

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 2349 OF 2006**

M/s. New India Assurance Co. Ltd.,
Kudal Branch, Kudal

....Appellant

Vs.

1. Govind Gopal Talavadekar
aged about 40 years, occu. Business
Tal. Sawantwadi, District Sindhudurg

2. Kalidas Padmanabha Shirodkar
aged about years R/o Shetewada
Opposite Danial Husband, Municipal
Market Shop Owner, Municipal Market
Shop No. 26, Mhapasa-Goa.

3. Smt. Umesh Pundlik Pednekar
aged 35 years occ. Service,
R/o Punala Usgaon-Goa Driver

4. National Insurance Co. Ltd.,
Opp. Patit Pavan Mandir, Ratnagiri

5. Vithoba Sitaram Gawade
aged about 35 years, Occ. Business
R/o. Giroda, Tal. Sawantwadi

....Respondents

Mr. Devendranath S. Joshi (through VC) for the appellant
Mr. Sanjay Krishnan h/f Ms. Harshada Rane for respondent no. 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th OCTOBER, 2025.

ORAL JUDGMENT:

1. This appeal is preferred by appellant-insurance company challenging the Judgment and Order passed by the learned Motor Accident Claims Tribunal, Ratnagiri (For short 'the Tribunal').

2. It is contention of learned counsel for the appellant that appellant-insurance company is insurer of claimant's motorcycle. The claimant was riding the motorcycle on correct side of the road. The offending vehicle came from wrong side and gave dash to the motorcycle of the claimant. But, the Tribunal has considered 50% contributory negligence of the claimant, which is erroneous. It should have been 100% negligence of the driver of the offending vehicle. Learned counsel further submitted that the claimant was a pillion rider and he was not covered under the insurance policy and the insurance policy was not issued by the insurance company. But these facts are not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for respondent nos. 1 to 4 that it appears from the spot Panchanama that the vehicle on which the claimant was riding was on wrong side. On that basis, the Tribunal has passed well reasoned order and no interference is required in it and requested to dismiss the appeal.

4. I have heard both the learned counsels, perused the impugned Judgment and Order. It is claimant's case that on 17th March 1991, the claimant was riding pillion on the motorcycle belonging to opponent no. 4 in the claim petition. He was driving the

motorcycle on left side of the road with moderate speed. At about 4.00 p.m., the offending Fiat car came in high speed. He could not control speed of his car, entered on the wrong side of the road and dashed the motorcycle. Due to dash, the claimant had suffered injury to his right leg. The offence was registered against the driver of the Fiat car. To prove negligence, the claimant has examined himself. The driver of the Fiat car did not step into the witness box. While dealing with the issue of negligence, the Tribunal has observed that motorcycle rider had gone on the other side of the road. There was 10 feet long brake marks of the motorcycle on the road which indicates that motorcycle was in high speed and he could not control speed of the motorcycle and met with an accident. On that ground, the Tribunal has held that the rider of the motorcycle had 50% contributory negligence in the said accident. I do not find infirmity in it. In my view, the 10 feet long brake marks of the motorcycle shows that motorcycle was in high and excessive speed and he could not control the motorcycle. Though the learned counsel for the appellant-insurance company has raised the issue of insurance policy and the claimant being a pillion rider not covered under the insurance policy, no evidence is produced in that regard. Hence, I do not find merit in it.

5. In view of above, I pass following order:

ORDER

I. The appeal is dismissed.

II. The claimants are permitted to withdraw deposited amount alongwith accrued interest thereon.

III. The statutory amount be transferred to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

IV. Record and proceedings be sent back to the Tribunal.

6. In view of disposal of First Appeal, all pending applications, if any, are disposed off accordingly.

(SHIVKUMAR DIGE, J.)

IRESH
MASHAL

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IRESH MASHAL
Date: 2025.11.10
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