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

% **Date of Decision:27th July, 2017**

\+ MAC.APP. 1016/2013

JYOTI JHA & ORS ..... Appellants

Through: Mr. Anshuman Bal, Advocate

versus

KAMAL & ORS ..... Respondents

Through: Ms. Shanta Devi Raman and Ms. Harsh Lata, Advocates for respondent No.3

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellants have challenged the award of the Claims Tribunal to the extent that the Claims Tribunal has exonerated respondent No.3 from the liability of paying the compensation on the ground that the alleged Cover Note of the offending vehicle was fake.

2. The relevant portion of the impugned order is reproduced hereunder: -

"10. Now, coming to the issue whether the vehicle was insured at the time of accident.

11. R3W1 has stated that the insurance cover note no.39125572 for the period from 02.09.2011 to 01.09.2012 Ex.R3W1/2 filed alongwith the claim petition was found fake in verification from the records. The company had issued the cover note no.39125572 for the period from 27.06.09 to 26.06.10 only. He proved the complaint given to DCP dated 11.04.12, *Commissioner of Police Faridabad, SHO PS Sarai Khwaja, Faridabad Ex.R3W1/3. He brought the policy alongwith the cover notes Ex.R3W1/5 pertaining to the year 2009-10 and its tabulated record Ex.R3W1/6. He stated that the cover note numbers and the policy numbers for the period 2011-12 start with the series '7' only. He stated that notice U/o 12 R 8 CPC was sent to the respondent no.2 to supply the documents but it was not supplied. Even the driving licence of the respondent no.1 was fake as it was never issued from the licensing authority, Bulandshahar. He proved report of the investigator Ex.R3W1/10. He admitted that Sai Insurance Co. is authorised to issue cover notes on behalf of the company and the cover note Ex.R3W1/2 was issued by Sai Insurance Co. and it bears its seal. But he stated that it is a forged cover note. He stated that he has brought the cover note issued for the period from August, 2011 to September 2012 Ex.R3W1/7 (colly).*

12. *From the documents and the testimony of R3W1, it is established that the cover note allegedly filed by the petitioners with the petition is a forged cover note and was never issued by the respondent no.3. No evidence contrary to this fact has come from the side of respondent no.1 and 2.*

13. *During the course of arguments Ld. counsel placed reliance on the case **New India Assurance Co. Ltd. Vs. Pushpa and Ors. MAC App. 1109/2012 decided on 25.07.2013 by Hon'ble High Court**. In that case R1W1 had appeared before the Tribunal and had stated that he had insured the vehicle with the Appellant through one Rohit the Authorised agent of respondent no.7 and the said authorised agent had issued the document in question and had also accepted the premium amount. In the instant case no such evidence has come from the side of respondent no.1 and 2. Rather from the series/cover note placed by the respondent no.3, I find that such series of cover notes were not issued during that period. In the case of*

__United India Insurance Co. Ltd. Vs. Kiran Singh & Ors. 1 (2009) ACC 721 (DD) Jharkhand High Court__, it was held that award of compensation can be passed against the insurer only when the vehicle is insured with the company. Even if the vehicle is not insured even the interim compensation is not payable. In the case of __Darilam Passah Vs. Batriat Lingdoh and Ors. 1 (2011) ACC 189, Guwahati High Court__, it was held that if there is no evidence to rebut the allegations of the fake policy the insurance company can not be asked to pay compensation and recover from the insured.

14. In the light of the aforesaid discussions, I am of the conclusion that it is a case of fake policy and no liability can be fastened on the insurance company. Rather it is a case of no insurance policy. R3W2 who has brought the record of the licence of the Licensing Authority, Bulandshahar, UP has stated that no such licence as seized by the police was issued from the authority. He proved the record Ex.R3W1/10 and stated that it is a fake licence. Thus, from the testimony of above witnesses and record it is proved that the offending vehicle was being driven using a fake licence also. Liability is therefore of the driver/owner to pay the compensation."

3. Learned counsel for the appellants submits that the Cover Note was issued by SAI Insurance Company who was authorised to issue the Cover Note and, therefore, the Insurance Company cannot deny the liability even if the Cover Note was found to be fake.

4. Learned counsel for the respondent No.3 submits that respondent No.2 has filed a complaint with DCP, South District, Hauz Khas in respect of the fake cover note on 11th April, 2012. Copy of the complaint has been placed on record.

5. This Court is of the view that no liability can be fastened on respondent No.3 on the basis of a fake Cover Note. This Court upholds the findings of the Claims Tribunal exonerating the respondent No.3 from any liability.

6. There is no merit in the appeal, which is hereby dismissed.

JULY 27, 2017 **J.R. MIDHA, J.**

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