

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1361 OF 2025
WITH
INTERIM APPLICATION NO. 377 OF 2026
WITH
INTERIM APPLICATION NO. 9906 OF 2025
WITH

FIRST APPEAL NO. 1354 OF 2025
WITH
INTERIM APPLICATION NO. 376 OF 2026
WITH
INTERIM APPLICATION NO. 9819 OF 2025

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Sunil Logistics Thr. At Karta, P. D. Sharma ...Appellant
Versus
Mai Mahadeo Gharat And Ors. ...Respondents

Mr. Mukesh Pabari for the Appellant.
Mr. Abhishek Avachat for Respondent No.3.

CORAM : R.M. JOSHI, J.
DATE : 20th FEBRUARY, 2026

P.C. :

1. In both these appeals, since the common questions of facts and law are involved, by consent of both the sides heard and decided together, finally at the stage of admission.
2. In this appeal the owner of the offending vehicle takes exception to the Judgment and Award dated 25.10.2024 passed in MACP No. 56 of 2021 and MACP No. 57 of 2021, whereby the death claim filed by the claimants came to be allowed directing payment of compensation of Rs.8,07,988/- with interest at the rate of 8% per annum from the date

of petition is realization of the amount. The Tribunal further directed the insurer to pay the compensation first and then to recover the same from the owner.

3. The Appellant/owner is aggrieved with the order of pay and recover passed by the Tribunal. It is a contention of the Appellant that though the driving licence of the driver of the offending vehicle was not produced before the Tribunal, now the said document is available. In this context, application moved under Order XLI Rule 27 of Code of Civil Procedure, 1908 ('CPC' for short) for leading additional evidence, being IA NO. 9906 of 2025 and IA NO. 376 of 2026.

4. On 01/09/2010, an accident occurred while Bhagwan was proceeding on Motorcycle No. MH-06-AY-9071 alongwith his wife Jyoti, as a pillion rider, a trailer bearing Registration No. MH-06-AQ-4815, came in rash and negligent manner and dashed to the Motorcycle. In the said accident, both rider and Pillion rider sustained serious injuries and succumbed thereto. Dependents of deceased filed two claim Petitions being No. 56 of 2021 and 57 of 2021.

5. Owner of offending vehicle filed Written Statement denying contentions of claimants with regard to accident, age and income of deceased. It is claimed that, offending vehicle was duly insured with Opponent No. 2 at relevant time.

6. Insurer filed Written Statement accepting the insurance but contended that the driver of offending vehicle was not having valid and effective driving license at the time of accident. On this ground, liability is denied by the Insurer.

7. The claimants substantiated their contention with examination of one of the claimants and relying upon documentary evidence including the Police Papers. Opponent No. 1 i.e. owner of offending vehicle did not lead evidence but he was examined by Opponent No. 2 insurer as its witness. Insurer also examined Sagar Gargunde, to support its contentions.

8. Learned Tribunal accepted the contention of claimants as well as Insurer and passed Impugned Judgment and Award. The Insurer was directed to pay compensation to claimants with liberty to the Insurer to recover the same from owner of Offending vehicle.

9. Thereafter, learned Counsel for the Appellant submits that the Appellant stepped into the witness box before the Tribunal and laid evidence of Purushottam Sharma. It is his submission that for want of the availability of the driving licence of the driver of the vehicle, the same was not produced before the Tribunal. Due attention of the Court and cross examination conducted by the claimant wherein it is brought on record that before employing any driver to drive his vehicle, he used to get confirmed of the fact that the driver has a valid driving licence. The submission of the counsel for the Appellant that since now the driving licence is available, the Appellant be permitted to produce the same on record and the order passed by the Tribunal of pay and recover be set aside.

10. Learned Counsel for the Insurer opposes the said contention by submitting that in order to permit the Appellant to lead additional evidence, the requirement of Order XLI Rule 27 of CPC needs to be complied with. It is his submission that since no due diligence has been

shown by the Appellant during the course of the trial before the Tribunal, now it is not permissible for the Appellant to produce any additional evidence or record.

11. It is not in dispute that the insurer has raised specific plea with regard to the driver of the offending vehicle having no valid and effective driving licence at the relevant time. Insurer also led evidence of Mr. Sagar Gargurde to substantiate its contention. Not only this Insurer examined Purshottam Sharma, owner of Sunil logistics, i.e. Opponent No. 1, perusal of the evidence of Mr. Sharma indicates that the owner/Appellant herein contented about existence of such valid and effective driving licence. However in the said evidence, there is no reference about the steps taken by the owner in order to procure the driving licence of the driver. He only states that the license is not available with the opponent, and hence the same was not produced on the record.

12. With this evidence before the Tribunal, it is necessary to see relevant provisions of Order XLI Rule 27 of the Code of Civil Procedure, 1908 which reads thus-

“27. Production of additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced

by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

A bare perusal of the said provision indicates that in order to permit any party to lead evidence in an Appeal, it must be shown that in spite of due diligence, the evidence could not be produced before the Trial Court.

13. Thus in absence of any such due diligence being shown, it would not be open for the Appellant to seek to lead evidence by production of the document at this stage.

14. There is admittedly no driving licence of the driver of the offending vehicle was placed before the Tribunal in order to rebut the contention of the insurer, no fault can be found with the judgment and award impugned.

15. In view of the above, there is no merit in the appeal. The appeal stand dismissed. All pending applications including application under Order XLI Rule 27 of CPC stand dismissed.

(R.M. JOSHI, J.)