

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****FIRST APPEAL NO. 498 OF 2024**

New India Insurance Company Ltd.
Office Address : Shreebag-Alibag, Dist. Raigad

... Appellant

Versus

- 1 Harishchandra Kashinath Gavand
Age 49 years, Occ : Agriculture & Labour
Residing at : Borge, Post. Shirki,
Tal. Pen, Dist. Raigad
- 2 Kishor Maruti Shivkar
Age : Adult, Occ : Maximo owner
Residing at : Post. Kelwane, Tal. Panvel,
Dist. Raigad.

... Respondents

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Mr. Rajesh Kanojia a/w. Ms. Prachi Pawar i/b. Res Juris, Advocate for Appellant.

Mr. Sanjay Ghaisas, Advocate for the Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATED : 13th JUNE, 2025.

ORAL JUDGMENT :

1. The issue involved in this appeal is driver of offending vehicle was not holding effective and valid driving licence.
2. It is contention of learned counsel for the appellant that the time of accident the driver of offending vehicle was not holding effective and valid driving licence. To prove the said fact appellant/Insurance Company examined their officer and he has stated that the driver of offending

vehicle was not holding effective and valid driving licence in spite of that the Tribunal has passed impugned Judgment and Order which is erroneous hence requested to allow the appeal.

3. It is contention of learned counsel for the respondent No.1/claimant that no witness from the office of Regional Transport has been examined by the appellant to prove that driver of offending vehicle was not holding effective valid driving licence. The Tribunal has passed well reasoned order. No interference is required in it and requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused Judgment and Order passed by Motor Accident Claims Tribunal, Alibag (for short “the Tribunal”). To prove the defence that driver of offending vehicle was not holding effective and valid driving licence, the appellant has examined their officer Kishor Patil at Exhibit-38. He has stated that driver of offending vehicle was not holding effective and valid driving licence. In cross examination, he admit that he has produced the report of investigator Shri Sontakke. It is at Exhibit-41 and in the said report, it is mentioned that driver of offending vehicle was holding learning licence and said learning licence was not produced on record. He further admit that after getting learning licence, the driver can get permanent licence but investigator did not make enquiry in that regard. From the evidence of

that witness it shows that driver of offending vehicle was holding learning licence and the investigator did not make enquiry whether driver of offending vehicle obtained permanent licence on the basis of learning licene, the appellant Insurance company did not examine any employee from the RTO office to prove that driver of offending vehicle was not holding effective and valid driving licence. It is settled principle of law that if any defence is taken it has to be proved by cogent evidence but appellant failed to prove it.

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

ORDER

- (i) The appeal is dismissed.
- (ii) The respondent No.1 /claimant is permitted to withdraw the deposited amount along with accrued interest thereon deposited by the appellant-Insurance Company.
- (iii) The statutory amount be transferred to the Tribunal. The parties are at liberty to withdraw it as per the Rules.
- (iv) Pending interim applications, if any, stand disposed of.
- (v) R & P be sent back to the Tribunal.

(SHIVKUMAR DIGE, J.)