

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

FIRST APPEAL NO. 1306 OF 2023

The Oriental Insurance Co. Ltd.]
Thr. Its. Asst. Manager, Mumbai Regional]
Office, T.P. Hub 3rd floor, Annex Building,]
Behind SBI Main Branch, Horniman Circule,]
Fort, Mumbai and Through its Kudal Branch,]
Tal. Kudal, District: Sindhudurg.]

.... Appellant

Versus

1. Prerana @ Vidhi Vishal Shirodkar]
Age – 26 years, Occu: Household,]
2. Vilas Krushna Shirodkar,]
Age – 63 years, Occu: Agriculture,]
3. Veena Vilas Shirodkar,]
Age – 59 years, Occu: Agriculture,]
No.1 to 3 R/o Gaorai (Jirewadi)]
Tal. Kudal, Distrcit: Sindhudurg.]
Since Deceased Through Lrs.]
- A. Vishakha Santosh Kinjalkar]
Age: Major, Occu: Housewife,]
R/o. 1/1/ Shahaji Raje Mhatre Chawl,]
Chintamani Sankul, Lotewadi, Mothagaon,]
Thakurli Tikal Nagar, Dombivali (W),]
Thane 421201.]
- B. Devika Dewoo Ludabe]
Age: Major, Occu: Housewife,]
R/o. 363/Katta, Varchiguramwadi,]
Malvan Katta, Sindhudurg.]
4. Sanjay Appa Mestry,]
Age: 42 years, Occu: Business,]

- R/o. 204/B, Morar Ashish, Eastern Highway,]
Near Nitin Company, Thane (West)]
District: Thane 400606.]
5. Krishna Zarnappa Bhalke,]
Age – 35 years, Occu: Service,]
R/o. New Bharat Nagar, Banjara Tande,]
H.P. Colony, Vahinaka – Chembur,]
Mumbai 52.]

.... Respondents

Mr. Nikhil N. Pawar, Advocate for the Appellant – Insurance Company.

Mr. T. J. Mendon, Advocate for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th NOVEMBER, 2025.

ORAL JUDGMENT. :

1. This appeal is preferred by the Appellant – Insurance Company against the impugned judgment and order passed by the Motor Accident Claims Tribunal, Sindhudurg (for short, “the Tribunal”).

2. It is contention of learned counsel for the Appellant – Insurance Company that at the time of accident, the offending vehicle did not have permit, and there was breach of terms and conditions of insurance policy. The insurance company has examined DW1 – Vinay

Paranjpe to prove the said fact, but the Tribunal has not considered this fact and passed the impugned judgment and order, which is erroneous. Learned counsel further submitted that atleast pay and recover order be passed. Hence, requested to allow the appeal.

He relied on *Amrit Pal Singh Vs. TATA AIG General Insurance Company Limited and Ors., reported in (2018) 7 SCC 558*.

3. It is contention of learned counsel for the Respondents – Claimants that the Tribunal has passed well-reasoned judgment and order, no interference is required in it. No witness from R.T.O. Office has been examined. Hence, requested to dismiss the appeal.

4. I have heard both learned counsel, perused impugned judgment and order passed by the Tribunal.

5. To prove the defence that at the time of accident, the offending vehicle did not have a permit. The Appellant has examined their Officer DW1 - Vinay Paranjpe at Exhibit – 49. He has stated that Ms. Ujvala Londhe is the empanelled investigator of their company, and she gave Form 24 with the endorsement that the luxury bus did not have permit at the time of accident. The Form 24 is at Exhibit – 57, which is issued by the R.T.O. Office, Thane.

6. While dealing with the issue of permit, the Tribunal has

observed that the Form 24 is issued by R.T.O. Thane. It is seen that there is hand written endorsement that the luxury bus involved in the accident did not have a valid permit at the time of accident. The Tribunal further observed that Ms. Ujvala Londhe had provided the said letter to DW-1, but the Appellant has neither examined Ms. Ujvala Londhe nor any person from R.T.O. Office, Thane. There is no proof as to who has made the hand written endorsement on Form 24, which is at Exhibit – 57. The Appellant has not proved the endorsement by examining the person who made it. On that ground, the Tribunal has observed that the Appellant failed to prove that at the time of accident, the offending vehicle did not have a valid permit. I do not find infirmity in it.

In my view, it is settled principle of law that if any defence is taken, it has to be proved by cogent evidence. Admittedly, Exhibit – 57 was given to DW-1 – Mr. Vinay Paranjpe by Ms. Ujvala Londhe. The Appellant should have examined Ms. Ujvala Londhe to prove the said fact or any person from R.T.O. Office, Thane, but it was not done. Hence, I do not see merit in the contention that the offending vehicle had no permit at the time of accident.

It is not proved before the Tribunal that the offending bus

did not have valid permit at the time of accident. Hence, I do not find merit in the contention of pay and recover order.

I have gone through the case law cited by the learned counsel for the Appellant, the facts of cited case and present case are different. Hence, it is not applicable.

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

ORDER

- i. The appeal is dismissed.
- ii. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rules.
- iii. The Record and Proceedings be sent back to the Tribunal.

8. In view of disposal of appeal, all pending applications, if any, also stand disposed off.

(SHIVKUMAR DIGE, J.)