
(2009) 04 AHC CK 0044
In the Allahabad High Court

Smt. Manoj Kumari and Others

APPELLANT

Vs

Gokaran Nath Misra and Another

RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2010) ACJ 2240 : AIR 2009 All 178 : (2009) 3 AWC 2904 : (2010) 2 CivCC 225

Hon'ble Judges : Shashi Kant Gupta, J

Bench : Single Bench

Judgement

Shashi Kant Gupta, J.—This revision is directed against the order dated 19.3.2001, passed by Additional Special District and Session Judge, Fatehpur, whereby the application No. 34Kha filed by the claimant/applicant under Order VI, Rule 17 of C.P.C. in Claim Petition No. 109 of 1998 has been rejected.

2. The husband of the revisionist No. 1 died in motor accident on 25.4.1998. The claimant/applicant filed a claim petition before the Motor Accident Claim Tribunal. The registration number of the vehicle involved in the accident was mentioned UT W-5467 in the F.I.R., Subsequent to the filing of the claim petition owner of the vehicle appeared and filed its written statement stating that the registration number of the vehicle involved in the accident was wrongly mentioned by the claimant and in fact the vehicle No. UT W-6075 was involved in the accident and not UT W-5467. Police after the investigation also submitted the charge-sheet on 27.6.1998 Vehicle No. UT W-6075 was found to be involved in the accident and the said vehicle No. UT W-6075 was released on personal bond of Rs. 1.5 lac.

3. Subsequent thereto an amendment application under Order VI, Rule 17 was filed by the claimant stating that the vehicle number involved in the accident was UT W-6075 and not UT W-5467 as such the prayer was made that the claimant be permitted to amend the claim petition accordingly by substituting the registration number of the vehicle UTW-6075 in place of UT W-5467. The said amendment application was rejected by the court below. Hence, the present

revision.

4. Heard the learned Counsel for the revisionist. No one has appeared on behalf of the respondent No. 2 despite the matter taken up in the revised list.

5. It appears that the registration number of the vehicle in dispute was mis-described and the registration number of the disputed vehicle was mentioned UT W-5467 instead of actual vehicle No. UT W-6075. It was submitted by the learned Counsel for the revisionist that immediately after the accident, causing the death of the husband of the claimant No. 1, the mental condition of the complainant at that point of time was not proper as such the registration number of the disputed vehicle was incorrectly described in the F.I.R. and consequently the same registration number was also mentioned in the claim petition.

6. It was further submitted that in fact, in the course of investigation by the police it was found that the vehicle in question involved in the accident was UT W-6075 and not UT W-5467 and the charge-Sheet was also submitted to this effect, moreover, the owner in his written statement admitted that the vehicle having registration No. UT W-6075 was involved in the accident.

7. The respondent No. 2 even though has not appeared to argue the matter but the counter-affidavit filed by it is on the record, wherein it has been stated that the owner of the vehicle has colluded with the claimant, therefore, the court below was justified in rejecting the amendment application.

8. It appears that the court below has taken a very technical view of the matter. Merit of the amendment is hardly a relevant consideration. It is open to the defendant to raise their objection with regard to the amended plaint by making correspondence amendment in its written statement. Mistake in description of the registration number of the vehicle in plaint can be rectified in plaint by way of amendment. It does not change the nature of the suit and the discretion has to be exercised in a judicious evaluation of the facts and circumstances in which amendment is sought.

9. An amendment which subserves the ultimate cause of justice and avoid further litigation should be allowed. There was merely a mis-description of the registration number of the vehicle, and allowing the amendment application could not have worked injustice or cause prejudice to the other party.

10. A bare perusal of the impugned order shows that the amendment application has been rejected mechanically in a most casual manner and the order is based on complete misreading of the case. The impugned order has not been passed in conformity with the principle of justice, equity and good conscious. The reasoning assigned by the court below is superfluous and has not considered the matter in the right perspective and has been swayed by totally irrelevant consideration.

11. The Apex Court in the case of Usha Devi Vs. Rijwan Ahamd and Others, has held as follows:

As to the submission made on behalf of the respondents that the amendment will render the suit non-maintainable because it would not only materially change the suit property but also change the cause of action. It has only to be pointed out that in order to allow the prayer for amendment the merit of the amendment is hardly a relevant consideration and it will be open to the defendants-respondents to raise their objection in regard to the amended plaint by making any corresponding amendments in their written statement.

12. It has been repeatedly held in catena of cases that Order VI, Rule 17 empowers the Court to allow amendments which are necessary for the purposes of determining the real question in controversy. The Court should be liberal in granting prayer of amendment of pleading unless serious injustice or irreparable loss is caused to the other side.

13. This Court in *Saleem v. IInd Additional District Judge, Balrampur* 2008 (105) RD 357, has held as follows:

A party cannot be refused a just relief merely because of some mistake negligence, inadvertence or even infraction of the rules of procedure. The Court generally gives leave to amend the pleadings to a party unless it is satisfied that the party applying was acting mala fide or that by his blunder, he had caused injury to his opponent. In the present case the amendments which are sought to be incorporated will not change the basic nature of the suit.

14. The Hon"ble Supreme Court in the case of *Rajesh Kumar Agarawal v. K.K. Modi and Ors.* 2006 (2) AWC 1886, has held as follows:

The rule of amendment is essentially a rule of justice, equity and good conscious and the power of the amendment should be exercised in the larger interest or doing full and complete justice to the parties before the Court. It is settled law that the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing prayer for amendment.

15. In view of the above, it cannot be said that there was any mala fide on the part of claimant-revisionist or the revisionists are trying to wriggle out from his admission. The proposed amendment will neither change the cause of action nor nature of the case.

16. In the result, revision is allowed. The impugned order dated 19.3.2001, passed by Additional Special District and Session Judge, Fatehpur is set aside. The claimant revisionist is permitted to incorporate the plea sought to be raised by way of amendment in the claim petition.