

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

CMPMO Nos. 590 of 2025

Reserved on 27.02.2026

Date of decision : 12. 03.2026.

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Smt. Kamla & others

...Petitioners.

Versus

Ajay Sautha & another

...Respondents

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*Coram:*

***The Hon'ble Mr. Justice Romesh Verma, Judge.***

*Whether approved for reporting?*<sup>1</sup>

For the petitioners : Mr. B.S. Chauhan, Sr. Advocate,  
with Mr. Sahil Sharma, Advocate.

For respondent No.1 : Mr. Adarsh Sharma, Advocate.

For respondent No.2. Mr. Raman Sethi, Advocate,

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**Romesh Verma, Judge**

The present petition arises out of the order dated 28.08.2025, as passed by the learned Additional District Judge(II), Shimla, H.P., whereby the application filed by the claimants/petitioners for the amendment of the petition has been ordered to be dismissed.

2. Brief facts of the case are that the claimants/petitioners filed petition before the learned Motor Accident Claim Tribunal, Rohru, District Shimla, H.P. by filing Claim Petition bearing case M.A.C.T/3/2024, titled as Kamla & others vs. Ajay Sauhta & another. It was claimed in the Claim Petition that Sh. Jai Bahadur Budha

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<sup>1</sup> ***Whether reporters of Local Papers may be allowed to see the judgment?***

father of the petitioners died in an accident on 10.09.2023 at about 6.00 p.m when he was returning back to his home after completing his work in a vehicle bearing No. HP63-7198 (Truck-Tipper). It was stated that driver of the truck namely Dinesh son of Sh. Ramesh,r/o Sukeda, Nepal, c/o Ajay Sauhta, r/o VPO Dhar, Tehsil Jubbal, District Shimla, H.P. was driving the vehicle in a rash and negligent manner and he could not control it and as a result of which truck fell down from the road in a ditch. The deceased received serious and grievous injuries on his head . The successors of deceased Sh. Jai Bahadur filed the Claim Petition for the grant of compensation to the tune of Rs.50,00,000/- (Fifty lacs) alongwith interest at the rate of 9% per annum from the date of the accident till its realization.

3. The petition was contested by the present respondent No.2- The New India Assurance Company Ltd. through its Deputy Manager, Divisional Office, 3<sup>rd</sup> Floor, Block No.7,SDA Complex, Shimla,HP. It was categorically submitted by the New India Assurance Company(Respondent No.2) that the Claim Petition is not maintainable in its present form. It was stated that the deceased Driver, who was driving the vehicle No. HP-63-7198 at the time of accident on 10.09.2023, was not holding any valid and effective driving licence. It was averred that since driver of the vehicle was not having any valid and effective driving licence, therefore, there is gross violation of conditions of insurance policy. It was stated that

the insured vehicle being a heavy goods vehicle (Truck-Tipper) which was carrying unauthorized gratuitous passengers, was empty at the time of accident and no goods whatsoever were found loaded in it at the time of accident. Seven persons including driver were travelling in this vehicle at the time of accident. Amongst them, three had died while four other have received injuries.

4. It is further submitted that this vehicle being heavy goods vehicle (Tipper) is specifically meant for carrying construction material like sand and stone etc. and not designed for carrying passengers and having seating capacity of three person only. It was further submitted that the owner had allowed all these persons being his labourers to travel in this vehicle and has thus knowingly and willfully disobeyed the terms and conditions of the insurance policy. Therefore, this is a fundamental breach of the terms and conditions of the insurance policy, thus liability for payment of compensation, if any is of the respondent/owner only.

5. Pursuant to the filing of the reply by the Assurance Company, the claimants /petitioners filed an application under Order 6 Rule 17 C.P.C for the amendment of the claim petition. By virtue of this application, the petitioners intended to incorporate para 10 of the claim petition in place of existing para as under:

“Yes, the deceased was employed with the respondent No.1 and was working as labourer at the site, engaged for the construction of retaining wall at Khera Kenchi just beneath the main road

alongwith his co-labourers on the fateful day, a vehicle bearing registration No. HP63-7198, being driven by Dinesh in rash and negligent manner and as such, could not negotiate the curb and consequently lost control over the vehicle and rolled down by crushing the labourers on the spot and rolled down in the deep gorge about 400-500 mtrs. from the main road. The factum of accident was reported at Police Station Chirgaon by informant but his statement under section 154 Cr. P.C. was not recorded as per his narration. The factum of occurrence was also witnessed by one Sh. Ashish Sharma who was supervising the construction work of the retaining wall, but he was not interrogated and associated by the investigating officer despite his oral requests as made to the investigating officer by him.”

6. Similarly, applicants/petitioners also intended to incorporate in place of existing para 23 in the following manner

“The deceased was engaged for the construction of retaining wall at Khera Kenchi just beneath the main road alongwith his co-labourers on the fateful day, a vehicle bearing registration No. HP63-7198, being driven by Dinesh in rash and negligent manner and as such, could not negotiate the curb and consequently lost control over the vehicle and rolled down by crushing the labourers on the spot and rolled down in the deep gorge about 400-500 mtrs. from the main road. The factum of accident was reported at Police Station Chirgaon by informant but his statement under section 154 Cr. P.C. was not recorded as per his narration. The factum of occurrence was also witnessed by one Sh. Ashish Sharma who was supervising the construction work of the retaining wall, but he was not interrogated and associated by the investigating officer despite his oral requests as made to the investigating officer

by him. It is apt to mention here that the deceased sustained multiple injuries in his entire body and consequently died on the spot. Postmortem of the deceased was conducted at CHC Chirgaon, by the doctor concerned. The deceased was hale and hearty and able bodied person the entire family was totally depended upon him. Now there is independent source of income of the petitioners because he was the only earning hand in the family. After his death the petitioners have become high and dry and debarred from his love and affection. The petitioners have spent about 50,000/- to perform the last rites of the deceased.”

7. It was averred in the application that the applicants/petitioners are rustic labourers and were unable to understand the language of the court and the contents of the petition were not read over and explained to the applicants/petitioners at the time of appending their signature on the claim petition. It is relevant to mention here that the petition so filed before this learned Tribunal was on the basis of case FIR, whereas the deceased including co-labourers were not occupants of the ill-fated vehicle. On the fateful day, whereas, they were deployed for the construction of retaining wall beneath the main road, who were crushed by the ill-fated vehicle, when the same rolled down from the main road. The factum of accident was witnessed by one Sh. Ashish Sharma who was present at the place of accident for the purpose of supervision of the construction work of the retaining wall. It is

apt to mention here that the applicants/petitioners alongwith co-petitioners were apprised by Sh. Ashish Sharma that the petitions so filed by applicants/petitioners and their co-petitioners have been filed on the basis of case FIR, whereas, the deceased and co-labourers were not at all occupants in the vehicle in question, but were crushed under the ill-fated vehicle.

8. By the said amendment, the petitioners intended to incorporate that at the time of the accident, they were not travelling in the vehicle, however, the deceased including other co-labourers were deployed for the construction of retaining wall and they were crushed by ill fated vehicle when the same rolled down from the main road.

9. Respondent No.2, Assurance Company filed reply to the application for the amendment of the claim petition whereby various objections were taken by the Assurance Company. It was averred that the application is not maintainable as the trial of the case has already commenced . The petitioners did not exercise due diligence while seeking the amendment. Further, it was averred that by means of this application, the basic structure of the petition shall be changed and the same shall change the entire nature, cause and character of the petition. It was further stated in the reply that

the petitioners have instituted the present application in connivance with the owner of the vehicle in order to save him from the liability to pay the compensation on the facts and grounds as mentioned in the claim petition.

10. The Assurance Company submitted in the reply that one of the eye witnesses /injured namely Karan, who has filed claim petition on account of injuries in case MACT No. 4/2024, had lodged an FIR, wherein he has categorically mentioned that on 10.09.2023 while working on Khashdar road they were working on Crate Wall in the day time. After finishing the job at around 6 p.m., in the said tipper Mohamad Tamanna sat with driver Dinesh in his cabin and rest of all namely Khali Buda, Padam Thapa, Tilak, Jai Bahadur and Dil Bahadur sat in the backside body of Tipper. While Dinesh was driving the tipper rashly and negligently, it steered towards right side and went down the road about 400-500 meters and they all fell along with tipper in the ditch. Therefore, the Assurance Company stated that when the eye witness and claimant himself had lodged the FIR and filed the Claim Petition and had disclosed the true and real facts before the Investigating Agency, therefore, the story as projected by the Claimants with respect to Aashish is wrong incorrect and false.

11. It was averred that the intended amendment sought to be incorporated and brought by way of amendment in the claim petition was in their knowledge at the initial stage when the claim petition was filed. The applicants failed to exercise the due diligence and now when the proceedings have already commenced and respondent No.2 has disclosed its defence by way of filing the reply, applicants in connivance with respondent No.1/owner in order to fill up the lacuna and save him from liability of payment of compensation, has moved the present application.

12. Learned Additional District Judge(II) Shimla, H.P. vide its order dated 28.08.2025, dismissed the application filed by the claimants/petitioners for the amendment of the claim petition.

13. Feeling dissatisfied, the claimants/petitioners have preferred the present petition Under Article 227 of the Constitution of India for setting aside the order dated 28.08.2025, passed by the learned Additional District Judge(II), Shimla.H.P.

14. I have heard the learned counsel for the parties and have gone through the case file.

15. It is submitted by Mr. B.S. Chauhan, Sr. Advocate, assisted by Mr. Sahil Sharma, Advocate that impugned order as

passed by the learned Additional District Judge-II, Shimla is bad in the eyes of law. Since the case in hand is at the initial stage and the trial has not commenced, therefore, no prejudice would be caused to the opposite side in case the proposed amendment is allowed to be effected. He further submitted that in case the present amendment is allowed to be incorporated, the respondents shall get an opportunity to rebut those averments and parties have yet to prove their case in accordance with law by leading evidence.

16. On the other hand, Mr. Raman Sethi, learned counsel appearing for the Assurance Company has defended the order as passed by the learned Additional District Judge-II, Shimla and he has submitted that since prayer sought by the claimants changes the basic structure of the petition which goes to the root of the case and there is no due diligence on behalf of the petitioners and the said amendment is contrary to the spirit of Order 6 Rule 17 C.P.C, therefore, order as passed by the learned Additional District Judge-II, Shimla is valid in the eyes of law.

17. Mr. Adarsh Sharma, Advocate, appearing for respondent No.1 has supported the case of the petitioners.

18. The case of the petitioners/ claimants before the learned MACT, whereby Claim petition for the grant of

compensation has been filed is that the father of the petitioners died in an accident while travelling in a vehicle bearing No. HP63-7198 Truck (Tipper), which was being driven rashly and negligently by its driver Dinesh.

19. In the claim petition, it has been stated that the deceased on account of the accident, sustained serious and grievous injuries on his head and he died on account of said accident and they sought compensation to the tune of Rs. 50,00,000/- (Rupees fifty lacs).

20. The Assurance Company has specifically taken defence of maintainability of the claim petition on the ground that insured vehicle was heavy goods vehicle Truck/Tipper which was carrying unauthorised gratuitous passengers. Since, there is breach of the terms and conditions of insurance policy, therefore, liability for the payment of compensation is of the owner.

21. The perusal of the application reveals that now by way of proposed amendment, the petitioners intend to incorporate the plea that they were not travelling in the tipper, however, they were deployed for the construction of retaining wall beneath the main road where they were crushed by the illfated vehicle when the same rolled down from the main road.

The provisions of order 6 Rule 17 C.P.C reads as follows:

“Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

22. The provisions provide that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the parties could have raised the matters before the commencement of the trial.

23. This Court is of the opinion that in the present case, the proposed amendment shall change the very basic structure of the claim petition. The nature and claim of the claim petition is being tried to be changed and the admission which is there in the claim petition is tried to be withdrawn.

24. The Hon’ble Apex Courts in **Civil Appeal No. 2886 of 2012, titled as Basavaraj vs. Indira and others**, dated 29.02.2024 while dealing with the amendment application has held as follows:

“9. This Court in *M. Revanna v. Anjanamma (Dead)* by legal representatives and others<sup>11</sup> opined that an application for amendment may be rejected if it seeks to introduce totally different, new and inconsistent case or changes the fundamental character of the suit. Order VI Rule 17 C.P.C. prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could not be sought earlier. It is not a matter of right. Paragraph No. 7 thereof is extracted below: “7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order 6 Rule 17 CPC virtually prevents an application for amendment of pleadings from being allowed after the 11 (2019) 4 SCC 332 Page 12 of 15 trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.”

10. Initially, the suit was filed for partition and separate possession. By way of amendment, relief of declaration of the compromise decree being null and void was also sought. The same would certainly change the nature of the suit, which may be impermissible.

**12.1** In the case in hand, the compromise decree was passed on 14.10.2004 in which the plaintiffs were party. The application for amendment of the plaint was filed on 08.02.2010 i.e. 5 years and 03 Page 14 of 15 months after passing of the compromise decree, which is sought to be challenged by way of amendment. The limitation for challenging any decree is three years (Reference can be made to Article 59 in Part-IV of the Schedule attached to the Limitation Act, 1963). A fresh suit to challenge the same may not be maintainable. Meaning thereby, the relief sought by way of amendment was time barred. As with the passage of time, right had accrued in favour of the appellant with reference to challenge to the compromise decree, the same cannot be taken away. In case the amendment in the plaint is allowed, this will certainly cause prejudice to the appellant. What cannot be done directly, cannot be allowed to be done indirectly.

**14.** For the reasons mentioned above, the present appeal is allowed. The impugned order passed by the High Court is set aside. The application filed for amendment of the plaint is dismissed. The appellant shall be entitled to cost of the proceedings, which are assessed at ₹1,00,000/- to be paid jointly or severally by respondents No. 1 and 2. The appellant shall be paid the amount of cost on the next date of hearing before the Trial Court by way of demand draft.”

25. The petitioners have failed to prove the due diligence which is essential while determining and adjudicating the application for amendment. There is no whisper in the pleadings that there is any due diligence on the part of the petitioners for filing of the application. More so the petitioner by way of proposed amendment intends to bring new facts which will certainly change the very basic structure of the claim petition and will prejudice the rights of the respondent.

26. The application for amendment is falsified on account of the fact that one of the injured/claimant, who has filed claim petition bearing claim petition No. 4/24, titled Karan Singh and Ajay Sautha had lodged an FIR, which speaks contrary to the stand which the petitioners intends to incorporate in the claim petition. Once the surviving claimant, who was the witness to the accident has himself filed the claim petition had lodged an FIR stating that the claimants were travelling in the vehicle, therefore, the stand which is being tried to be taken can not be permitted in order to defeat the rights of the respondents. The impugned order does not suffer from any error, therefore, the same does not require interference.

27. It will be pertinent to mention here that six claim petitions have been preferred before the MACT Rohru, District Shimla and arising out of those proceedings, six CMPMOs were filed on account of rejection of applications for amendment in the following manner:

Sr. No.	Claim Petition No. at MACT Rohru, District Shimla	CMPMO No.	Titled	Decided on/Reserved on
1.	MACT/1/2024	CMPMO No. 589 of 2025	Manisha vs. Ajay Sauhta	Reserved on 27.02.2026
2.	MACT/2/2024	CMPMO 588 of 2025	Kamla vs. Ajay Sauhta	Reserved on 27.02.2026
3.	MACT/3/2024	CMPMO No. 590 of 2025	Kamla vs. Ajay Sauhta	Decided on 27.02.2026
4.	MACT/4/2024	CMPMO No.	Karan Singh vs	Decided on

5.	MACT/5/2025	586 of 2025 CMPMO No.591 of 2025	Ajay Sauhta Tilak Kumar Budha vs. Ajay Sauhta	29.12.2025 Decided on 29.12.2025
6.	MACT/6/2024	CMPMO No. 587 of 2025	Padam vs. Ajay Sauhta	Decided on 29.12.2025.

28. In all the claim petitions, the amendment application was filed by the claimants, however, the learned MACT rejected the applications in all the cases.

29. In MACT Case Nos. 4/24, 5/24, 6/24 /CMPMO 586/2025, CMPMO 591 of 2025 and CMPMO No. 587 of 2025 were filed before this Court and the said petitions were dismissed by the co-ordinate Bench of this Court vide order dated 29.12.2025.

30. The Co-ordinate Bench in its order has held as follows:

“11. I have heard learned Senior Counsel for the petitioners and also learned counsel for the respondents and have also carefully gone through the impugned orders as well as the documents appended with the petition(s).

12. It is a matter of record that in all the claim petitions which stand preferred before the learned Tribunal, the stand of the claimants therein originally was that they were travelling in the ill-fated Tipper, which fell down on account of the rash and negligent driving of the driver, resulting in grievous injuries to the petitioners. In this backdrop, if one peruses the application filed under Order VI, Rule 17 of the Civil Procedure Code, as I have already observed hereinabove, the prayer of the petitioners therein was that they should be allowed to change 11

their version and be allowed to introduce the version that they were not sitting in the Tipper, when the Tipper fell down, but, they were working at the site performing their duty and were crushed by the Tipper, which fell down on account of the rash and negligent driving of its driver.

13. Order VI, Rule 17 of the Civil Procedure Code, inter alia, provides that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and such amendment shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. It is further provided in this Section that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. It is not in dispute that in the present cases, the applications for amendment of the claim petitions were filed before the commencement of Trial after response was filed by the respondent, more so, the Insurance Company to the claim petitions.

14. What weighed with the learned Tribunal while dismissing the application(s) filed by the petitioners herein was that the proposed amendment would not only change the nature of the pleadings, but, also its character, which amounted to withdrawing material facts and admissions. Learned Tribunal also held that the same would change the cause of action and though the Motor Vehicles Act was a beneficial legislation, but, as the manner, in which, the incident took place, was material and germane and had to be proved by the party which alleged it, the factum of the applicants trying to introduce a new case and a totally new cause of action would be detrimental to the contesting respondent and would cause prejudice to them.

15. This Court does not find any infirmity with the reasoning given by the learned Tribunal, in terms

whereof, the application(s) filed under Order VI, Rule 17 of the Civil Procedure Code were dismissed.

16. It is a matter of record that in terms of the applications filed for amendment of the claim petitions, the petitioners intended to withdraw the earlier factual narration with regard to the occurrence of the incident by altering it from 13 the factum of them being seated in the ill-fated tipper to working at the site and being crushed by a tipper.

17. This Court does not concur with the submissions of the learned Senior Counsel that, merely because, the petitioners are illiterate labourers, therefore, they were not able to gauge as to whether the incident took place on account of the petitioners being passengers in the tipper or on account of the petitioners being crushed by the tipper. According to this Court, even a child, who has some sense, can very easily infer and narrate these facts.

18. As far as the arguments qua lodging of the two FIRs is concerned, it is completely irrelevant and immaterial for the adjudication of the application filed under Order VI, Rule 17 of the Civil Procedure Code in the present case.

19. Herein, it is not the case of the petitioners that the claim petitions were filed by them on the strength of the FIRs. Even otherwise, there was no occasion for the petitioners to have filed the claim petitions on the strength of the FIRs. for the reason that they were the first parties to the incident and it is not as if they were the legal heirs of someone else, who had 14 met with an accident.

20. The petitioners, thus being the party to the incident, obviously have to be believed as the persons having narrated the correct facts which are mentioned originally in the claim petitions.

21. Obviously, for some reason, there was a change in heart subsequently and this prompted them to file the application under Order VI, Rule 17 of the Civil Procedure Code, which has been rejected by the

learned Tribunal. This change in heart was on account of the fact that the application for amendment was filed, after the Insurance Company had filed its response to the claim petitions, wherein, the Insurance Company took the stand of the petitioners were gratuitous passengers.

22. All this demonstrates that the filing of the applications under Order VI, Rule 17 was not a bonafide act but the petitioners intended to introduce a completely different story in the claim petitions as from the one, with which they had earlier approached the Court.

23. In this backdrop, this Court holds that the learned Tribunal has correctly dismissed the applications filed by the petitioners under Order VI, Rule 17 of the Civil Procedure Code, as the said applications did not meet the parameters of the statutory provisions of Order VI, Rule 17 of the Code of Civil Procedure and the intent of the petitioners was nothing but to fill up the lacunas in the cases.

24. Accordingly, in light of the above observations, these petitions are dismissed.”

31. Since, the co-ordinate Bench of this Court while dealing with the same issue arising out of the same accident has already dismissed the CMPMOs filed by the claim petitioners, therefore, this Court does not find any infirmity in the impugned order, as passed by the learned Additional District Judge, -II, Shimla. The present petition being devoid of any merit, deserves to be dismissed and is accordingly dismissed.

Pending application(s), if any, also stands disposed of.

12<sup>th</sup> March, 2026  
(Veena)

**(Romesh Verma)**  
Judge