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%28.03.2008

Present: Mr. Pankaj Seth, Adv for appellant.

+ MAC APP No.208/2008

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Counsel for the appellant contends that due to the fact that the record of the licencing authority was destroyed in fire and on account thereof the appellant could not prove on record that the licence in question was a fake licence. The contention raised by the counsel for the appellant is that in such circumstances the Tribunal should not have returned the finding and should have kept the issue open so that the appellant could have taken the civil remedy to prove the fact of fake licence.

I have heard counsel for the appellant and have perused the record. I do not find any merit in the submission of counsel for the appellant since as per the appellant the record of the licencing authority itself was destroyed then how the question of proving the license as a fake licence could have been left open. Perusal of the award shows that

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respondents 1 & 2, owner and driver of the offending vehicle were proceeded ex-parte and neither any notice under Order 12 Rule 8 was served upon them by the insurance company so as to summon the original driving licence nor any steps were taken by the appellant insurer to summon any of them as a witness. In the absence of such evidence, the findings of the Tribunal cannot be considered erroneous.

There is no merit.

Dismissed.

March 28, 2008
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KAILASH GAMBHIR, J.