IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

FIRST APPEAL NO.4004 OF 2017

The Oriental Insurance Company Limited
Through its Division Manager,
Adalat Road, Aurangabad. = **APPELLANT**
(Orig.Resp.No.3)

VERSUS

1. Keyur Pramod Pathak,
Age: 31 Yrs., occu. Service,
R/o Bhusawal, Dist.Jalgaon.

2. Ahmedbhai Musabhai,
Age: 41 Yrs., occu. Driver,
R/o Harfodi, Tq. Upketa,
Dist. Rajkot (Gujrat)

3. Rasikkumar Somabhai Rathod,
Age:Major, Occ. Truck-Owner,
R/o Daiyya, Tq. Gondal,
Dist. Rajkot (Gujrat)

4. Jagannath Raghunathji Bhatkar,
Age: 42 Yrs., occu. ST Bus Driver,
C/o ST Depot Main, Chandrapur,
Divisional Bhandara.

5. Maharashtra State Road
Transport Corporation, on its
behalf Divisional Manager,
ST Stand, Jalgaon. = **RESPONDENTS**

Mr. Totala Rameshwar F., Adv. For Appellant
Mr. Kulkarni Mukul S., Adv. For R/1;
Mr. Goyanka M.K., Advocate For R/5.

CORAM : P.R.BORA, J.
DATE : 8th January, 2019

ORAL JUDGMENT

1. The insurance company has challenged the Award passed by the Motor Accident Claims Tribunal,

Jalgaon in MACP No.255/2008 decided on 5.5.2017 only on the ground that the Tribunal has failed in appreciating the defence raised by the insurance company and the evidence adduced by the insurance company in that regard, taking specific objection that the Cover note which was placed on record by the claimants, was a fake cover note.

2. Shri Totala, learned counsel appearing for the insurance company, submitted that no evidence was required to arrive at the conclusion that the cover note was fake since it was shown to have been effective only for the period of ten months. The learned counsel further submitted that ordinarily the period of insurance is of one year and in the circumstances, according to Shri Totala, the tribunal must have recorded a finding in favour of the insurance company, holding that the claimants have failed in proving that the offending vehicle was insured with the appellant insurance company. The learned counsel, on the aforesaid grounds, prayed for setting aside the impugned judgment and to exonerate the insurance company from its liability to indemnify the insured.

3. Learned counsel appearing for the

Respondent No.1 – claimant, inviting my attention to the discussion made by the Tribunal in para 11 of the judgment, submitted that the insurance company has failed in substantiating the defence raised by it and the Tribunal has, therefore, rightly rejected the defence so raised by the insurance company and has held the insurance company liable to pay the amount of compensation jointly and severally with the owner of the offending vehicle.

4. I have carefully gone through the impugned judgment and more particularly the discussion made by the Tribunal in para Nos.11 and 15 thereof. I deem it appropriate to reproduce said paras 11 and 15 of the said judgment, which read thus, -

> "11. Respondent No. 3 examined its Administrative Officer Mr. Sachin Ware (as RW-1) at Exh.69. It is his version that the cover note (which was initially marked Article 'A' and thereafter Exh.58 subject to objection of respondent No.3) was fake and hence, no liability could be fastened on respondent No.3 According to him, regarding said cover-note his office had made

necessary inquiry and correspondence during which it was confirmed that it was fake. He further stated that respondent No.3 had deposited amount of no-fault liability pursuant to order of this Tribunal which it was entitled to get back.

. In his cross- examination RW-1 stated as follows .

"Since March, 2016 I am attached to our Jalgaon office at Administrative Officer. Our office had made written correspondence with our office at Mahim. Reply received from Mahim office is in the record of our office at Jalgaon. I have not filed it because it is in the form of e-mail. I have not filed copy of the e-mail for which I cannot assign any reason. I found that the vehicle in question was registered in the State of Gujarat. We have our offices in Gujarat as well. There is no record with us to show that either I or my predecessors had made correspondence with any office of our company in Gujarat. In insurance cover - note there is entry showing that the vehicle was hypothecated with Tata Motors and it was registered in the office of RTO

Rajkot. Our office did not make correspondence with RTO Rajkot or with Tata Motors on the basis of engine number and chassis number mentioned in the cover-note. On the basis of registration number mentioned in the cover-note we did not make any correspondence with the concerned RTO. Cover-notes are issued serially. Insurance cover-note filed in this case bears No. 90589. We tried to trace its office copy but we did not find it. We issue book of cover-note to our Development Officers. I do not remember the name of our Development Officer with whom the book containing form No.90589 was kept but I can say that he was attached to our Mahim office. We obtained from the concerned officer information regarding this cover-note which he sent on e-mail. Printout of this e-mail is not placed on record. We did not obtain any opinion from our office regarding genuineness of office stamp on cover-note NO.90589. Our office did not file any complaint with police alleging misuse of our cover-note. In the cover-note name and address of the insured is mentioned. With the insured our office did not make any correspondence. We did not appoint any officer of our company to conduct investigation of this matter. Our objection is to contents inserted in the cover-note in handwriting. We do not have any objection regarding printed matter of the cover-note. The cover-note contains terms and conditions which are consistent with terms and conditions which our company laid down. Printed material on the cover-note is as per print of our office. The cover-note is shown to have been issued on 26.10.2005. I cannot say who was our officer attached to our Mahim office on 26.10.2005 who had issued this cover-note. On the basis of signature on the cover-note I cannot say whether it was issued by our Development officer. It is not true to say that we have not placed on record our correspondence with Mahim office so that it is not revealed that this cover-note is, in fact, issued by our Mahim office.

. It is true to say that our company has deposited no-fault liability amount in this Tribunal and said order is not challenged by us."

15) Respondent No.3 has disputed that truck No.GJ-3-W-9411 was insured with it. According to it, cover-note filed by the petitioner (Exh.58) is fake. To support this contention respondent No.3 examined RW-1 Sachin Ware. I have already dealt with his testimony. It was submitted by advocate Mr. R.V.Kulkarni for respondent No.3 that aforesaid cover-note was initially marked Article 'A' and it cannot be said to have been duly proved. It was further submitted that testimony of RW-1 can be acted upon to conclude that the cover-note in question is fake. I have reproduced entire cross-examination of RW-1. Said cross-examination shows that respondent No.3 did not take requisite steps/efforts to support its contention that the cover-note was fake. Consequently, contents of cover-note (Exh.58) can be relied upon. It would, therefore, follow that along with respondents 1 and 2 viz. the driver and the owner of truck No.GJ-3-W-9411, respondent No.3 being the insurer shall be jointly and severally liable to pay

compensation to the petitioner."

5. On perusal of the aforesaid discussion, there remains no doubt that the insurance company though had raised the defence as about the fake cover note, has failed in substantiating the said defence. In view of the fact that the insurance company could not substantiate the defence raised by it, no fault can be found in the impugned Judgment and Award whereby the Tribunal has held the insurance company liable to pay the amount of compensation to the claimants jointly and severally with owner of the offending vehicle. The appeal being devoid of any substance, deserves to be dismissed and is accordingly dismissed, however, without any order as to costs. Pending civil application, if any, stands disposed of.

6. The amount deposited by the insurance company in this court is permitted to be withdrawn by the original claimant.

7. The Registry shall transmit the said amount along with interest accrued thereon to the Motor Accident Claims Tribunal at Jalgaon so as to facilitate its withdrawal by the original claimant.

(P.R. BORA)
JUDGE

bdv