

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.585 OF 2004

Ram Gajendran @ Rajendra Balu Kevat	]	
Age 22 years, Occupation- Hawker	]	
R/at Ganesh Wadi, Behind Nitin Company	]	
Highway-Thane	]	...Appellant

Vs.

1. Sharad Saidas Lembhe	]	
At post Pimpode Bk.,	]	
Taluka Koregaon, District Satara	]	
2. New India Assurance Company Ltd.	]	
Gokhale Road, Near Station Thane	]	...Respondents

Mr. T. J. Mendon	Advocate for the Appellant.
Ms. Poonam Mittal	Advocate for the Respondents.

CORAM : S. M. MODAK, J.

DATE : 5th OCTOBER 2026

ORAL JUDGMENT :

1. Heard Mr. T. J. Mendon, learned counsel for the Appellant and
Ms. Poonam Mittal for the Respondents.

2. The claim for compensation on account of injury was dismissed by the Tribunal against the insurer whereas it was decreed against the insured. Part of the judgment is challenged. It is per the Judgment dated 7th January 2003, passed in Motor Accident Claim Petition No.559 of 1991. The reason for dismissing the claim petition against the insurer is the claimant could not prove existence of a policy for vehicle No. MWF-2080. According to Mr. Mendon, learned counsel on the basis of police papers and the RTO certificate, the identity of the vehicle, that is, a tempo is established and the claimant has discharged his burden. According to him, the insurance company has examined his officer, but they have not produced the policy in respect of cover note bearing number 3115170120135.

3. According to him, the insurance company has produced a policy for vehicle No.MXL 3476. The number of that policy is 311517012013, However, according to him, this number is not the cover note number, but it is an insurance policy number. Whereas, Mr. Mendon submitted that, burden lies on the appellant to prove the existence of policy and whatever material they are having, they have produced it and the Tribunal has rightly dismissed the case. The only

issue arisen in this appeal is whether the appellant has discharged his burden by producing necessary documents to show existence of a policy for tempo No. MWF 2080.

4. Mr. Mendon has relied upon the following judgments:

1. Bhalchandra N. Donge vs. Mohan G. Butala, ¹
2. The New India Ass. Co. Ltd. vs. Roshan Bi Magdum, ²;
3. Smita Nikhil Bhavar v/s. Mukund Ltd. and Anr.³;
4. Bandu Dhondu Patil vs. Balwas Bhagal Singh and Anr.,⁴ and
5. Karuna Parmar vs. Prakash Sinha and Ors.,⁵

The focus of learned Advocate is on observations in case of *The Oriental Fire General Insurance Co. Ltd. vs. Bhiwa Shidawa and Wayada*,⁶. With the assistance of both the learned Advocates, I have gone through the record and findings of the Tribunal.

5. The case of the claimant in nutshell is as follows.

- a. The claimant along with his colleague Naresh Kewat were going from Thane to Bhiwandi for selling kerosene on handcart.

¹ 1995 ACJ 898 Bombay;

² 2005 ACJ 2005 Bombay

³ First Appeal no.319 of 2005

⁴ First Appeal No.1107 of 2003

⁵ 2025 ACJ 1624 (SC)

⁶ First Appeal No.280 of 1992 dated 19th January 2010

It was on Thane-Bhiwandi road that they came near Kasheli Bridge near pipeline No.133. They had crossed the Balkum village and at 5 am on 16th July 1990, one tempo bearing registration No. MWF 2080 came from opposite direction and dashed them. As a result, both of them have fallen down and sustained injuries.

b. The driver of the tempo was kind enough and he took both of them to Civil hospital by autorickshaw. The appellant was admitted there from 18th July 1990 for 3 days and thereafter he was removed to KEM hospital and then to Vishwas Maternity and General Nursing Home. He was admitted there. He took treatment there from 18th July 1990 till 20th September 1991.

c. He was selling kerosene as a hawker and earning his livelihood. The claim petition was filed against one Anna Ramchandra Shinde. He was the driver of the offending vehicle i.e. tempo. His name was deleted. The present owner is Respondent No. 2- Sharad Lembhe. No one has contested the proceedings except the insurer. Mr. Mendon has invited my attention to their written statement. It is true that the company has expressed ignorance and not admitted the contents of the

documents recorded in paragraph 8 to 20 of the claim petition.

During evidence, the claimant has given evidence and he has examined the RTO Divisional clerk Shri Mohan Jadhav from Satara. Whereas, the insurer has examined his representative one Prasad Pandurang Kulkarni, who is working in Satara branch.

6. In support of his claim, the claimant has relied upon the following documents:

a. FIR bearing No.124 of 1990 registered with Kapurbawdi Police Station, Thane against one Anna Ramachandra Shinde, who is a driver. It was registered at the instance of police constable of Kapurbawdi Police Station.

b. In his FIR, he has also mentioned about recording the statement of the driver Shinde. He himself has given information. According to him, on 16th July 1990 at about 3.30 am, he was going from Bhiwandi to Mumbai in a Tempo bearing No.MWF 2080. That is the offending Tempo. One lorry came from Bhiwandi side and gave a dash to the driver side of the Tempo and the lorry driver ran away. Due to the said dash, the said Shinde lost control and dashed to a water pipeline. At the same time, his

Tempo gave a dash to two persons who were taking handcarts of kerosene.

c. The FIR further mentions about conducting enquiry by the officer by visiting the civil hospital and the present claimant is also enquired.

d. Discharge card of Vishwas Hospital is at Exhibit 31-The period of hospitalisation is 18th July 1990 to 20th September 1990. Exhibit 32 is the certificate. Exhibit 33 is the hospital bill for Rs. 6,875/-. Receipt for blood transfusion is at Exhibit 34 and the bills for medicine is at Exhibit 35.

e. The claimant also relied upon disability certificate issued by Dr. Ajit Natu dated 16th July 2002.

f. The disability assessed is 15%. Exhibit 46-Certificate issued by Doctor.

g. The RTO representative has produced the following documents:

i. Letter at Exhibit 41.

ii. Copy of extract from the Register at Exhibit 42 in respect of vehicle No. MWF-2080. It is Bajaj Tempo.

iii. Exhibit 43- A copy of payment receipt.

iv. Exhibit 44- Certificate giving following details:

- a. Vehicle number MWF-2080 stands in the name of Mr. Sharad Lendhe and It was insured with New India Insurance Company.
- b. The period of insurance is 23rd April 1990 to 22nd April 1994. The cover note number is 311517012013.

7. The officer Prasad Kulkarni has brought the record in respect of a vehicle No.MXL-3476. He has tendered the following documents:

- i. Exhibit 56- Authority letter.
 - ii. Exhibit 57- Copy of policy bearing number 311517012013.
- The name of insured is Mr. Vasantrao Anna Salvi. Admittedly, he is not before the Court and the vehicle number is MXL-3476. So, admittedly, this is not the offending vehicle recorded in FIR.

8. On this background, I have gone through the findings given by the Tribunal. It is true, on the point of negligence, no evidence is given on behalf of the insurer. However, the Tribunal has given finding about rash and negligent driving of the tempo against the tempo driver.

9. From the police papers, it is very clear that offending vehicle is

MWF-2080. The issue does not rest there. The issue is whether the Tribunal was justified in non-suiting the appellant for not proving the existence of policy for the tempo No.MWF-2080.

10. The Tribunal has discussed the evidence of the RTO officer in paragraph 29 and 30. Whereas in paragraph 31 and 32, the evidence of the Officer of Insurance Company is discussed. Ultimately, the Tribunal has come to the following conclusion:

“In my opinion, the burden lies on the applicant to prove that the said offending vehicle was insured with Opponent No.3 at the time of accident and therefore, in fact, the applicants should have adduced evidence to prove such fact. The applicant cannot rely on the shortcomings in the evidence of opponent No.3.”

11. After considering the above circumstances, my findings are as follows:

- a. The FIR is lodged by the police after initial investigation. It is lodged against the driver of the tempo No. MWF-2080, so identity of the vehicle is established.
- b. Now the issue is whether it is insured with opponent No.3. To prove this the claimant relied upon the evidence of Mr.Jadhav and

documents produced by him. After reading them we can infer the following facts:

- i. The tempo was registered with opponent No.3 from 23 April 1990 till 22nd April 1991, the date of accident is 16th July 1990.
- ii. He has brought the certified copies from his record at Exhibit 42 and 43 , the owner is Mr. Sharad Lembhe.
- iii. From Exhibit 44 it is clear that the tempo was owned by Mr. Sharad Lembhe and in that certificate the number is mentioned. It is written by hand and certificate is in the printed format and number is preceded by the words Insurance Policy/Cover Note Number. From the certificate it is not clear whether it is cover note number or policy number. The vehicle is subsequently transferred to Thane RTO but that is not material.

12. From the above it is clear that the offending vehicle is insured with New India Assurance Company. Still the issue remains whether number is a cover note number or policy number. From this it can very well be said that the appellant has discharged his initial onus of proving the existence of the policy for vehicle having Registration No. MWF-2080.

13. On this document the company has examined witness Mr. Prasad Kulkarni. No doubt he has produced the policy having number 3115170120135. That policy is issued for vehicle standing in the name of Vasant Salvi. Admittedly in the policy at Exhibit 57, number which is mentioned is not cover note number but policy number. Mr. Kulkarni has admitted that the cover note details are maintained by Stationary Department and he has not brought any record about the policy pertaining to said cover note number.

14. Now it is relevant to note that any claimant who met with an accident is not having access to the documents possessed by the insured. Those documents may be in the possession of the insurer or the insured. The insurer has called for documents from the insured. However not successful.

15. Whatever evidence given by this officer is in respect of the policy Number 3115170120135. Admittedly, they have not given any evidence for the policy having Cover note No.3115170120135. The record pertaining to policy having cover note No.3115170120135 is supposed to be with the insurance company. Admittedly, they have not produced any documents to that effect. The appellant is not expected

to have access to the documents of the insurance company and about the police having cover note No.3115170120135. The practice of the Insurance Company is to issue first cover note and then to issue policy.

16. The information maintained by RTO office is the information given to them by the registered owner. If the owner will give the cover note number only their record will contain cover note number only. The appellant cannot be blamed for not producing the record about the policy having the said cover note number. Infact the Tribunal was wrong in placing burden on the appellant. The appellant has discharged his initial onus and it was for the Insurance Company to produce necessary documents. If necessary documents are not produced, adverse inference has to be drawn against Insurance company. Merely producing record about the policy having that number will not relieve Insurance company of their responsibility. They have certainly failed and hence adverse inference is to be drawn against them and it has to be believed that the appellant has discharged his onus. The finding needs to be corrected. I conclude that the appellant has proved his case that the vehicle bearing registration No. MWF-2080 is insured with opponent No.3.

17. There is discharge card at Exhibit 31 and disability certificate at Exhibit 32 issued by Vishwas Hospital. There was a fracture to the right leg of applicant and nailing of the tibia was required to be done. Further there was dislocation of right leg knee joint and right leg tibia was required to be nailed. Considering the nature of injuries even though the physical disability assessed as 20 % are considered, the functional disability is 15%.

18. The claim petition is dismissed against the Insurance Company whereas the insured is asked to pay Rs.48,000/- towards compensation at the rate of 9% p.a.

19. In view of the above findings, the appeal needs to be allowed against the Insurance Company and both the insurer and insured are liable to pay enhanced amount jointly and severally.

20. Mr. Mendon has asked for compensation as follows:

Sr. No .	Particulars	Amount Tribunal	Amount High Court
1.	Loss of Income (during treatment for 6 months) (Rs.3000 x 6)		Rs.18,000/-
2.	Future prospects Rs.3,000/- x 40%		Rs.1,200/-
2.	Loss of Income		Rs.1,36,080/-

	(Rs.4200 x 12 x 18 x 15%)		
3.	Hospital and Medical Expenses	Rs.23,000/-	Rs.23,000/-
4.	Pain and Suffering		Rs.25,000/-
5.	Amenities of life		Rs.25,000/-
6.	Loss of expectation of life		Rs.5,000/-
7.	Conveyance Charges		Rs.5,000/-
8.	Special diet	Rs.2,000/-	Rs.5,000/-
9.	Marriage Prospect		Rs.5,000/-
10.	Future Surgery		Rs.15,000/-
			Rs.2,62,080/-
	Tribunal granted		Rs.48,000/-
			Rs.2,14,080/-

21. Now the question arises about income and computation of compensation. In paragraph No.3 he has said his monthly income as Rs.3,000/- per month. The Tribunal has given details of expenses incurred by the appellant in paragraph 20 and 21.

22. Appeal needs to be allowed by passing the following order:

ORDER

a) **The Appeal is allowed.**

b) The judgment dated 7 January 2003 passed by the II Extra Joint District Judge, Thane is modified as follows:

i. Respondent Nos.1 and 2 are directed to pay jointly and severally a sum of Rs.2,14,080/- at the rate of 9% p.a. from the date of application till realization within 8 weeks from the date of uploading of the order.

- 23.** In the light of the above observations, **the Appeal is disposed of.**
- 24.** Pending Applications, if any, also stand disposed of.

[S. M. MODAK, J.]