* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 3rd December, 2012

\+ **MAC.APP. 1100/2012**

NATIONAL INSURANCE COMPANY LTD. ..... Appellant
Through: Mr. D.K. Sharma, Adv.

versus

UMESH SINGH & ORS. ..... Respondents
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant National Insurance Company Limited seeks exoneration or in the alternative recovery rights in respect of compensation of ₹60,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the First Respondent for having suffered injuries in a motor vehicle accident which occurred on 31.12.2005.

2. The Claims Tribunal dealt with the issue of liability in Paras 56 to 59 of the impugned judgment, which are extracted hereunder:-

> *"56. Hon'ble High Court of Delhi in the case of New India Assurance Company Ltd. Vs. Suresh Kumar in MAC Appeal No. 648/12 dated 01.06.2012 has rejected the appeal of insurance company in a case where no witness was examined by insurance company from the Licensing Authority to prove that the license was fake. Report of Licensing Authority stating that the license is fake and given to investigator of insurance company is not*

admissible for granting recovery rights or exoneration to insurance company.

57. Reliance can be placed on the judgment of Hon'ble High Court in the case of Bajaj Alliance Gen. Insurance Company Ltd. Vs. Bhikari Yadav, MAC Appeal No. 727/11 dated 03.01.2012 where
Hon'ble High Court has stated in para 6 as under:

> *"It is settled that in order to avoid the liability the onus on the Insurance Company to prove that there is breach of the policy conditions by the insured. The breach committed by the insured will be willful e.g. where the insured entrusted a vehicle to a duly licensed driver and it is unlawfully driven by any other person not holding a valid and effective driving license, it cannot be said that the owner is guilty of willful breach. Similarly, where a vehicle is stolen by a thief holding no license and meets with an accident, it cannot be said that the insured is guilty of a willful breach. Rather, the insured himself is a victim."*

58. In para no. 18, it is further held as under:

> *"In any case, the contents of the certificate can be presumed to be genuine it has to be proved that it is signed by the District Transport Officer, Gawahati. That having not been done, the certificate was not of any value and the same was not rightly taken into consideration by the Tribunal. Since the insurance company failed to discharge the onus that the driving license held by the first Respondent was fake, it cannot avoid its liability."*

59. In this case, no witness was examined to prove the report of Licensing Authority stating that the license was fake."

3. The Appellant Insurance Company relies on a report Ex.R3W1/6 purported to have been issued by the Transport Department, R.P. Road Headquarter where it was report as under:-

> *"No permit found as per the computer record."*

4. This report was not enough to prove that the owner did not possess a permit on the date of the accident. What was reported by the concerned official is that as per computer record no permit has been found. There was no positive report that vehicle did not possess a valid permit on the date of the accident. Moreover, even the report Ex.R3W1/6 has not been proved in accordance with law.

5. Every document including a public document has to be proved in accordance with law.

6. Section 67 of the Indian Evidence Act, 1872 (the Evidence Act) lays down the mode of proof of a document, which is extracted hereunder:-

> ***"67. Proof of signature and handwriting of person alleged to have signed or written document produced -***
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> *If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his hand writing."*

7. Thus, any document including public document has to be proved as provide under Section 67 of the Evidence Act.

8. The question of proof of a Sanction Order signed by the Sanctioning Authority i.e. Secretary (Medical) Delhi Administration came up before a learned Single Judge of this Court in *State (Delhi Administration) v. Brij Mohan, 27 (1985) DLT 322* where it was held as under:-

> *"(8) Section 61 of the Evidence Act lays down that the contents of a document may be proved either by primary or by secondary evidence. Section 62 thereof defines primary evidence as meaning the document itself produced for the inspection of the court. In other words, the primary documentary evidence of a transaction*

(evidenced by writing) is the document itself which should be produced in original to prove the terms of the contract/ transaction, if it exists and is obtainable. Since the original sanction was admittedly placed on record by the prosecution, the requirements of this provision stood satisfied and the question of any secondary evidence for proving the contents of the sanction as such did not arise. Primary evidence in the context of oral evidence, however, means an oral account of the original evidence i.e. of a person who saw what happened and gives an account of it recorded by the court. That question does not appear to have arisen in the instant case because the matter was still at the stage of proof of the consent accorded by the Secretary (Medical). Since Sections 61 to 66 of the Evidence Act deal with the mode of proving the contents of the documents, either by primary evidence or by secondary evidence, I need not dwell upon the same in view of the original document having been placed on the record.

(9) Then comes the most important question viz. the genuineness of a document produced in evidence i.e. is a document what it purports to be and this is dealt with in Sections 67 to 73 of the Evidence Act. Section 67 refers to documents other than documents required by law to be attested. It simply requires that the signature of the person alleged to have signed a document (i.e. the executant) must be proved by evidence that the signature purporting to that of the executant is in his handwriting. Further it requires that if the body of the document purports to be in the hand-writing of someone, it must be proved to be in the hand-writing of that person. However, Section 67 does not in terms prescribe any particular mode of proof and any recognised mode of proof which satisfies the Judge will do. Thus, the execution/ authorship of a document may be proved by direct evidence i e. by the writer or a person who saw the document written and signed or by circumstantial evidence which may be of various kinds, for example, by an expert or by the opinion of a non-expert who is acquainted with the hand-writing in any of the ways mentioned in Explanation to Section 47 or even by comparison etc. (See Sections 45, 47, 73 & 90 of the Evidence Act)……"

9. The question of proof of a public document came up before Bombay High Court in *C.H. Shah v. S.S. Malpathak & Ors., AIR 1973 Bom. 14,*

where it was held as under:-

> *"4……. In all cases of secondary evidence under Section 65 read with Section 63 of the Evidence Act when a copy or an oral account of a document is admitted as secondary evidence, the execution of the original is not required to be proved but if the original itself is sought to be tendered it must be duly proved and there is no reason for applying a different rule to public documents. Secondly, in the case of a certified copy, before a presumption of its genuineness can be raised under Section 79, as laid down by the Supreme Court in Bhinka's case already referred to above it must be shown that the certified copy was executed substantially in the form and in the manner provided by law. There would, therefore, be a check or safeguard in so far as the officer certifying it in the manner required by law would have to satisfy himself in regard to the authenticity of the original and in regard to the accuracy of the copy which he certifies to be a true copy thereof. On the other hand if the original of a public document is to be admitted in evidence without proof of its genuineness, there would be no check whatever either by way of scrutiny or examination of that document by an officer or by the Court. The third and perhaps the most important reason, for not accepting Mr.Shah's argument on the point which I am now considering is that neither Section 67 nor Section 68 of the Evidence Act which lay down that the signature and the handwriting on a document must be duly proved do not make any exception in the case of public documents. In view of the provisions of the said section all documents whatever be their nature must be therefore be proved in the manner provided by Section 45, 47 or 73 of the Evidence Act……..*
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> *5. The only question which remains for consideration is whether a presumption of the genuineness of the original of a public document should be drawn by reason of Illustration (e) to Section 114 of the Evidence Act to the effect that official acts have been regularly performed. It is no doubt true that it has been held by a Division Bench of this Court in the case of East India Trading Co. v. Badat & Co., AIR 1959 Bom. 414 that Section 114 of the Evidence Act is wide enough to permit the Court to raise a presumption not only with regard to oral evidence, but also with regard to documentary evidence. It may be mentioned that the*

decision of the Division Bench in the said case was reversed on appeal by the Supreme Court by a majority AIR 1964 SC 538, but in the judgment of the majority the Supreme Court has not referred to the point mentioned above. Apart from the undesirability of taking a view which would let in any and every document tendered by Government in suits to which it is a party without proof of genuineness, in my opinion, no presumption under Section 114 can be drawn in view of the mandatory and unqualified term of Sections 67 and 68 of the Evidence Act. Section 114 which to put it in popular language, merely empowers the Court to use its commonsense, cannot be used to contravene an express provision of the Act itself. I, therefore, hold that if the original of a public document is sought to be tendered in evidence, it must be proved in the manner required by law....."

10. Thus, the certificate purported to be issued by a Transport Authority could not be admitted into evidence unless signatures thereon were proved by examining a witness.

11. It is true that there are some difficulties in summoning the witnesses from the registering authorities. This aspect was taken into consideration while framing the Delhi Motor Accidents Claims Tribunal Rules, 2008. Under Rule 7 it has been provided that the submission of report as per Form "D" (provided in the Rules) by the registering authority would be made admissible without any formal proof. Rule 7 is extracted as under:

> *"7. **Presumption about reports-** The contents of reports submitted to the Claims Tribunal in Form "A" and Form "D" by investigating police officer and concerned registering authority respectively, and confirmation under clause (b) of rule 5 by the insurance company shall be presumed to be correct, and shall be read in evidence without formal proof, till proved to the contrary."*

12. In the circumstances, the Claims Tribunal rightly excluded the report from consideration and declined to grant recovery rights.

13. The Appeal is devoid of any merit; it is dismissed in limine.

14. The statutory deposit of ₹25,000/- be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

DECEMBER 03, 2012
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