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

**Date of Decision: 24<sup>th</sup> May, 2016**

+ **MAC.APP. 858/2014**  
**UNITED INDIA INSURANCE COMPANY LTD ..... Appellant**  
Through: **Mr. L.K. Tyagi, Adv.**

versus

**EK BAHADUR & ANR.** ..... Respondents  
Through: **None.**

**CORAM:**  
**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT**

**R.K.GAUBA, J (ORAL):**

1. First respondent (claimant) suffered injuries in a motor vehicular accident that occurred at about 12.30 a.m. on 10.02.2010 in the area of Rani Chowk, bus stand Okhla Tank when, as a pedestrian, he was hit by a motorcycle bearing No. DL 9SM 9585 (the motorcycle) which was owned and driven by the second respondent herein. He (claimant) instituted an accident claim case (Suit No.328/2011/2010) on 05.03.2010 seeking compensation for injuries suffered under Sections 166 and 140 of motor Vehicles Act, 1988 (MV Act) impleading, besides the second respondent (owner-cum-driver), the appellant insurance company (insurer) on the plea that the accident had occurred due to negligent driving of the motorcycle and that the vehicle was covered against third party risk by an insurance policy issued by the appellant.

2. The tribunal held inquiry and on the basis of evidence returned a finding, by judgment dated 18.07.2014, upholding the case of the claimant about the injuries being suffered due to negligent driving of the motorcycle. It awarded compensation in the sum of ₹ 1,44,108/- with interest in favour of the claimant.

3. While contesting the claim case before the tribunal, the insurance company took the plea that the motorcycle was not covered by any insurance policy on the date of accident (10.02.2010). It proved a copy of the insurance policy (Ex.R2W1/X) which indicates the insurance cover to have commenced from 11.03.2010 and to be valid upto 10.03.2011. The second respondent, on the other hand, took the plea that he had paid the premium and had been issued the cover note on 10.02.2010, and, therefore, the insurance company was liable to indemnify. He examined himself (as R2W1), *inter alia*, to prove document (Ex.R2W1/DX) on the strength of his own affidavit (Ex.R2W1/1) describing the said document as cover note. The insurance company, *per contra*, by evidence of its witness Lalit Kumar (R1W1), Assistant Manager deposing on the basis of his affidavit (Ex.R1W1/A) described the said document (Ex.R1W1/DX) as a mere proposal, that too a fabricated document. It also relied on cash receipt (Ex.R2W1/1) to claim that the premium against the insurance policy (Ex.R2W1/X) had actually been tendered and paid on 09.03.2010. During his cross-examination, the second respondent (owner-cum-driver) admitted that he was unable to produce any cash receipt whereby the premium may have been paid by him. He did not produce any document (other than Ex.R1W1/DX) to prove the existence of insurance policy in respect of the offending vehicle for the period in question.

4. The tribunal rejected the plea of the insurance company and held it liable to indemnify, *inter alia*, observing that the conspiracy between the second respondent (owner) and agent/officials of the insurance company could not be ruled out and, therefore, the insurance company was at liberty to initiate criminal investigation/prosecution and in case the registered owner of the vehicle was found guilty of forgery and fabrication, it could recover the awarded compensation from him.

5. By the appeal at hand, the insurance company argues that it was the burden of the owner of the offending vehicle (second respondent) to prove that a valid insurance policy existed. It is the submission that since no such proof was adduced, the view taken by the tribunal cannot be sustained.

6. In spite of notice, the second respondent has failed to put in any contest to the appeal.

7. Having heard arguments on behalf of the appellant and having gone through the tribunal's record, this Court finds the view taken by the tribunal to be wholly erroneous. The document (Ex.R1W1/DX) is wrongly described by the second respondent as cover note. It was definitely not a cover note. It was merely a proposal form which was "subject to acceptance" and declared on the top that it could not even be treated as "a proof of insurance" and hence was "not enforceable at law".

8. It is questionable as to how the tribunal could read the above-mentioned as a cover note so as to give the benefit to second respondent. The insurance policy and the cash receipt produced in support of the evidence by the insurance company clearly show that its liability to indemnify commenced only *w.e.f* 11.03. 2010. In absence of any evidence whatsoever showing existence of an insurance policy covering the period in

question, liability could not have been fastened on the appellant company.

9. In the result, the appeal is allowed. The direction to the appellant company to pay compensation is set aside. The claimant (first respondent) who also did not appear in appeal inspite of notice is at liberty to take out appropriate proceedings before the tribunal to recover the compensation from the second respondent (owner-cum-driver).

10. The amount of ₹ 50,000/- deposited by the appellant company in terms of order dated 19.09.2014 and the statutory deposit, if made, shall be refunded.

11. The appeal is disposed of in above terms.

**MAY 24, 2016**  
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**R.K. GAUBA**  
**(JUDGE)**

