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

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Decided on: 16.10.2019

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MAC.APP. 564/2018

UNITED INDIA INSURANCE CO LTD Appellant

Through: Mr. Pankaj Gupta, Advocate.

versus

SHANTI & ORS Respondents

Through: Mr. Dushyant K. Mahant, Advocate
for R-2 & R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal seeks right of recovery against the owner and driver of the vehicle i.e. respondent nos. 2 and 3, which was declined to the appellant by the impugned order passed by the learned MACT dated 06.01.2018 in MACP No. 451139/16. The learned Tribunal's rationale for disallowing the right of recovery is as under:-

“25. It has also been argued by Ld. Counsel for the insurance company that R-1 was not having valid DL at the time of the accident and to prove the same he has examined witness R3W2 who has deposed that he has seen the DL bearing no. P08072007538147 purported to be issued in the name of Simar Preet Singh S/o Sh. Amarjeet Singh from the licensing authority, NAA/ Zone, Delhi the copy of the same is Ex. R3W2/1. He has also stated that our authority have no record of the said DL and the letter issued by MLC Jaspal Singh is Ex. R3W2/2. This argument of Ld. Counsel for the Insurance company is immaterial and cannot be substantiated in the eyes

of law inasmuch as R3W2 Sh. Gopal Krishan Dealing Assistant, Transport Department, Wazir Pur, Delhi has deposed that the record of the DL Bearing No. P08072007538147 in the name of Simar Preet Singh S/o Sh. Amarjeet Singh is not trace at Zonal Office, Computer Data and the same might have been issued from Sheikh Sarai, South Zone Office, Delhi but insurance company has not summoned any witness from Sheikh Sarai Transport Authority to prove that R-1 was having fake DL, if the record of DL in computer data is not available then, it does not mean that the same has not been issued from the said transport authority or is a fake license. Once the copy of DL has been supplied then the onus is upon the insurance company to prove the validity and genuineness of the said DL. Therefore, there is no breach of any of the condition of the insurance policy and insurance company is held the liable to make the compensation to the petitioner/injured.”

2. It is the appellant's case that the owner/driver did not enter into the witness box and it was only at the insistence of the appellant that the officer from the Transport Authority had deposed. Be that as it may, the right of recovery would be available to the insurer only if it is proven that the driving licence was fake. Whether the owner or driver chose not to prove their case is immaterial, because what emanates from the evidence led by the appellant and deposition of the Dealing Assistant of the Transport Department, is that the aforesaid driving licence had indeed been issued by the South Zone Office Department of Transport, GNCTD; he had stated that he could not trace the Computer Data of the said licence in the Zonal Office at Wazir Pur, Delhi and that it might have been issued by South Zone Office at Sheikh Sarai, Delhi.

3. The learned counsel for the respondent states that even after the impugned order on an application of Rs. 50/- paid to the Transport

Department, GNCTD, they have obtained a document from the Zonal Office at Wazir Pur verifying that the driving licence bearing P08072007538147 stands issued in the name of Simer Preet Singh and is valid from 28.07.2007 to 27.07.2027 for LMV in the non-transport category.

4. The document handed over to the Court by the learned counsel for respondent nos. 2 and 3, a copy of which has been handed over to the learned counsel for the appellant, verifies that the said driving licence stands issued by the South Zone Office, GNCTD, Delhi and is valid till 2027. Evidently, the insurer has not been able to prove that the licence was not issued or is not valid.

5. In the circumstances, the relief sought cannot be granted. The appeal is without merit and is, accordingly, dismissed.

6. The statutory amount, alongwith interest accrued thereon, be deposited into the 'AASRA' Fund opened by this Court.

NAJMI WAZIRI, J

OCTOBER 16, 2019

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