$~25

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

% *Decided on: 15.11.2019*

\+ MAC.APP. 872/2019 & CM Nos.48977/2019, 48978/2019

SHRIRAM GENERAL INSURANCE CO LTD ..... Appellant
Through Mr.Amit Kumar Maihan, Adv.

versus

BHUDEV TIWARI (DECEASED) THR LRS ..... Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 28.08.2019 passed by the learned MACT in MACP No.77060/2016 on the ground that the right of the recovery had not been granted to the insurer despite them having proven on the basis of the Detailed Accident Report (DAR) of the driving licence being fake. The learned Tribunal had concluded that the insurer was never able to establish that the licence was fake and presumption in their favour could not be made, only on the basis of the DAR. Serial No.25 of the DAR is about the driving licence. It mentions 'Without Licence' in the 'Driving Licence' column. Clearly, the same cannot be deemed to be a conclusion by the Investigating Officer or of the DAR that the driving licence had been investigated and that after the investigation,

the driving licence was found to be fake. Since no driving licence was mentioned or recorded in the DAR, issue of its verification never arose. The impugned order has dealt with the issue as under:

> *"38. Admittedly, the offending vehicle was duly insured with respondent No.3/insurance company vide its Policy bearing No. 101047/31/14/005464 which was valid from 07.10.2013 to 06.10.2014 including the date of accident i.e. 15.09.2014. However, as per the statutory defence taken by the Insurance Company, offending vehicle was being driven by respondent No.1/driver Bijay Kumar Raut while holding a fake driving licence which was in contravention of terms and conditions of the Insurance Policy.*
> *39. To substantiate its claim, respondent No.3/Insurance Company examined Rama Raman, Legal Officer of Shri Ram General Insurance Co. as R3W1. R3W1/Rama Raman in his evidence by way of affidavit (Ex.R3W1/A) testified that as per the DAR filed by the IO, the driver of the offending vehicle was holding a fake driving licence at the time of accident. However, the insurance company failed to prove that the licence of respondent No.1 was fake. The insurance company neither examined the concerned RTO nor got the same investigated."*

2. What emanates from the above is that the insurer had clearly not been able to establish that the driving licence was fake. The owner of the vehicle had pleaded that the driving licence was valid. It was for the insurer to have summoned the records of the driving licence Issuing Authority to prove that the said licence was fake. They did not do so. A presumption that the said licence was fake, cannot be drawn. For the aforesaid reasons, the Court finds no reason to interfere with the impugned order.

3. In view of the above, the Court finds no reason to interfere with

the impugned order.

4. The appeal alongwith pending applications are, accordingly, dismissed.

5. The statutory amount along with interest accrued thereon be deposited in 'AASRA Fund' created by this Court.

NAJMI WAZIRI, J

NOVEMBER 15, 2019/aa