IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 41 OF 2023

1.	The Oriental Insurance Co. Ltd., Through its Asst. Manager, Mumbai Regional Office, T.P.Hub, 3rd floor, Annex Building, Behind SBI Main Branch, Horniman Circle, Fort, Mumbai. AND H.O.State Bank of India Bldg., Bank Street, 3rd Floor, P. M. Road, Fort, Mumbai – 400 023.	…	Appellant (Orig. Opponent No.2)
	Versus		
1.	Tukaram Hiramani Holkar, Age – 80 years, Occu.Nil, R/o. Room No.78, Chawl No.10, Kohinoor Mill Compound, Mahatma Phule Road, Naigaon, Dadar (W), Mumbai 400 014.	…	(Orig.Claimant)
2	M/s. SKIPL MK DI (JV) 10th Floor, 20/21, Atul Niwas, 7th Lane, Khetwadi, Mumbai 400004. (Owner of Motor Dumper bearing No.MH 01 AP 7011)	…	Respondents

Mr. Nikhil Narendra Pawar, Advocate for the Appellant.
Ms. Varsha Chavan, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st FEBRUARY, 2024.

Oral Judgment :

1. The issue involved in this appeal is the driver of the offending vehicle was holding fake driving license.

2. It is contention of learned counsel for the appellant-Insurance Company that, at the time of the accident, the driver of the offending vehicle was holding fake driving license. The appellant-Insurance Company has examined two witnesses to prove the said fact but the Tribunal has not considered it. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent No.1/claimant that the original driving license of the driver of the offending vehicle was never seized by the witnesses examined by the appellant-Insurance Company, hence, without verifying the original driving license, it cannot be said that it was fake. Hence, requested to dismiss the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short "the Tribunal").

5. To prove its defense, the appellant has examined Laxmi Parab- Assistant Manager of Oriental Insurance Company Limited.. She has stated that the driver – Mohd. Edris Ansari, who was driving the offending tempo, was holding fake driving license at the time of accident. She relied on the letter dated 6th February 2018 written by Advocate – Arun Kumar Tiwari to the insurer. In the said letter, the advocate has informed the appellant that he had visited the DTO Jamshedpur regarding verification of the driving license at Exhibit-46 and it was revealed to him that license No.1035/95 standing in the name of Edris Ansari was not

issued by the said office nor recorded in their office record. She has produced a letter dated 5th April 2022 issued by the appellant – Insurance Company to the insured, it is at Exhibit-40, whereby it was informed that the license was fake. The insurance policy is at Exhibit-42. In cross-examination, this witness admitted that she never met the insured personally nor she met the driver of the offending vehicle. She further admitted that she does not know whether the insured was aware that the license was fake. In support of the evidence of DW1, the appellant has examined DW2 – Arvind Kumar, Investigator appointed by the insurer to verify the driving license. He has stated that he had applied to the District Transport Officer for verification of the license and paid fees of Rs.200/- for the same. He was told to verify the driving license No.1035 of 95 standing in the name of Edrish Ansari. The District Transport Office had issued a certificate and informed him that the license No.1035/95 was not issued in the name of Edrish Ansari. Accordingly, he had reported to the appellant – Insurance Company. In cross-examination, he admitted that he had not seen the original license and he admitted that he does not know full license number of Edrish Ansari. He further admitted that he cannot say whether he was given a copy of license or not and he cannot say whether license was issued to Edrish Ansari or not as he did not have the entire license number.

While dealing with the issue of fake license, the Tribunal has observed that the appellant- Insurance Company failed to prove that the driving license of the driver of the offending vehicle was fake as the letter issued by the District Transport Officer, Jamshedpur was neither produced nor proved in the evidence, bare words of DW2 cannot be relied upon. The Tribunal further observed that in the absence of any letter or any witness from the RTO- Jamshedpur, it cannot be said that the Insurance Company has established the fact that the license in question was a fake license. I do not find infirmity in it. In my view, it was onus on the appellant-Insurance Company to prove that the license was fake but no evidence is produced on record in that regard. Moreover, DW1 and DW2, in their cross-examination, admitted that they did not have license number nor they had seen original license.

6. In view of above, the appeal is devoid of merit and I pass following order :

O R D E R

1. The appeal is dismissed. No order as to cost.
2. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
2. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)