

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.954 OF 2011

The New India Assurance Company Ltd. ,
Through its Manager (Legal Hub) and
authorised signatory,
Sanjeev S/o. Ramrao Gaisamudre ..Appellant

Vs.

Sachin Pandharinath Gaikwad and ors. ..Respondents

Mr.A.B.Kadethankar, Advocate for appellant
Ms.M.D.Thube-Mhase, Advocate for respondent no.1
Mr.Y.V.Kakade, Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
DATE : DECEMBER 04, 2021**

ORDER :-

This is an insurance company's appeal taking exception to the judgment and award granting compensation on account of injuries and permanent disability suffered in the vehicular accident. The challenge is mainly on the ground of validity of the licence to drive the vehicle at the material time and contributory negligence of the respondent-claimant.

2. Heard learned counsel for the appellant-insurance company. Perused the impugned judgment and award.

3. It was an accident between a tempo (goods carriage) and a motorbike. The tempo driver held the licence to drive light motor vehicle. Learned counsel for the appellant-insurance company would submit that the tempo driver did not hold the licence to drive the transport vehicle.

4. The issue, however, is no longer *res-integra* in view of the Apex Court judgment in the case of **Mukund Devangan Vs. Oriental Insurance Co. Ltd., AIR 2017 SC 3668**. The appeal on this count, therefore, fails.

5. On the question of contributory negligence, the facts indicate that the tempo knocked down the motorcyclist/respondent no.1 from behind. The appellant-insurance company did not examine any witness in proof of its claim of contributory negligence. The Tribunal, in paragraph 9 of the impugned judgment, has observed thus :-

“9. Further considering the damage caused to the motorcycle and the tempo, it is submitted that it is a case of contributory negligence and not a case of any sole negligence on the part of tempo driver. But I find no force in this submission of Mr.Barshikar. Only because the right side front portion of the tempo was damaged, in the absence of any evidence it cannot be

inferred that the applicant-motorcyclist was riding the motorcycle negligently without keeping his left side and the motorcycle was at the center of the road etc. Though the tempo driver would have the best witness to throw light on the facts of the incident, no pains are taken by the opponent no.3 to lead the evidence of opponent no.1 Tempo driver. Therefore, in the absence of any evidence such unfounded contention of Mr.Barshikar cannot be sustained.”

6. In view of the above, this Court has no reason to take a different view in the matter. The appeal, therefore, fails. The appeal, thus, stands dismissed.

[R.G. AVACHAT, J.]

KBP