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

\+ **<u>CM(M) 153/2025 & CM APPL. 4707/2025</u>**

BHAIRAB GHOSH .....Petitioner

Through: Mr. Ashwin Vaish, Mr. Vinod Pandey, Mr. Sandeep Yadav, Mr. Himanshu Pandey, Ms. Ritu Pandey, Mr. Rohan Nair and Mr. Gulshan Sharma, Advs.

versus

AMIT KUMART KANAUJIA & ORS. .....Respondents

Through: Ms. Hetu Arora Sethi and Ms. Sarika Goel, Advs. for R-5 / National Insurance Company Limited.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

<u>O R D E R</u>

% **31.01.2025**

1. By present petition, the petitioner challenges the order dated 13.01.2025, passed by the learned Motor Accident Claims Tribunal, Karkardooma Courts, Delhi whereby the Tribunal directed the petitioner to file an affidavit stating the exact number of the insurance policy and the application filed by the petitioner for summoning of certain records was kept pending to be decided after the affidavit is filed by the petitioner.

2. The petitioner is alleged to be the driver of the offending vehicle. The petitioner had taken defense that the offending vehicle was insured.

3. The Insurance Company has taken a stand that the cover

note relied upon by the petitioner does not represent a valid policy and in fact is a fake document.

4. The petitioner had claimed that the said cover note was issued by the authorized agent of the National Insurance Company Limited and therefore, if the cover note turns out to be fake, no liability can be fastened on him.

5. During the course of the proceedings, an Email dated 01.02.2023 (hereafter '**Email**') was marked as 'Mark Y', which was brought on record during the evidence of R2/W1, who was the Manager of the Insurance Company at that time.

6. It was stated in the Email that the cover note with serial number 0303089 which was relied upon by the petitioner to be issued in regard to the insurance taken for the offending vehicle, as per Register No. 2, was distributed on 22.11.2006 to the Divisional office in Ghaziabad through challan number 4516. It was also stated in the Email that the cover note with the said serial number falls within the Ghaziabad range. The Email was written pursuant to the internal exchange of correspondence when the Insurance Company was checking the validity of the cover note relied upon by the petitioner.

7. The learned counsel for the petitioner submits that during the course of recording of evidence, a question was put to R3/W1, who was an official of the Insurance Company, asking about the agent to whom these books referred in the Email were issued.

8. He submits that the learned Tribunal disallowed the said question noting that the witness has neither produced the document (Email marked as 'Mark Y') nor is he the maker of the said document.

9. He submits that the same led to filing of the application for

summoning of the witness in order to produce Book No. 1 to 5 bearing serial no. 350503030876 to 350503030900 which has been referred in the Email as noted above.

10. The application was not decided, however, directions were given to the petitioner to file an affidavit which led to filing of the present petition.

11. It is not disputed that the petitioner has taken a defense that the insurance policy was taken in regard to the offending vehicle. He relied upon the cover note which bears the serial number 0303089.

12. The Insurance Company seems to have taken a stand that the said serial number is fake since the policies contain serial numbers having 12 digits whereas in the cover note relied upon by the petitioner the serial number only has 7 digits.

13. The petitioner has taken a specific stand that the cover note as relied upon by him before the learned Tribunal, was in regard to the policy which was issued by the Insurance Company.

14. In the opinion of this Court, the learned Tribunal fell in error in directing the petitioner to file an affidavit. The petitioner has already disclosed the cover note which contains the serial number. Thus, asking him to file an affidavit mentioning or stating any other number does not serve any purpose.

15. The learned counsel for the Insurance Company submits that the said direction was issued only to avoid any subsequent application being filed by the petitioner, which would amount to holding fishing and roving enquiry.

16. In my opinion, the argument does not hold any merit. It is categorical stand of the petitioner that the cover note as annexed with the present petition is the one which was issued in regard to

the policy taken by the petitioner for the offending vehicle. The petitioner claims to be unaware of any other number except the one mentioned on the said cover note. The number as mentioned on the cover note finds mention in the Email which was produced by the Insurance Company in evidence.

17. Therefore, there was no reason for the learned Tribunal to direct the petitioner to file an affidavit disclosing 'exact number of the insurance policy'.

18. In view of the above, the present petition is allowed and the order dated 13.01.2025 is modified to the extent that the learned Tribunal is directed to decide the application filed by the petitioner without insisting on filing of any such affidavit.

AMIT MAHAJAN, J

JANUARY 31, 2025
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