$~13 to 74

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

% *Decided on: 20.09.2019*

\+ MAC.APP. 23/2019 & CM APPL. 301/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD ..... Appellant
versus
RINKOO SINGH & ORS ..... Respondents

\+ MAC.APP. 24/2019 & CM APPL. 304/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD ....Appellant
versus
KUSUM LATA & ORS ..... Respondents

\+ MAC.APP. 27/2019 & CM APPL. 398/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD ..... Appellant
versus
PINKY & ORS ..... Respondents

\+ MAC.APP. 28/2019 & CM APPL. 404/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD ..... Appellant
versus
JAMEEL & ORS ..... Respondents

\+ MAC.APP. 32/2019 & CM APPL. 431/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD ..... Appellant
versus
JAMEEL & ORS ..... Respondents

\+ MAC.APP. 36/2019 & CM APPL. 488/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD ..... Appellant
versus
RAMWATI & ORS ..... Respondents

\+ MAC.APP. 38/2019 & CM APPL. 501/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD ..... Appellant
versus
SHAISTA & ORS .... Respondents

\+ MAC.APP. 39/2019 & CM APPL. 503/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD ..... Appellant
versus
VIJENDERI & ORS ..... Respondents

+ MAC.APP. 40/2019 & CM APPL. 506/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant
versus
JAMEEL & ORS ..... Respondents

+ MAC.APP. 42/2019 & CM APPL. 510/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant
versus
RAJENDER & ORS .....Respondents

+ MAC.APP. 49/2019
ASHOK SHARMA & ORS ..... Appellants
versus
ROYAL SUNDARAM GEN INS CO LTD & ORS ..... Respondents

+ MAC.APP. 50/2019
PINKY & ORS ..... Appellants
versus
ROYAL SUNDRAM GENERAL INSURANCE CO LTD & ORS
.....Respondents

+ MAC.APP. 53/2019 & CM APPL. 962/2019
ROYAL SUNDARAM GENERAL INSURNACE CO LTD ..... Appellant
versus
CHARU & ORS ..... Respondents

+ MAC.APP. 55/2019 & CM APPL. 992/2019
ROYAL SUNDARAM GENERAL INSURNACE CO LTD .... Appellant
versus
GANESH CHANDRA SHARMA & ORS .... Respondents

+ MAC.APP. 371/2019
GANESH CHAND SHARMA & ANR ..... Appellants
versus
ROYAL SUNDARAM GENERAL INSURANCE CO LTD & ORS
..... Respondents

+ MAC.APP. 56/2019 & CM APPL. 1052/2019
ROYAL SUNDARAM GENERAL INSURNACE CO LTD ..... Appellant
versus
ASLAM & ORS ..... Respondents

+ MAC.APP. 65/2019 & CM APPL. 1291/2019

ROYAL SUNDARAM GENERAL INSURNACE CO LTD ..... Appellant
versus
MAHESH CHAND & ORS ..... Respondents

+ MAC.APP. 370/2019
MAHESH CHAND (SINCE DECEASED) THR LRS & ANR ..... Appellants
versus
ROYAL SUNDARAM GENERAL INSURANCE CO LTD & ORS
..... Respondents

+ MAC.APP. 66/2019
SHAISTA & ANR ..... Appellants
versus
ROYAL SUNDRAM GENERAL INSURANCE CO LTD & ORS
..... Respondents

+ MAC.APP. 68/2019 & CM APPL. 1353/2019
ROYAL SUNDARAM GENERAL INSURNACE CO LTD .....Appellant
versus
DHARAM VEER & ORS ..... Respondents

+ MAC.APP. 71/2019
KUNTI DEVI & ANR ..... Appellants
versus
ROYAL SUNDARAM GEN INS CO LTD & ORS ..... Respondents

+ MAC.APP. 75/2019
PINKI & ORS .....Appellants
versus
ROYAL SUNDARAM GEN INS CO LTD & ORS ..... Respondents

+ MAC.APP. 76/2019
SHAISTA & ORS .....Appellants
versus
ROYAL SUNDRAM GENERAL INSURNACE CO LTD & ORS
..... Respondents

+ MAC.APP. 79/2019
SHERPAL .....Appellant
versus
ROYAL SUNDARAM GEN INS CO LTD & ORS .....Respondents

+ MAC.APP. 80/2019 & CM APPL. 1494/2019
ROYAL SUNARAM GENERAL INSURANCE CO LTD ..... Appellant

versus

ANGURI & ORS . ....Respondents

+ MAC.APP. 81/2019

PINKY & ORS .....Appellants

versus

ROYAL SUNDRAM GENERAL INSURANCE CO LTD & ORS ..... Respondents

+ MAC.APP. 82/2019 & CM APPL. 1555/2019

ROYAL SUNDARAM GENERAL INSURANCE CO LTD ..... Appellant

versus

ANIL KUMAR & ORS .....Respondents

+ MAC.APP. 83/2019 & CM APPL. 1558/2019

ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant

versus

URMILA & ORS .....Respondents

+ MAC.APP. 84/2019

SHERPAL .....Appellant

versus

ROYAL SUNDARAM GEN INS CO LTD & ORS .....Respondents

+ MAC.APP. 85/2019

RAJENDER .....Appellant

versus

ROYAL SUNDARAM GEN INS CO LTD & ORS .....Respondents

+ MAC.APP. 86/2019

RAMWATI & ORS .....Appellants

versus

ROYAL SUNDRAM GENERAL INSURANCE CO LTD & ORS ..... Respondents

+ MAC.APP. 87/2019 & CM APPL. 1723/2019

ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant

versus

RAJWATI & ORS ....Respondents

+ MAC.APP. 89/2019

RAJENDER .....Appellant

versus

ROYAL SUNDARAM GEN INS CO LTD & ORS .....Respondents

+ MAC.APP. 90/2019 & CM APPL. 1801/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant
versus
SHAISTA & ORS .....Respondents

+ MAC.APP. 91/2019 & CM APPL. 1814/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant
versus
ASHOK & ORS .....Respondents

+ MAC.APP. 92/2019 & CM APPL. 1829/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant
versus
RAJENDER & ORS .....Respondents

+ MAC.APP. 93/2019 & CM APPL. 2089/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant
versus
KUNTI DEVI & ORS .....Respondents

+ MAC.APP. 96/2019 & CM APPL. 2174/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant
versus
DHAPO @ LONGSHREE & ORS .....Respondents

+ MAC.APP. 97/2019 & CM APPL. 2177/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant
versus
ASHOK SHARMA & ORS .....Respondents

+ MAC.APP. 98/2019 & CM APPL. 2187/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant
versus
SHAISTA & ORS .....Respondents

+ MAC.APP. 99/2019 & CM APPL. 2197/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant
versus
NAMRA & ORS .....Respondents

+ MAC.APP. 104/2019
CHARU & ORS .....Appellants

versus

ROYAL SUNDARAM GEN INS CO LTD & ORS . ....Respondents

+ MAC.APP. 105/2019 & CM APPL. 2226/2019

ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant

versus

PINKY & ORS .....Respondents

+ MAC.APP. 107/2019 & CM APPL. 2291/2019

ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant

versus

PINKY & ORS .....Respondents

+ MAC.APP. 108/2019 & CM APPL. 2294/2019

ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant

versus

SHERPAL & ORS .....Respondents

+ MAC.APP. 109/2019

ASLAM & ORS .....Appellants

versus

ROYAL SUNDARAM GEN INS CO LTD & ORS ....Respondents

+ MAC.APP. 111/2019 & CM APPL. 2328/2019

ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant

versus

SHERPAL & ORS .....Respondents

+ MAC.APP. 112/2019

SHAISTA .....Appellant

versus

ROYAL SUNDRAM GENERAL INSURANCE CO LTD & ORS

..... Respondents

+ MAC.APP. 113/2019

SHERPAL & ORS .....Appellants

versus

ROYAL SUNDARAM GEN INS CO LTD & ORS .....Respondents

+ MAC.APP. 115/2019 & CM APPL. 2355/2019

ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant

versus

PAWAN KUMAR & ORS .....Respondents

+ MAC.APP. 118/2019 & CM APPL. 2377/2019
ROYAL SUNDARAM GENERAL INSURANCE CO LTD .....Appellant
versus
SHERPAL & ORS .....Respondents

+ MAC.APP. 142/2019
RAJWATI & ORS .....Appellants
versus
ROYAL SUNDARAM GEN INS CO LTD & ORS .....Respondents

+ MAC.APP. 146/2019
SHERPAL .....Appellant
versus
ROYAL SUNDARAM GEN INS CO LTD & ORS .....Respondents

+ MAC.APP. 151/2019
URMILA .....Appellant
versus
ROYAL SUNDARAM GEN INS CO LTD & ORS .....Respondents

+ MAC.APP. 152/2019
ASHOK .....Appellant
versus
ROYAL SUNDARAM GEN INS CO LTD & ORS .....Respondent

+ MAC.APP. 153/2019
DHARMPAL .....Appellant
versus
ROYAL SUNDRAM GENERAL INSURANCE CO LTD & ORS
..... Respondents

+ MAC.APP. 154/2019
NAMRA .....Appellant
versus
ROYAL SUNDARAM GEN INS CO LTD & ORS .....Respondents

+ MAC.APP. 158/2019
SOM .....Appellant
versus
ROYAL SUNDARAM GENERAL INSURANCE CO LTD & ORS
..... Respondents

+ MAC.APP. 166/2019
KAMLESH .....Appellant

versus

ROYAL SUNDARAM GENERAL INSURANCE CO LTD & ORS .....Respondents

\+ MAC.APP. 168/2019

YASH @ JASSU .....Appellant

versus

ROYAL SUNDARAM GENERAL INSURANCE CO LTD & ORS ..... Respondents

\+ MAC.APP. 261/2019

VIJENDERI & ANR .....Appellants

versus

ROYAL SUNDARAM GEN INS CO LTD & ORS .....Respondents

\+ MAC.APP. 348/2019 & CM APPL. 11352-53/2019

KUSUM LATA & ORS .....Appellants

versus

ROYAL SUNDARAM GEN INS CO LTD & ORS .....Respondents

Appearances

Through: Ms. Suman Bagga and Mr. Pankaj Gupta, Advocates for Insurance Company.
Mr. Anshuman Bal, Advocate for appellants in Item Nos. 23, 24,31, 33-38, 41-45, 54, 58, 60, 61 & 64-74 and for claimants in Item Nos. 19,20,22,25,28,32,37,39,40,44 & 46-52.
Mr. Munish Kumar Sharma, Advocate for appellants in Item Nos. 27 & 30 and for claimants in Item Nos. 26 & 29.
Mr. Ankur Saboo, Advocate for Owner and Driver.
Ms. Garima Prashad, Standing Counsel for State of Uttar Pradesh.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. These appeals impugn the award of compensation passed by learned MACT on the ground; that there was no valid insurance policy between the appellant-insurer and the owner of the offending motor vehicle, on the date

of the accident. All claims arose from the same motor vehicular tragedy. The facts of the case are that on 22nd September, 2014, at around 5:15 in the evening, a passenger bus was plying in western Uttar Pradesh, it was packed with over 82 passengers, against the permitted seating capacity of 52+2 passengers in terms of the insurance policy. Little did the passengers, know that they were moments away from a disaster. En route, one of the passengers had told the conductor and the driver of the bus that there was smell of gas in the bus and it should be looked into. Other passengers too, joined in the chorus of the requests and protests. One of the passengers had deposed that he had personally requested the conductor and the driver to stop the vehicle but they paid no heed to him. Similarly, the repeated requests of the other passengers too, went unheeded. The bus was being driven at a very high speed, as if to defeat time itself. Moments later, smoke emanated in the bus and then it exploded, resulting in 31 fatalities and 51 grievous injuries. The injured were maimed for life. Miraculously, both the driver and the conductor escaped unhurt. What was the fault of the passengers? None. They were innocent. The driver and conductor were at fault for ignoring the repeated calls and entreaties for caution and the need for immediate safety measures to be taken. The rash and negligent driving of the offending bus is evident.

2. The State Government acknowledged the bus blast tragedy which had affected scores of families. It extended some *ex gratia* payments to the affected parties. An FIR No. 151/2014 was registered at Police Station Shikarpur, for offences punishable under sections 285, 337, 338 and 427 of the Indian Penal Code, 1860. Claim Petitions were filed for compensation under the Motor Vehicles Act, 1988. The owner and the driver of the vehicle

were arrested, but within a week, they were granted bail. The Court is informed that they continue to remain on bail.

3. The injured/claimants and kin of the deceased sought compensation on various grounds from the insured/owner of the vehicle. Their misery, occasioned from the blast in the bus, is not in dispute. Although, the owner of the vehicle did take a stand that there was nothing on record to prove that they were travelling in the said bus; that they have not produced any passenger tickets in this regard. The said statement is *ex facie* callous as it shows complete disregard for human life and limb. In this case, the non-production of passenger tickets could have been only because of the same having been destroyed in the fire caused due to the blast in the bus, the numerous deaths and extensive life-altering injuries; the ghastly aftermath in which human bodies would have been flung about and the same cannot be said to cast an impediment on the injured persons. The factum of their injuries and casualties due to the blast in the bus has been recorded by the jurisdictional police. Therefore, their being passengers in the offending bus, stands proven.

4. The bus owner-Mr. Vipin Kumar produced its Registration No. DL-1-PA-3059 and on the insurance Cover Note bearing No. CVL 0464404 dated 17.09.2014, against third-party claims. It extended coverage to a seating capacity of 52+2 persons, valid from 18.09.2014 till 17.09.2015. A premium of Rs. 36,968/- is stated to have been paid by the owner for the Cover Note. The accident happened four days later on 22.09.2014. On the basis of this Cover Note, an insurance policy was issued by the appellant on 30.09.2014.

5. The insurer had contested the Cover Note on the ground that: i) it was fraudulently procured by the owner, in connivance with of its agent-Sandeep Kumar; ii) the Certificate of an insurance policy issued by it on 30.09.2014 covered only 18 persons, including the driver and a premium amount of only Rs. 18,130/- was paid for the same; iii) the owner approached the insurer in November, 2014 seeking enhancement of the carrying capacity of the passengers in the said bus by way of a letter, and further payment of the requisite premium of Rs. 18,836/-; iv) a fresh endorsement was issued on 01.12.2014 against a subsequent additional premium payment of Rs. 18,836/-; v) in law, the said endorsement was of no consequence, because the vehicle apropos which the said endorsement or enhancement of carrying capacity was sought and made, did not exist on that date, as it had already been blown to smithereens, two months earlier. It is the appellant's case that the contract of insurance is based on the principle of '*uberrima fides'* i.e. utmost good faith. The proposer seeking insurance is required to disclose to the insurer the complete facts apropos the goods or vehicles or substances which are sought to be insured. In the present case, since the vehicle had already suffered extensive damage resulting in loss of scores of life and injuries to many others, therefore, the endorsement was *void*. It is argued that at best the insurer would be liable only to return the additional premium amount i.e. Rs. 18,836/-, alongwith interest accrued thereon.

6. The insurer further contends that the Cover Note purportedly extended to the owner, through the insurer's agent-Sandeep Kumar, was an act of fraud, not only on the insurance company but upon the public at large, as well as upon the Transport Authority; that fraudulent acts of this nature

should never be treated lightly and should be dealt with in the sternest manner. The appellant contends that the vehicle owner had furnished a Proposal Form, alongwith a copy of the insurance Cover Note, purportedly issued by United India Insurance Co. Ltd., Dehradun. However, upon verification through RTI, it was established that no such Cover Note had been issued by United India Insurance Co. Ltd. Additionally, the Registration Certificate of the said vehicle shows its seating capacity as 17+1. Therefore all these documents, which purportedly led to the issuance of the Cover Note, were misleading. The resultant Cover Note should, therefore, be considered void. The insurer refers to the admission of the vehicle owner, that after its purchase about 6-7 years earlier, he had never sought its insurance cover on any occasion. Therefore, it is argued, that when there is no insurance policy or if it was otherwise obtained through fraud, the insurer would not be liable for any indemnification. Reference is also made to section 149 of the Motor Vehicles Act, 1988 to contend, that third party liability would not ensue where the policy was void on account of non-disclosure. Section 149(2) (b) reads as under:-

> *"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.—*
>
> *(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (l) of section 147 (being a liability covered by the terms of the policy) 1[or under the provisions of section 163A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or*

cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non- disclosure of a material fact or by a representation of fact which was false in some material particular.

....”

(emphasis supplied)

7. The impugned order has, however, found the vehicle to be insured at the time of the accident and held the appellant liable to pay the awarded compensation. It has reasoned as under:-

> *“62. Respondent No. 4 is the insurance company which admittedly had issued a valid insurance policy of the offending vehicle. There is no evidence on behalf of respondent No. 4 to show that there was any violation of the rules and terms of policy by the respondent No. 1 to 3. Hence, I am of the opinion that respondent No. 4 being insurance company is liable to pay the compensation on behalf of respondent No. 1 to 3. Interim award if any paid to injured/petitioner be adjusted in the award amount.”*

8. The impugned order does not hold the owner and the driver liable for rash and negligent driving for the following reasons:

> *“21. To succeed in the claim petitions, it is for the claimants to prove that vehicle which caused the accident was being driven rashly and negligently by its driver / respondent. No.1. In all the cases, petitioners / injured examined themselves as PW and deposed about the facts of the case. In the claim petition, it is itself contended that the injury or death was caused due to the fire by the burst of the cylinder.*

Admittedly the chargesheet has been filed for offence U/s 285/337/338/427 IPC and respondent No. 1 has not been charged for the offence of rash and negligent driving. The testimony of witnesses is not sufficient to prove the rash and negligent driving by respondent No. 1 at all. The testimony of witnesses was further shattered during cross examination and admittedly the compensation was also granted by the State Government in respect of the said incident to the victims. In view of the testimony of witnesses on records and relevant documents like claim petition and chargesheet, the incident had happened due to the leakage of gas from the cylinder which resulting the gas caught fire and fire spread in the bus. The rash and negligent driving of the driver respondent No.1 is not proved at all resulting into the injuries or death of the passengers.

Ld. counsel for respondents vehemently argued that the petitioners are not entitled for compensation as rash and negligent driving of respondent No. 1 is not proved at all and relied upon the judgments reported as The Oriental Insurance Company V/s Meena Varival S Ors. Minu B. Mehta & Ors V/s Balkrishna Ramchandra Navan & Ors. Surender Kumar Arora Ors. V/S Dr. Manoj Bisla & Ors. & Oriental Insurance Company Ltd. Vs. Premlata Shukla & Ors in support of contentions.

After perusal of the records and testimony of the witnesses, it appears that the negligence of the respondent No. 1 is not proved therefore the claim petition filed by petitioners; U/s 166 &140 of MV Act, 1988 for grant of compensation is treated as claim petition U/s 163 A MV Act for grant of compensation. Issue No. 1 in all the cases are disposed off accordingly."

9. The appellant further argues that fraud apropos the Cover Note, is established from the fact that the agent-Sandeep Kumar was operating from Chandigarh, whereas the owner of the vehicle was from Bulandshahr.

10. The appellant's contentions are refuted by learned counsel for the vehicle owner. He contends that the Cover Note was a valid document and for its issuance, he had paid the demanded premium amount of Rs. 36,968/-. Interestingly, in his cross-examination he was not confronted with any suggestion of the Cover Note being fraudulently obtained. Evidently, the insurer never doubted the legitimacy and genuineness of the Cover Note throughout the claim proceedings. Seeking to question it now is a misplaced attempt at valiance. It is untenable and ought to be rejected. The vehicle owner contends that the said letter of request, purportedly seeking endorsement of enhancement of passenger carrying capacity in November, 2014, was never written by him nor was any additional premium paid by him either in cash or by way of any banking transaction, such as cheque or Demand Draft.

11. The respondent contends that the place of residence or geographical area of operations of the agent and the residence of the owner was never an issue before the learned Tribunal. Furthermore, under the Cover Note, the Service Branch of the insurer is shown at Chandigarh. It is not anyone's case that Sandeep, whose contact number is mentioned in the policy, was operating only in Chandigarh or that he was not operating in Bulandshahr. There is neither any administrative bar nor legal impediment in the issuance of such policy or Cover Note. Therefore, mere separation of the insurer's Service Branch and the address of the vehicle owner by a couple of hundred

kilometers, cannot be a reason to suspect that the Cover Note was obtained fraudulently. Besides, in today's world of instant communication, geographical distances have become irrelevant.

12. The vehicle owner further argues that there could be a case of fraud only if the owner had produced documents apropos the alleged fraudulent ownership of the vehicle or that he had disclosed incorrect facts or set- up a case that the insurance policy would be voidable only if complete facts had not been disclosed. But the insurer has not proven that any untrue facts were given to it in any communication by the vehicle owner. The owner argues that all that was required for him was to produce the documents which formed the basis of the insurance Cover Note. He did so and after being satisfied with his documents and without any reservation, the insurer did issue the Cover Note w.e.f. 18.09.2014 valid for a year. The requisite premium amount was paid in cash, it has been so testified in evidence. The respondent contends that the letter seeking correction of the policy, for endorsing its coverage from 17+1 persons to 52+2 persons was in the context that the policy was not in consonance with the Cover Note, as stated in his affidavit. He has categorically denied that he had paid any additional monies or premium in cash for the corrective endorsement. The owner had produced the following documents i.e. Cover Note:

ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED

MOTOR VEHICLE COVER NOTE

Royal Sundaram

Royal Sundaram Alliance Insurance Co. Ltd.
SCO-82, F.F., Sec. 40-C, Chandigarh
Ph.-0172-4613840, 4613845
Fax-0172-5077580

THIS COVER NOTE IS VALID 15 MAR 2015

Claim Intimation 328482442881

COVER NOTE NO. OVC

ORIGINAL

COMMERCIAL VEHICLES ONLY

Date of Issue: 19 / 9 / 19 | Branch | Agent Code:

The insured described in FORM 52 referred to below having proposed for insurance in respect of Motor Vehicle(s) described therein and having paid the sum of Rs. 3649/- (Payment type-Cash/ Cheque / DD) Ref. No: | Dated: | as premium, the risk is hereby held covered under the terms of the Company's usual form of commercial vehicle policy applicable thereto (subject to any Special Conditions mentioned below) unless the cover be terminated by the Company by notice in writing in which case the insurance will thereupon cease and a proportionate part of the premium otherwise payable for such insurance shall be charged for the time the Company has been on risk.

FORM 52 (India) Section 146(1) of Central Motor Vehicle Rules 1989

1. Description of the Vehicle Insured

Name & Address of the Insured :	Registration No.	DL 1PA - 0359	
	Engine No.	1GE 201	
	Chassis No.	5D2219	
	Make	Tata	
	Model of the Vehicle	Ace	
City: Ghaziabad Pincode: U.P.	Cubic Capacity / H.P.		Body Type: Bus
Phone No.	Carrying / Seating Capacity	5+2	Year of Manufacture: 1997
Date of Birth & Age of the Insured	Gross Vehicle Weight		
Name of Registration Authority :			Date of Registration :

Insured's Declared Value (IDV)
(a) Vehicle : Rs. (b) Accessories : Rs. Total (a+b) : Rs.

Trailer Identification Details
IDV : Rs. Make : Regn.No : Chassis No :

Additional risks and special conditions, if any :

Additional Cover for Package (Add-ons)

Disclaimer: This Cover Note is not valid unless the Engine Number and Chassis Number or Registration Number is mentioned.

2. Effective date and time of commencement of insurance for the purpose of the Act 18/9 Noon, 12 on 18/9/2019

3. Date of expiry of insurance Midnight on 17/9/2020

4. Persons or classes of persons entitled to drive As per item IV of "Persons or classes of persons entitled to drive" overleaf

Any limitations as to use of the vehicle As per item V of "Limitation as to use" Overleaf

6. Validity: This Cover note will expire on the completion of 60 (Sixty) days from the date of issue.

This Cover Note is valid subject to realisation of insurance cheque. In the event of non realisation of the cheque for any reason whatsoever, the Cover Note shall be deemed cancelled ab-initio and the Company shall not be held responsible for any liabilities of whatsoever nature.

I/We hereby certify that this cover note is issued in accordance with the provisions of Chapter XI of the Motor Vehicles Act, 1988.

Name of Service Provider / Agent :

Counter Signature of Authorised Person:

For Royal Sundaram Alliance Insurance Company Limited

Authorised Signatory

Corporate Office: Dhanalaxmi Motors Building, No. 7 (310), Poiche Gandhi Salai (Cross), Kilpauk, Chennai - 600007. Registered Office: 21, Patullos Road, Chennai - 600002.
In case of any queries you may write to grievance.redressal@royalsundaram.in
IRDA Registration No.102

Date on Cover note : 18/9
Seating Capacity = 5+2.
Premium mentioned : Rs. 3649/-
having paid.

13. The insurer's version of Certificate of Insurance and Policy Schedule issued on the basis of the said Cover Note is as under:-

Annexure A-3 (142)

Royal Sundaram

General Insurance

Royal Sundaram Alliance Insurance Company Limited

Service Branch Address: SCO - 48, Ground 2nd Floor, Sector - 40 C, DI-Chandigarh ,CHANDIGARH - 161 041.

Jan 02, 2019

Mr.VIPIN KUMAR
S/O VILL KALERA
BULANDSHAR

BULANDSHAHAR,UTTAR PRADESH
203001
Telephone :
Mobile:

Intermediary Code: OA503523
Intermediary Name: Sandeep Kumar
Contact: 9017785000

CERTIFICATE OF INSURANCE & POLICY SCHEDULE
(See Form 51 of the Central Motor Vehicles Rules, 1989; Motor Vehicles Act, 1988
Passenger Carrying Vehicle Policy – Liability only [Reprint]

Certificate of Insurance and Policy No.	Policy Period/Period of Insurance
YYT001861700010	From 00:00 hours on 18/09/2014 To Midnight of 17/09/2015

INSURED DETAILS

Name of Insured	Insured Date of Birth	Geographical Area	Business/Profession	Registration Authority	Registration Date
Mr VIPIN KUMAR		India		BULANDSHAHAR	18/09/1997

VEHICLE DETAILS

Reg number Number	DL1PA0359	Model Description	SFC 407 Std Bus	Gross Vehicle Weight(Kgs)	0
Engine Number	497002B5Q104201	Type of Body		Seating Capacity (including Driver)	18
Chassis Number	85910B0Q104379	Cubic Capacity	0		
Make of the Vehicle	Tata Motors Ltd.	Year of Manufacture	1997	Total Premium (in Rs.)	16,130

LIMITATIONS AS TO USE: The Policy covers use of the vehicle for any purpose other than: a) Hire or reward, b) Free carriage, c) Special types, d) Rule of City Taxi, e) Any purpose in connection with Motor Trade.

DRIVER: Any person including the insured – Provided that a person driving holds an effective driving license at the time of the accident and is not disqualified from holding or obtaining such a license – Provided also that the person holding an effective learner's license may also drive the vehicle and that such person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.

LIMITS OF LIABILITY:
Under Section II-1 (i) of the Policy – Limit of bodily injury – Sum assured is necessary to meet the requirements of the Motor Vehicles Act, 1988.
Under Section II-1 (ii) of the Policy – Damage to Third Party Property – Rs 750,000. Irrespective of the number of claims arising out of one event.

Nominee Name :		Nominee Age : 0	Relationship with :
Guardian Name :		Guardian Age : 0	Guardian Relation :

Personal Accident Cover for Owner – Driver under Section IV (Owner Driver) : Rs 2,00,000/-

1. LIABILITY			
1. Basic premium including gain cost for TPPD	7,863.00		
2. Legal liability towards TPPD cover for Rs.6000/- (IMT 20)	1.00		
3. Passenger Liability Premium	8,143.00		
4. Bi-fuel kit (CNG)	1.00		
Add:Personal Accident Benefits			
5. Geographical Area Beyond India (IMT-1)	1.00		
6. Under Section IV (Owner Driver), CSI Rs.2,00,000	133.00		
7. P.A. Cover to Paid Driver (IMT 17)	2.00		
Legal Liability			
8. To Paid Driver/Cleaner/Conductor (IMT 40)	50.00		
9. To Employees (IMT 39)	0.00	Add: Service Tax	1,936.00
10. NFPP to employees (IMT 37)	0.00	Educational Cess	38.70
11. NFPP other than employees (IMT 37-A)	0.00	Krishi Kalyan Cess	19.00
TOTAL LIABILITY PREMIUM (B)	16,130.00	TOTAL PREMIUM	18,130.00

IMPORTANT NOTICE: [illegible]

For Royal Sundaram Alliance Insurance Company Limited

Authorised Signatory

Date of Issue: Stamp Duty Paid to Govt of Tamil Nadu

For Legal Information, English version will be prepared [illegible]

Service Tax No. AACCR7139ST001

PAN Number : AABCR7106D

True Copy

You can reach us through the details given below Mon - Sat 8.00am to 8.00pm and Sunday up to 5.00pm

Call: 1800 425 0000

SMS type <MOTORCLAIMS> and send to 567575

E-Mail: customer.services@royalsundaram.in

www.royalsundaram.in

14. The letter seeking endorsement upto 52+2 persons reads as under:-

To

The Manager
Royal Sundaram alliance Ins Co. Ltd
Chandigarh

Subject:- Enhancement in Policy 17 to 52

Sir, It is hereby given you that I Vipin Kumar insured my vehicle Tata Bus in your Company. But Regnbook Comes to insured 17+1 Rather than 52+2. So request you to please enhance the Policy. Obliged to very thankful to You.

Yours faithfully
Vipin Kumar

(6)

15. Accordingly to the insurer, the receipt of additional premium (pg. 291) and the corresponding endorsement (pg.339) read as under:-

Royal Sundaram Alliance Insurance Company Limited

RECEIPT

ISSUING OFFICE
Chandigarh Branch

Received from
Mr/Mrs VIPIN KUMAR

Receipt Voucher Number : MOR1992047 Date of Receipt : 28/11/2014

Agent Party Code: AG020813

Received with thanks from Mr/Mrs VIPIN KUMAR

a sum of Rs. 18,836/-

Rupees Eighteen Thousand Eight Hundred Thirty Six Only.

towards CBC Ref No : CBCMOR1992047

Collection Details:

Cash Chq DD Credit Card, Direct Credit Dated: 19/11/2014
Payment Gateway: 223054
Drawn on: ICICI Bank , CHANDIGARH

For Royal Sundaram Alliance Insurance Company Limited

Authorised Signatory

1. This receipt is subjected to realization in case of cheque.
2. Please refer the Receipt Voucher No. for future correspondence

IRDA Regn. No. 101

Royal Sundaram

Royal Sundaram Alliance Insurance Company Limited

MOTOR INSURANCE ENDORSEMENT

VIPIN KUMAR
R/O VILL KALERA
BULANDSHAR
BULANDSHAHAR 203001

PREMIUM
16,555.00

Policy Number	Endorsement Number	Expiring On
[illegible]	001	17/2/2016

Make & Model	Year Of Manufacture	GVW / CC
STC 407 Ste Bus	1997	2

Registration Number	Engine Number	Chassis Number
DL1PA[illegible]	[illegible]	[illegible]

Notwithstanding anything contained herein to the contrary, it is hereby declared and agreed that the following detail of the said vehicle covered under the policy stands amended as below:

The Seating capacity is added by 35 Pass(s) on the policy.
In consideration a premium of Rs 16,555/- is charged to the insurance with effect from 26/11/2014

All other Terms, conditions, exceptions and warranties remain unaltered.

Issued on 01/12/2014
Issued To Ms [illegible] P.O. [illegible]

FOR ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED

AUTHORISED SIGNATORY

16. The appellant states that the Cover Note which was given to them by the insurer's agent and had been filed before the learned Tribunal is as under:-

Form No. 52 Rule 55 (1)(a)

ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED

Royal Sundaram

MOTOR VEHICLE COVER NOTE

Issuing Office

THIS COVER NOTE IS VALID 31st March 2015

COVER NOTE NO (V)

COMMERCIAL VEHICLES ONLY

Date of Issue: Branch: Agent Code:

The insured described in Form 52 referred to below, having proposed for insurance in respect of Motor Vehicle(s) described thereon and having paid the sum of Rs. (Payment type-Cash/ Cheque / DD) Ref. No. Dated as premium, the risk is hereby held covered under the terms of the Company's usual form of comprehensive vehicle policy applicable thereto (subject to any Special Conditions mentioned below) unless the cover be terminated by the Company by notice in writing in which case the insurance will thereupon cease and a proportionate part of the premium otherwise payable for such insurance shall be charged for the time the Company had been on risk.

FORM 52 (India) See Rule 142(1) of Central Motor Vehicle Rules 1989

1. Description of the Vehicle Insured:

Name & Address of the Insured

Registration No.

Engine No.

Chassis No.

Make

Model of the Vehicle

Seating Capacity

Body Type

City Pincode

Year of Manufacture

Phone No.

Gross Vehicle Weight

Date of Birth & Age of the Insured

Date of Registration

Insured's Declared Value (IDV)

(a) Vehicle Rs. (b) Accessories Rs. Total (a+b) Rs.

Trailer Identification Details

IDV Rs. Make Regn. No. Chassis No.

Additional risks and special conditions, if any

Additional Cover for Package (Add ons)

Disclaimer: This Cover Note is not valid unless the Engine Number and Chassis Number or Registration Number is mentioned

2. Effective date and time of commencement of insurance for the purpose of the Act

3. Date of expiry of insurance

4. Persons or classes of persons entitled to drive

5. Any limitations as to use of the Motor Vehicle

6. Validity

This Cover Note is valid subject to realisation of premium cheque. In the event of non-realisation of the cheque for any reason whatsoever, the Cover Note shall be deemed cancelled ab initio and the Company shall not be held responsible for any liabilities

I/We hereby certify that this cover note is issued in accordance with the provisions of Chapter XI of the Motor Vehicles Act, 1988

Name of Service Provider / Agent

Counter Signature of Authorised Person

Corporate Office: Velachery Main Road, Pallikaranai, Chennai-600 100

IRDA Registration No. 102

26 SEP 2014

17. The appellant submits that the actual document which was received by it is the one which has been handed over to the Court and reproduced in the preceding paragraph. Copy of the same has been handed over to the learned counsel for the vehicle owner. The latter submits that this new document was never a part of the records of the learned Tribunal, instead what is found on the record of the learned Tribunal is the document reproduced in para 12 (*supra)*. The "insurer's copy" reproduced below shows some discrepancies such as: i) seating capacity shows 17+2, yet significantly the imprint of 52+2 is shown below the 17+2 and ii) the agent code has been added in handwriting, which according to the respondent is a self-serving endorsement and does not make the insurer's copy more reliable, because the Cover Note number is the most relevant and significant identifier of its veracity.

ROYAL SUNDARAM ALLIANCE INSURANCE COMPANY LIMITED

Royal Sundaram

MOTOR VEHICLE COVER NOTE

THIS COVER NOTE IS VALID UNTIL 31st March 2015

COVER NOTE NO. CVL 0464484

COMMERCIAL VEHICLES ONLY

H R003170

Issue: 17/9/14 Branch: Agent Code: M020813

insured described in Form 52 referred to below having proposed for insurance in respect of Motor Vehicle(s) described and having paid the sum of Rs. (Payment type-Cash/ Cheque / DD) No: 862365 Dated 17/9/14 as premium, the risk is hereby held covered under the terms of the Company's usual form of commercial vehicle policy applicable thereto (subject to any Special Conditions mentioned below) unless the cover be terminated by the Company by notice in writing in which case the insurance thereupon cease and a proportionate part of the premium otherwise payable for such insurance shall be charged for the time the company had been on risk.

AGENT POLICY.

FORM 52 (India) - See Rule 141(1) of Central Motor Vehicle Rules 1989

Description of the Vehicle Insured:

Name & Address of the Insured: VIPIN KUMAR, Hill. Road - Kalera, BULANDSHAR, UP. City: BULANDSHAR Pincode:

Registration No: DL 1PA - 0359
Engine No: 165201
Chassis No: 503379
Make: TATA
Model of the Vehicle:
Cubic Capacity / H.P.: Body Type: BUS
Carrying Capacity: 17+ Year of Manufacture: 1997
Gross Vehicle Weight:
Date of Registration:

Policy No.
Date of Birth & Age of the Insured
Insured's Declared Value (IDV)
(a) Vehicle: Rs. (b) Accessories: Rs. Total (a+b): Rs.
Trailer Identification Details
IDV: Rs. Make: Reg. No: Chassis No:
Additional terms and special conditions, if any:
Additional Cover for Passenger (Add ons)

INSURER COPY

COPY - NOT VALID AS PROOF OF MOTOR INSURANCE

Disclaimer: This Cover Note is not valid unless the Engine Number and Chassis Number or Registration Number is mentioned.

2. Effective date and time of commencement of insurance for the purpose of the Act: On 17/9/2014 Midnight
3. Date of expiry of insurance: 18/9/2015 on 17/9/2015
4. Persons or classes of persons entitled to drive: As per item [illegible] of "Persons or classes of persons entitled to drive" overleaf
5. Any limitations as to use of the Motor Vehicle: As per item [illegible] of "Limitation as to use" Overleaf
6. Validity: - This Cover note will expire on the completion of 30 (sixty) days from the date of issue

This Cover Note is valid subject to realisation of premium cheque. In the event of non-realisation of the cheque for any reason whatsoever, the Cover Note shall be deemed cancelled ab-initio and the Company shall not be held responsible for any liabilities [illegible]

We hereby notify that insurance note is issued in accordance with the provisions [illegible] Section XI of the [illegible]

Name of Service Provider / Agent: 25103

Counter Signature of Authorised Person:

Royal Sundaram Alliance Insurance Company Limited

26 SEP 2014

18. The Court would note that two copies of the cover note have been produced before this Court: one which was filed before the learned Tribunal that showed premium of Rs. 18,130/- but did not bear any cover note number; whereas the document handed over to the Court, it does bear that number, which is CVL 0464404. Although, the latter document shows a seating capacity of 17+1 yet in its middle, just above the column where the date of registration is mentioned, there is a faint endorsement of 52+2. The amount of Rs. 36,968/- as insurance premium, is the computation for four heads of insurance cover. There is an overwriting on the first figure i.e. Rs. 7,843/- by the amount of Rs. 18,130/- with a dark hand written imprint. How this larger amount came about, is not explained by the insurer. On the insurer's copy, which has been shown to the Court, the Cover Note issued to the vehicle owner has the amount of Rs. 36,968/-, which is inscribed at the lower end of the body of the said document. The same amount is also mentioned in the first para of the document. However, this figure is inexplicably missing from the document now produced by the insurer. It has two additional endorsements, one on top of the page showing the address of the office of the insurer as Sector 40-C, Chandigarh and another endorsement of claim intimation number, and then the Cover Note number. The document on record of the learned Tribunal does not have these endorsements. The owner had deposed in his cross examination that he had paid the entire monies in cash to the insurer's agent.

19. The insurer contends that the insurer's Proposal Form alongwith documents annexed thereto i.e. Registration Certificate and prior insurance certificates, clearly show that details of the vehicle were not properly filled

in. Therefore, the insurance policy issued by them was in breach of good faith hence it would be *void ab initio*. The vehicle owner argues that the element of fraud is not made out because the insurance policy issued on 30.09.2014 has not been produced by the insurer which mentions the Cover Note bearing No. 0464404. It reads *inter alia*:-

> *"In witness whereof this policy has been signed at Chennai on 30/09/2014 in lieu of Cover note No. CVL0464404 dated 17.09.2019 Receipt No. CBCMOR 1935511."*

20. The learned counsel for the respondent contends that as far as the insured is concerned, he paid the monies to the agent and not to the company. He has categorically deposed that the insurance premium was paid in cash. Therefore, there was no question of any subsequent payment. The insurance company has accepted the monies in cash or through banking transactions, which is noted in the subsequent document of 28.11.2014; it mentions that it is drawn on ICICI Bank, Chennai. Details of the said financial instrument, as may be, ought to have been produced by the insurer to promptly ascertain whether such payments were made by the vehicle owner. But the insurer chose not to do so. The insured had deposed as under (pdf pg. 134 of MAC APP. 23/2019):-

> *"R3W1 Statement of Sh. Vipin Kumar recalled for examination chief as has been examined as R3W1 in case no. 526/16 vide affidavit Ex.R3W1/A. My affidavit Ex.R3W1/A may be read as evidence in all these connected cases as testimony (R3W1)*
> *ON SA*
> *XXXXX by V K Gupta, Adv for R-d/ insurance company*

I do not remember when I purchased the vehicle no. DL-1PA-0359 but it was purchased form Ghaziabad as second hand vehicle. I have purchased it about 6 -7 years before the accident and after my purchase get the insurance but the insurance was not taken in every year. I have not got the vehicle insured after its purchased by me. It was already insured. I cannot tell the name of insurance company form which I purchased the policy during this period and therefore I cannot produce the particulars of the said policy. I do not know the procedure of getting the insurance but I produced my RC and other documents for insurance but I cannot tell regarding the details of other documents. I cannot tell what documents I have submitted to get this policy I have not aware whether inspection of the vehicle is required for lapse period policy. I cannot tell whether I obtained comprehensive policy or third party insurance. I have given the premium in cash. I do not remember whether I claimed against the previous policies or not. The agent of insurance company approached me for the policy in question. I have employed one driver and one conductor for this vehicle. I cannot tell by which company tell by which company the vehicle was insured before the policy in question. I cannot tell whether the vehicle was mechanically inspected before issuance of this policy. No inflammable articles are allowed to be carried in the vehicle.

Do you get the fitness certificate and permit issued of your vehicle every year and if yes, from which authority it is being issued?

Disallowed being not relevant and specific to the period of accident.)

I do not file my ITR.

My conductor did not have any conductor license not conductor maintained any register regarding the goods

carried by any passenger. I do not remember whether I signed the proposal form or not for policy and how much number of passenger was shown in the proposal form. It is wrong to suggest the Ex. RW1/5 is fake document. After the accident I did not use the vehicle. I cannot give any reason why I visited he company on 01.12.2014 for endorsement in the policy regarding the sitting capacity. I have not disclosed regarding the accident while getting the endorsement of sitting capacity. My bus was not attached with any educational institute at the time of accident. It is wrong the suggest that I have mentioned the same in proposal from. I am not an eye witness to the accident not I was present in the bus at the time accident. One criminal case is pending against me regarding the accident in question. I knew the agent Sandeep Kumar being an insurance agent only and did not know before the policy . It is wrong to suggest that I in collusion with the said Sandeep Kumar obtained the insurance cover note after occurrence of the accident on 22.09.2014. It is wrong to suggest that I had permitted the driver and conductor of the bus to permit the passengers to carry inflammable goods / cylinder in the bus against hire or that there is gross violation of provisions of motor vehicle rules / act on my part. It is wrong to suggest that I am deposing falsely to avoid my liability/.
Xxxxx by Counsel for petitioners.
NIL. Opportunity given"

emphasis supplied

21. What emanates from the preceding discussions, documents and testimony is that the document relied upon by the insurer, as the one which allegedly formed the basis of the issuance of the Cover Note, was never given to the insurer by the vehicle owner. The latter's testimony that he had paid the monies in cash for the issuance of the Cover Note remains unshaken

in his cross-examination. The cash amount is mentioned in the second line of the said document, which is Rs. 36,968/- on the basis of the computation made on the body of the said document. Anomaly, if any, the 'Insurer's Copy' which must have been deposited with the insurer by its agent, is an explanation which it should seek from the agent. The discrepancy apropos the Cover Note given to the vehicle owner and the Insurer's Copy kept by its agent, has to be solved between the agent and the Principal. Additionally, the stamp on the top of the document makes it complete; whereas the document relied upon by the appellant does not even bear the cover number. It was for the insurer to produce documents to prove that the Cover Note was obtained fraudulently. But it failed to do so. Except for the averments that they have filed cases against the agent-Sandeep, the appellant has not brought on record as to what action has been taken against him. It has also not asked him about the discrepancy, if any, in receipt of Rs. 36,968/- which was purportedly paid by the insured to the agent**.** Where the vehicle owner had applied to the insurer for issuance of an insurance cover and had paid the due premium and then received an unqualified Cover Note, it constitutes a valid transaction and would call for no review or doubt unless evidence is brought on record to show that the same was rooted in fraud. Despite due opportunities having been accorded to the insurer, it has not been able to prove that the policy was fraudulently obtained.

22. The insurer argues that it had not been intimated about the tragedy with the bus. The Court is of the view that in the special facts of the present case, such non-intimation, resulting in loss of lives of scores of people, the shock and enormity of the tragedy would have numbed anyone. Therefore, it cannot be held against the insured. Besides, it was such a major accident

that everybody in the area and also in areas beyond it knew about it. The Government of Uttar Pradesh had extended *ex gratia* payments to the victims of the said disaster. The insurer and the agent are deemed to have knowledge of the same. Therefore, this argument too is rejected.

23. At this stage, the learned counsel for the appellant submits that the cheque bearing no. 832635 mentioned in the cover note filed at page 565 of the LCR which they had relied upon, is the cheque issued by the agent. In other words, it was not a cheque issued by the owner who had said that he had paid the monies in cash. It is also not proven by the insurer that whether the second cheque for an amount of Rs. 18,836/- which was paid for the endorsement, was ever issued by the owner. When the appellant-insurer itself has been unable to prove that either of the cheques were issued by the owner, there is no reason to assume that the payments had been made by a cheque. The testimony of the owner supported by the recording in the cover note that he had paid Rs. 36,968/-, has gone unrebutted.

24. The insurer stresses that the vehicle owner's silence apropos the insurer's legal notice, is proof of the owner's complicity with the insurer's agent. The aforesaid argument is *ex facie* fallacious and rejected because if the Cover Note is valid, the vehicle owner's conduct cannot undo the insurer's contractual liability. The owner's conduct post accident is a separate issue. It will primarily examine his negligence in the accident apropos third party claims.

25. In the facts of the case as discussed hereinabove, where a vehicle having a seating capacity of 52+2 carries passengers in excess thereof, there would be a breach of Motor Vehicles Rules. However, that by itself would not be a breach of the policy condition. The insurer's liability would be

limited to the number of persons to which the insurance Cover Note provides i.e. 52+2, the plus two being the driver and the conductor. In the present case, neither the conductor nor the driver has suffered any injuries, therefore, there is no liability cast upon the insurer to cover their damages. Now the question to be examined is: Whether the accident happened because of rashness and negligence on behalf of the driver and the conductor?

26. The overloading of passengers in the bus, to almost twice its carrying capacity is not just negligence but an act of callous disregard to human safety and dignity. It cannot be denied that in areas where transport facilities are not adequate, village folk and commuters from small towns, hop-on and board any infrequent bus which comes along, because there may not be another bus for that day. One passenger alighting from the bus has deposed that he smelled gas inside the bus and told the conductor and the driver to get it checked. There was an immediate and simultaneous chorus of protest and requests from a number of the other passengers to check the smell or leakage of gas, but throwing caution to the winds the bus sped on, unmindful of their protests, requests and entreaties. Moments later, the gas spread in the bus, there was an explosion ending many lives and permanently maiming many others.

27. In MAC.APP.No. 55/2019, PW-2 Subhash has tendered his evidence by way of affidavit, which states as under:

> *"I, Subhash S/o Sh. Bhagwat Singh aged about 40 years R/o Village: Davar Arniya, Tehsil: Khurja, Distt. Bulandshahr, U.P. at present Delhi, do hereby solemnly affirm and declare as under:*
>
> *1. That the deponent being the eye witness in the above*

noted matter is well conversant with the facts of the case and competent to sewer the present affidavit.

2. That on the most unfortunate day of 22.09.2014, I have boarding the Bus bearing No. DL 1PA 0359 from Khurja for going to Jahagirabad, Bulandshahr U.P. and many other passengers were also travelling in the same Bus.

3. That the conductor as well as the driver of the said Bus was very careless & negligent towards his duty and intentionally & knonwingly carrying the goods in the said Bus which was prohibited by Law for fetching the huge amount by illegal means.

4. That on the date of accident, inspite of the objections raised by the passengers the driver & conductor of the said Bus has loaded the Gas Cylinder in the Bus without caring the life of the passengers. The Bus driven by its driver at a very high speed and negligent manner, at about 5.15 p.m. when the Bus reached near Village: Kutubpur on Jahagirabad road there was a smell of gas spread in the Bus due to lekage of gas from Cylinder. The passengers asked the driver as well as conductor of the Bus to stop the Bus as there was a leakage of Gas but the driver as well as conductor did not pay any attention towards the request made by the passengers and drove the Bus carelessly at a very high speed, resulting whereof the gas caught fire and spread into the bus and made a heavy blast.

5. That I hardly saved my life as I was standing at the back door due to heavy rush in the Bus and after hearing the crying of the other passengers & feel the smell of burning, I had jumped out from the running Bus when the driver slow the speed for a moment just before the blast.

6. That after hearing huge crying of the passengers due to the heavy burning, public persons gathered on spot and try to set off the fire and made a call to the police as well as fire brigade, after some time police arrived on spot & inquired about the accident and all the injured were taken to the Govt. Hospital, Bulandshahr U.P.

7. That due to the carelessly and negligently act of the driver and conductor of the Bus many passengers were burnt

resulting into their deaths and some also badly burnt and sustained grievous injuries in this accident.

8. That this accident has absolutely been caused due to rash & negligent driving of respondent no. 1. Had the respondent no.1 been vigilant, cautious enough and ought to have driven the vehicle in question by observing proper look out and taking necessary precautious and pay attention towards the request made by the passengers, the said accident has been very easily averted and the passengers could not sustained fatal injuries. It is the duty of the respondent no.1 to drive the vehicle in question by observing the Traffic rules.

9. That this accident has absolutely been caused due to rash & negligent driving of the driver of Bus bearing No. DL 1PA 0359.

10. That this accident has seen by me through my necked eye as stated above and nothing has been conceal.

11. That the deponent has signed on this affidavit at point 'A'& 'B' and filed the copy of his Aadhar Card which is exhibited as Pw-3/1."

28. Similarly in his cross examination, it was recorded as under:

" The route of the bus was from Khurja to Jahangirabad. The police never recorded my statement. (Vol. The police had orally enquired from me at the spot.) I cannot tell the name of the police official. I remained at the spot for about one hour after the accident. The police had reached at the spot after 45 minutes of the accident. I myself did not inform the police about the accident. One passer by had informed the police regarding the accident but I do not know the whereabouts of informer / passerby. I do not have any bus ticket to show that I was travelling in the said bus. (vol. Conductor did not give me any ticket as he was not giving ticket to the passengers traveling for short distance.) I had boarded the bus from Khurja and was supposed to go to Bypass Bulandshahr – Jahagirabad. At the time of

accident owner was not present in the bus. I was travelling in the bus in a standing position on the back gate of the bus. I had seen a passenger carrying cylinder of 5 kg. The driver had charged more amount for the said cylinder. I do not know the name of said passenger had boarded the bus from Khurja. I do not know whether any passenger was igniting by 'Beedi' or not. There was a smell of gas in the bus just about 500 mtrs before Qutubpur. I do not know whether any passenger was trying to stop any passenger igniting the 'Beedi' or not. It is wrong to suggest that there was no fault on the part of the driver for the said accident. (Vol. The driver was negligent as he did not stop the bus despite request regarding the smell of gas in bus). I had jumped out of the bus just 25-30 mtrs. before the spot of accident when I heard noise from inside the bus that there is a smell of gas. It is correct that the road on which the bus was running was in a bad condition. It is wrong to suggest that I was not traveling in the said bus. It is wrong to suggest that I am not an eye witness of the accident. I have come to depose before the court on asking of claimants, my evidence affidavit was prepared by the ld counsel for claimants. It is wrong to suggest that the driver / conductor had not permitted the carrying of cylinder in the bus. It is wrong to suggest that driver / conductor did not know about the cylinder in the bus. It is wrong to suggest that I am deposing falsely to favor the claimants.

xxxxxxx by Mr. V K Gupta, Adv for defendant no. 4 / insurance company.

In between the bus had stopped for about 15 – 20 times after I boarded the bus and where I jumped out of the bus. I felt the smell of gas after about 1 hour of my

boarding the bus. I did not tell the driver about the smell of gas in bus. It is wrong to suggest that I did not see the gas cylinder in the bus. The fire had broken out in the bus in the middle portion of the bus. There were 80 – 90 passengers in the bus and the bus was fully packed, all the seats were full and the passengers were packed in standing positions and even 8 – 10 passengers were travelling on the roof of the bus. Even some passengers were traveling on the entry / exit gates of the bus. It is wrong to suggest that the said bus no. DL-1PA-0359 has falsely been involved in this case. It is wrong to suggest that I am not eye witness of the accident nor I was traveling in the said bus. It is wrong to suggest that I am deposing falsely to favour the claimants. It is wrong to suggest that inspite of gas leakage I as well as the other passengers did not take any step for removal of the gas cylinder from the bus or that I as well as other passengers were themselves responsible for the accident. It is wrong to suggest that my claim is false or that I am deposing falsely."

29. In MACT 197/2006 the claimant- Ganesh Chand's evidence by way of an affidavit, is as under:

"I, Ganesh Chand Sharma S/o Sh. Ramesh Chand Sharma,a aged about 44 years R/o K-II-9, Block-K-II, Sangam Vihar, Delhi-62, do hereby solemnly affirm & declare as under:

.....

2. That the deponent along with his wife has filed the above noted matter for getting the compensation on account of premature death of his son due to injuries sustained by him on 22.09.2014 when he was Travelling in the Bus bearing No. DL 1PA 0359, the petition bears the signature of the deponent and the same is correct and the contents of the petition may kindly

be read as part and parcel of this affidavit. The petitioners are entitled to get compensation as claimed by them in the petition.

3. That on the most unfortunate day of 22.09.2014 my Son namely Santosh & his friend Govind boarding the Bus bearing No. DL 1PA 0359 from Khurja for going to Jahagirabad, Bulandashahr U.P. and many other passengers were also travelling in the same Bus.

4. That the conductor as well as the driver of the said Bus was very careless & negligent towards his duty and intentionally & knowingly carrying the goods in the said Bus which was prohibited by Law for fetching the huge amount by illegal means, inspite of the objections raised by the passengers they have loaded the Gas cylinder in the Bus without carrying the life of passengers. The Bus driven by its driver at a very high speed and negligent manner, at about 5.15 p.m. when the Bus reached near Village Kutubpur on Jahagirabad road there was a smell of gas spread in the Bus due to lekage of gas from Cylinder. The passengers asked the driver as well as conductor of the Bus to stop the Bus as there was leakage of Gas but the driver as well as conductor did not pay any attention towards the request made by the passengers and drove the Bus at a very high speed and carelessly resulting whereof the gas caught fire and spread into the bus and made a heavy blast.

5. That after hearing huge and crying of the passengers due to heavy burning, public person gathered on spot and try to set off the fire and made a call to the police, after some time police arrived on spot and all the injured were taken to the Govt. Hospital, Bulandshahr U.P. but due to the serious condition my son was refer to and admitted in Safdarjung Hospital New Delhi on the same day, where he died during the course of treatment on 04.10.2014 and post mortem was conducted by the Doctor's.

6. That due to the carelessly and negligently act of the driver and conductor of the Bus many passengers were burnt resulting into their deaths and some also badly burnt and a Case Crime No. 319/2014 U/S 285/337/338/427 IPC was registered at P.S. Shikarpur, Distt. Bulandshahr U.P. against the respondents.

7. That this accident has absolutely been caused due to rash & negligent driving of respondent no. 1. Had the respondent no.1 been vigilant, cautious enough and ought to have driven the vehicle in question by observing proper look out and taking necessary precautious and pay attention towards the request made by the passengers, the said accident has been very easily averted and the deceased could not sustained fatal injuries. It is the duty of the respondent no. 1 to drive the vehicle in question by observing the Traffic rules."

30. The aforesaid testimony makes it clear that the bus was carrying over 80 to 90 passengers, eight to ten passengers were travelling on the roof of the bus as well. The accident happened on account of explosion of a gas cylinder which was being carried by a passenger in the bus. Who knows, the driver might have charged him more money for carrying the said gas filled cylinder in the bus. The passenger concerned had boarded the bus from Khurja. He denied the suggestion that the driver or conductor had not permitted the carrying of the cylinder in the bus. The dangerous and combustible substance was permitted by the conductor and the driver to be carried in an overcrowded passenger bus, exposing everybody in it to extreme harm. Sadly, the harm did occur as a result. The harm could have been averted, had the conductor and the bus driver been vigilant and/or paid heed to the requests of the various passengers.

31. PW-2, Subhash, by way of affidavit, had further deposed as under:

> *"...*
>
> *4....*
>
> *The passengers asked the driver as well as conductor of the Bus to stop the Bus as there was leakage of Gas but the driver as well as conductor did not pay any attention towards the request made by the passengers and drove the Bus at a very high speed and carelessly resulting whereof the gas caught fire and spread into the bus and made a heavy blast."*

32. There is nothing on record to show that the conductor was qualified and/or licensed to undertake such duties. Under the Motor Vehicle Act, 1988, a bus can ferry passenger on a route only with a qualified conductor. In the present case, there was nothing of this sort. This too shows callousness of the driver towards the safety and security of the passengers. Surely, neither the driver cared about the safety of the passengers nor did the conductor have the sensitivity, alacrity or care about human safety.

33. The Court is of the view that even if the person officiating as the conductor, was not duly licensed or trained as a bus conductor, he would have very well known that carrying of a gas cylinder in a bus packed with passengers was to put to threat the lives of everybody travelling in it. All the more, when there were repeated calls that there was leakage of gas in the bus. For the driver to rush-on despite the entreaties and requests of the passengers, establishes callousness, rashness and negligence on his part. The tragedy occurred because of the rash and negligent driving of the insured vehicle. The claims are maintainable under s. 140 and 164 of the M.V. Act.

34. Therefore, the impugned order is set aside. The compensation shall be payable by the insurer, with right to recover the same from the owner/driver of the offending vehicle in terms of *Mukund Dewangan vs Oriental Insurance Co. Ltd.* (2017) 14 SCC 663 and *Shamanna & Anr vs Divisional Manager, The Oriental Insurance Co. Ltd. & Ors* (2018) 9 SCC 650.

35. The Court would note that as per the Cover Note, the liability of the insurer extends only to 52 passengers. No claim had been referred to the insurance company for the driver and conductor. The latter have been compensated *ex-gratia* by the State Government to some extent, i.e. apropos their injuries. Be that as it may, the insurer is liable to pay compensation for claims apropos the 52 persons only, the total number of onboard passengers was 82, out of which 31 had died and 51 others have been injured. In the circumstances, the highest amount payable in 52 claim petitions shall be considered and this amount shall be distributed on pro-rata basis amongst the claimants.

36. It is noted that 33 appeals have been filed by the insurance company while the remaining 29 appeals have been filed by the claimants seeking enhancement of the compensation amount, on the ground that minimum wages ought to have been considered while granting compensation towards 'loss of dependency'. The Claim Petitions filed under sections 166 and 140 of the Motor Vehicles Act, 1988 were converted by the learned Tribunal into one for liability under section 163A of the Motor Vehicles Act, 1988.

37. Insofar, this Court has already held that there was clear rashness and negligence on part of the driver in plying the bus, with knowledge to him

and the bus conductor that a hazardous substance i.e. a gas cylinder being carried by a passenger, which was leaking, leading to an explosion of the gas cylinder and resultant fatalities and injuries to many of the passengers, the case would have to be assessed on the basis of evidence led by the parties for assessment of 'loss of dependency', etc. The learned counsel for the insurer states that the written arguments did allude to and address all the issues argued before this Court, but the learned Tribunal erred in not considering the same.

38. In terms of the aforesaid conclusion, the cases are remanded for assessment of compensation on the basis of individual claims under section 164 of the Motor Vehicles Act, 1988. Since the accident happened on 22.09.2014, almost half a decade ago, the learned Tribunal is requested to dispose-off the claim petitions within a period of four months from the date when the case is next listed before it. LCR be returned to the learned Tribunal before the aforesaid date. The parties shall lead their evidence in support of their claims. The learned counsel for the parties submit that they will the assist the learned Tribunal on every date when the case is so listed and shall not seek an adjournment in the matter.

39. The insurance company has already deposited the minimum compensation amount under section 163 A Motor Vehicle Act, 1988, which is, in any case, the minimum amount payable to the claimants. Let the same be released to the beneficiaries of the respective awards in terms of the scheme of disbursement specified therein.

40. The release of the said monies shall be subject to adjustments in case there is enhancement of compensation by the learned Tribunal.

41. The statutory amounts, alongwith interest accrued thereon, shall be retained in the FDRs and shall be subject to adjustments, in case there is enhancement of compensation by the learned Tribunal.

42. The appeals are disposed-off in the above terms.

NAJMI WAZIRI, J

SEPTEMBER 20, 2019/RW/AB