* IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Reserved on : 30th July 2026***
Pronounced on : 18th September 2026
Uploaded on : 21st September 2026

\# **CNR No. DLHC012289982014**

\+ **MAC.APP. 1190/2014**

ARUNA ATTRI AND ORS .....Appellants

Through: Mr. Manish Maini, Ms. Aastha Chauhan, Mr. Abhinav Sharma, Advocates.

versus

SONU KASHYAP AND ORS (ORIENTAL INSURANCE CO LTD) .....Respondents

Through: Mr. Pradeep Gaur, Mr. Amit Gaur, Mr. Kaarrtikey Parashar, Advocates for Respondent no.3/ Insurance Company.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal has been filed assailing the impugned Award dated 20th August 2014 passed by the Motor Accident Claims Tribunal (West), Delhi ('***MACT/Tribunal***') in Suit No.475/2014, whereby the Insurance Company was exonerated on the ground that the insurance cover note relied upon by the claimant was a forged and fabricated document, and liability was instead fastened jointly and severally upon the driver and owner of the offending vehicle. The claimants' appeal seeks to prove that the cover note was not fake

and focuses on the imperative duty of the Insurance Company to have taken steps to file complaint against its own officers if such cover note was indeed issued without process.

2. Accident in question occurred on 24th December 2007 at 02:10 p.m., when the deceased, *Lalit Attri*, was proceeding on his motorcycle towards his office at Mangolpuri. Upon reaching near *Suraj Mal Stadium, Rohtak Road, Delhi,* a truck bearing registration *No. UP-12C-2045*, driven by respondent no. 1 and owned by respondent no. 2, struck the deceased, as a result of which he fell on the road, sustained injuries and subsequently succumbed to the same.

3. The driver and owner did not file any written statement despite opportunities. The Insurance Company was subsequently permitted to file its written statement, although it had not filed the same initially. The Insurance Company took the defence that the offending vehicle was not insured under *Cover Note No.465971* and, therefore, no liability could be fastened upon it on the basis of the alleged fake cover note.

Impugned award

4. While concluding, the MACT held that the death was caused due to the rash and negligent driving of the offending vehicle and compensation of *Rs.41,23,000/-* along with interest @ 7.5% per annum was awarded.

5. On the issue of liability, the MACT noted that the Insurance Company produced **R3W1**, *Mr. Daya Chand, retired ASI*, who stated that the charge sheet exhibited as ***Ex.PW1/13*** had been prepared by him. He further stated that the original insurance policy had not been supplied by the owner and that only a copy of the insurance policy had been furnished to him.

6. *Mr. N.K. Sharma, Assistant Manager of the Insurance Company*, who deposed as **R3W2,** stated that the copy of *Cover Note No.465971*, which had been supplied to the Insurance Company along with the claim petition by the claimant, was a forged and fabricated document. He further stated that the said cover note had neither been issued in respect of the offending vehicle nor signed by the official of the Insurance Company whose stamp appeared at the bottom of the cover note.

7. It was further deposed that the said cover note had actually been issued in the name of *S.K. Malhotra* in respect of *vehicle No. DDU-4317* under *Policy No. 99/2177*, valid from 12th October 1998 to 11th October 1999. **R3W3**, *Mr. Hakumat Rai, Deputy Manager*, also corroborated the testimony of **R3W2** and tendered his affidavit as ***Ex. R3W3/A***.

8. The Insurance Company further placed on record *Cover Note No.465931*, which had been issued in respect of vehicle *No. DL-8CH-2457* in the name of *Mr. Ravinder Singh Sethi*, which was exhibited as ***Ex. R3W3/3***. The Insurance Company also placed on record a copy of the notice issued to the owner under Order XII Rule 8 of the Code of Civil Procedure, 1908 (***'CPC'***), exhibited as ***Ex. R3W3/5***, along with the postal receipts.

9. The MACT, upon examining the record, noting that there had been no cross-examination by the driver or the owner, concluded that the cover note in question, which contained handwritten entries and had been produced by the claimant, was forged and fabricated.

<u>Submissions on behalf of claimants</u>

10. The appellant, in its written submissions, contended that the same cover note appeared to have been issued multiple times to different persons

by the Insurance Company. Therefore, according to the appellant, responsibility ought to be fixed upon the officials of the Insurance Company, and the matter would ultimately constitute an internal issue of the Insurance Company. It was further submitted that the claimant was entitled to ensure that the compensation was paid by the Insurance Company rather than by the driver or owner. The appellant relied upon the testimony of **R3W2,** *Mr. N.K. Sharma*, Assistant Manager, Oriental Insurance Co. Ltd., who, in his affidavit ***Ex. R3W2/A***, deposed that *Cover Note No.465971* had been issued in the name of *Mr. S.K. Malhotra* for a different vehicle, while *Cover Note No.465931* had been issued in the name of *Mr. Vipin Kumar Jain*, also in respect of a different vehicle.

11. *Mr. Hakumat Rai, Deputy Manager,* who deposed as **R3W3,** stated that *Cover Note No.465971* was again issued in respect of vehicle no. *DL-1LE-4815* in the name of *Mr. Ravinder Kumar* by the Regional Office; however, the same was subsequently cancelled due to the dishonour of the cheque. He further stated that, according to the records of the Insurance Company, *Cover Note No.465931* had been issued in the name of *Sh. Ravinder Singh Sethi* in respect of a different vehicle.

12. Counsel for the appellant, therefore, submitted that *Cover Note No.465971* and *465931* had been issued multiple times in respect of different vehicles and in favour of different persons, which clearly indicated a duplicitous act on the part of the officials of the Insurance Company. Counsel further contended that the document had been collected by the Investigating Agency after the accident and that the claimants were being made to suffer for the fault of the Insurance Company.

13. Reliance was placed upon the decision of the Supreme Court in ***Mangla Ram v. Oriental Insurance Co. Ltd.*** (2018) 5 SCC 656, wherein the Court was considering a case in which no premium had been received by the Insurance Company, and no insurance policy had been issued, though a cover note had been relied upon. In this case, the Insurance Company had alleged that the cover note had been fraudulently procured from a Development Officer who was subsequently dismissed from service. Accordingly, the Supreme Court noted that the Insurance Company had been able to establish that no payment towards the insurance premium had been received and that no insurance policy had been issued. At the same time, the claimants' assertion that they were in possession of a cover note issued by the concerned Development Officer was accepted, particularly in the absence of any positive evidence to establish that the cover note had been ante-dated. Consequently, the Court invoked the principle of '*pay and recover*', as enunciated in ***National Insurance Co. Ltd. v. Swaran Singh & Ors***. (2004) 3 SCC 297.

14. Reliance was also placed on the order of the Supreme Court dated 25th November 2024 in Civil Appeal No. 13043/2024 titled ***S. Latha & Anr. v. United India Insurance Co. Ltd. & Ors.,*** wherein the Supreme Court stated that in cases of motor accident claims, the rights of the claimants must be considered. When compensation has been granted, it must be ensured that the rightful compensation reaches the claimants as soon as possible. The Supreme Court then went on to state "*we find it to be highly unfair to make the claimants suffer in trying to recover the due compensation. Therefore, to protect the interests of the claimants and considering the principles of justice*

and fairness, the Insurance Company must pay the compensation with the right to recover it later from the owner of the vehicle".

15. The decision of this Court in ***Sundar @ Sunderi Devi & Ors. v. Reliance General Insurance Co. Ltd.*** 2014:DHC:955 was also relied upon, wherein the Insurance Company had contended that it had not received any premium in respect of the cover note in question and was unable to identify the person who had received the cash allegedly paid against the said cover note. The witness examined on behalf of the Insurance Company admitted that neither the owner of the vehicle nor the concerned authorities had been informed about the alleged loss of the cover note. Further, the driver and owner had specifically asserted that the vehicle was insured with the Insurance Company and had produced the cover note in support thereof. The Court noted that neither the cover note register/book had been produced nor had the informant who lodged the FIR been examined. In these circumstances, the Court observed as under:

> "*9. When such a dispute arises and the owner of the vehicle produced the cover note and states on oath that his vehicle was insured with the Insurance Company and; if the said cover note is found not valid or forged and; the intimation regarding missing of the said cover note has not been given to the concerned authority or the owner of the vehicle, then in such an eventuality, liability to pay the compensation rests upon the Insurance Company.*
>
> *10. For the loss of cover note in question FIR was lodged. Both the parties are not aware about the outcome of the FIR. If, after investigation, the police has filed charge-sheet against the owner of the offending vehicle, then the insurance company is entitled to recover the amount from him otherwise not.*"

(emphasis added)

16. *Mr. Maini* further contended that the Insurance Company lodged the complaint alleging that the cover note was fake on 15th March 2012, i.e. after a lapse of nearly five years from the date of the accident. He submitted that the Insurance Company ought to have proactively lodged a complaint against the alleged fake cover note immediately upon acquiring knowledge of the same. In support of his contention, he relied upon the judgment of this Court in ***New India Assurance Co. Ltd. v. Kishan Singh Chauhan***, 2014 SCC OnLine Del 1238, wherein the Court was dealing with a case of a fake cover note and the Court noted the following:

> "*12. On the other hand, learned Amicus Curiae for Respondents 5 to 7 submitted that though the complaint dated 29-7-2011 was addressed to the SHO, P.S. Green Park, New Delhi, but there is no proof that the said complaint was given/made to the said Police Station. The said complaint was received in the office of Deputy Commissioner of Police(South East), which proved that a formal attempt was made but the complainant was not serious. Thus, the learned Tribunal has recorded in its impugned order that in respect of the insurance cover note, simply one letter was written to SHO, which was not pursued thereafter and no proceedings or enquiry shown to have been initiated. Thus, FIR was not registered pursuant to the complaint noted above. It only bears the stamp of the Office of DCP, South-East, without certifying as to which official had received the complaint. Hence, the factum of lodging the complaint with the police was not proved as no witness has been summoned by the appellant company to prove this fact.*
>
> *13. I have heard the learned counsels for the parties and have perused the record.*
>
> *14. On perusal of the material placed on record, it is revealed that the appellant/Insurance Company raised the defence before the learned Tribunal that the*

offending vehicle was being plied without the driving licence, permit and fitness and the insurance cover note was forged.

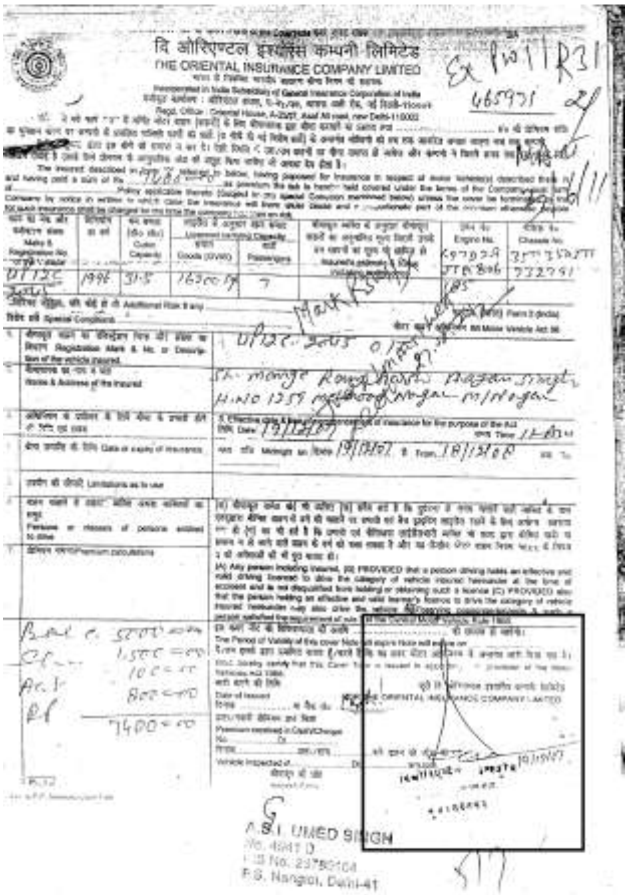
15. It is also revealed from the records that the appellant had not served Respondents 5 and 6 i.e. driver and owner of the offending vehicle with any notice under Order XXII Rule 8 CPC calling upon them to furnish the driving licence, permit and fitness certificate of the offending vehicle. Thus, the defence raised by the appellant does not establish."

(emphasis added)

17. He further relies upon the judgment of Patna High Court in ***New India Assurance Company Ltd. v. Md. Khalil Nai***, 2012 SCC OnLine Pat 254, where the Court was dealing with the issue whether the Insurance Company could avoid liability for the compensation on the ground that the insurance cover note relied upon by the claimants was forged, fabricated or contained overwriting. The Tribunal noted that the question whether the cover note was issued or not, or the same was forged, fabricated and fake, is between the Insurance Company and the owner/driver, and that the Insurance Company could take appropriate legal action against them. The High Court noted that, in a summary proceeding, the Tribunal could not have conclusively adjudicated upon the Insurance Company's plea that the cover note was forged, fabricated or fake. It therefore rightly observed that the Insurance Company was at liberty to take appropriate legal action, if any, against the owner and driver of the vehicle.

18. He further drew the attention of the Court to the signature appearing on the alleged cover note, contending that the same was that of the agent of the Insurance Company. He referred to the Stock Register, exhibited as ***Ex. R3W2/4 (Colly)*** to contend that the cover note bore the signature of the

Insurance Company's agent and, therefore, had in fact been issued by the Insurance Company. For ease of reference the signature on the alleged cover note and the Stock Register are extracted as under:


दि ओरिएण्टल इंश्योरेंस कम्पनी लिमिटेड

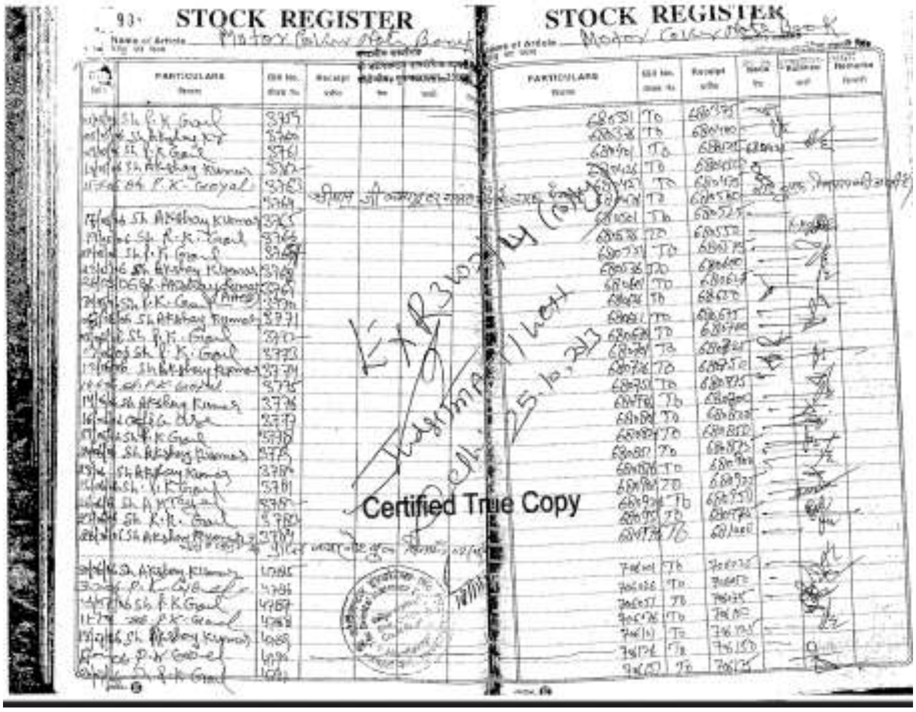
THE ORIENTAL INSURANCE COMPANY LIMITED

Ex PW1/R3

665971

A.S.I. UMED SINGH

P.S. Nangloi, Delhi-41



Submissions of behalf of Insurance Company

19. *Mr. Pradeep Gaur*, counsel for the Insurance Company, contended that Tribunal rightly considered that the *Cover Note No.465971*, copy of which had been supplied by the Insurance Company along with the petition, was forged and fabricated and was neither issued to the offending vehicle nor signed by the official of the Insurance Company whose stamp had been affixed at the bottom of the cover note. The Insurance Company's written statement it is stated that the alleged vehicle was not insured. He relied on ***Ex. R3W3/3***, pointing out that the said the cover note was actually issued in respect of another vehicle being DL -8CH-2457 and in fact that cover note was also cancelled due to dishonour of cheque. He further contended that as per the statement of ***R3W1*** (*IO of the case, who prepared the charge sheet*), there was no seizure memo of the insurance policy. The only thing which was produced was a photocopy of the insurance policy by the claimant, and the owner did not produce the original insurance policy.

20. Insurance Company had issued a notice to the owner of the offending vehicle. Notice had been issued under Order XII Rule 8 of CPC, but the owner failed to prove any cover note. The Insurance Company had, therefore, discharged the onus and onus was shifted on the driver to recover the same. He contended that the Tribunal had rightly exonerated the Insurance Company and the liability had been rightly fixed on the owner of the vehicle. In the *superdari* proceedings, it was also recorded that no cover note was produced. It was also contended that the Insurance Company's testimony through ***R3W2*** was not effectively rebutted in any manner.

Analysis

21. To effectively assess the appellants' contention that the Insurance Company ought not to have been exonerated and that the liability fastened upon the driver and owner should instead be borne by the Insurance Company, it would be useful to first examine the sequence of events.

22. The accident took place on 24th December 2007. Right to file written statement was not availed by the driver and owner, and the right was closed on 11th May 2009. As far as the Insurance Company was concerned, they were permitted to file a written statement by order dated 15th September 2009.

23. The FIR was registered on 24th December 2007 on the complaint of *Balvan*, son of *Ramkishan*. The charge sheet was filed on 29th January 2008. The DAR was filed on 16th January 2010. Testimony on behalf of Insurance Company was recorded on 25th October 2013.

24. Complaint against the fake note was filed by the Insurance Company with SHO P.S. Nangloi, Delhi on 15th March 2012, exhibited as ***Ex.R3W3/Z***.

25. One of the major pleas by *Mr. Manish Maini*, counsel for the appellant is that the Insurance Company delayed filing a complaint after the alleged fake cover note had been brought to its attention, despite having raised this issue in its written statement. It was contended that such delay indicated the complicity of the Insurance Company, or its officials, in trying to conceal the fact that the insurance policy had in fact been issued and was in favour of the owner.

26. While this may amount to an omission on the part of the Insurance Company, it does not, by itself, constitute proof of the existence of a legitimate and valid insurance cover in respect of the vehicle.

27. In this regard, it is instructive to consider that there are certain decisions of various courts which relate to the issue of fake cover notes or the inability of the claimant to prove the insurance cover notes, which are referred as under:

27.1. ***National Insurance Company Ltd. v. Poonam Rana & Ors.*** 2017:DHC:7357 **-** In that case, the appeal was pressed by the insurer seeking recovery rights on the ground that it bore no liability, as the insurance contract purportedly based on the cover note had been improperly issued in respect of another vehicle. A Coordinate Bench of this Court observed that the owner had failed to adduce any evidence to establish payment of the insurance premium. It was held that a mere denial of the Insurance Company's evidence could not suffice. The Court observed that "*since they were to take the benefit of the insurance policy, it was their prime burden to prove, by some clear evidence, the payment of premium to the Insurance Company*".

27.2. ***Reliance General Insurance Co. Ltd. v. Virendra Patel*** 2024:CGHC:23262: The Chhattisgarh high Court, dealing with an issue of an alleged fake insurance cover note, stated that the burden of proving that it was fake lies on the Insurance Company since the driver and owner had remained *ex parte*. Upon considering the evidence, the Court observed that, in order to establish that the cover note was fake, the Insurance Company could have issued a notice to the registered owner, which had not been done. It was also noted that the Insurance Company had not lodged any complaint alleging that the cover note was forged. On that basis, the Court found that the Insurance Company had admitted that the cover note had been issued upon receipt of the premium in respect of the offending vehicle. Accordingly, it was held that the Insurance Company had failed to discharge its burden of proving that the cover note was fake.

27.3. ***Naveen Kumar Gupta & Ors. v. Bhupender Singh & Ors*.** 2016:DHC:1868: A Coordinate Bench of this Court noted that the insured had not appeared to contest the plea that the cover note had been amended unilaterally and without his consent. The evidence led by the Insurance Company demonstrated that due intimation had been given to the insured prior to such amendment. The evidence further showed that the premium had been paid by cheque only on 24th September 1999, making it apparent that the insurance document relied upon was fabricated. The Court held that the insurance policy, insofar as third-party rights were concerned, could not have come into effect prior to 24th September 1999, whereas the accident had occurred on 23rd September 1999.

27.4. ***Shriram General Insurance Co. Ltd. v. Kamlesh Jha & Ors.*** 2023:DHC:346: A Coordinate Bench of this Court noted that the driver and owner of the offending vehicle had not appeared before the Tribunal to prove the veracity of the cover note in question. The specific defence raised by the Insurance Company that the cover note was fake was unchallenged. Therefore, the Insurance Company could not be directed to pay the compensation amount.

28. In the present case as well, the driver and the owner did not appear before the MACT, nor did they file any response. There is, therefore, no material available to establish that the offending vehicle was, in fact, insured with the Insurance Company. Such fact could only have been established through evidence of payment of premium and/or production of the original cover note/policy document. A mere photocopy of a cover note, particularly when the Insurance Company has led evidence demonstrating that it was not issued in respect of the offending vehicle, cannot, by itself, fasten liability upon the Insurance Company.

29. Moreover, the principle of preponderance of probabilities, as applicable in motor accident claim proceedings, does not dispense with the requirement of establishing the basic facts necessary to fasten liability upon the insurer. The said principle is primarily relevant to the determination of issues such as the involvement of the offending vehicle and the negligence of its driver. In this regard, it would be relevant to examine the observations of the Supreme Court concerning the standard of proof applicable in motor accident claim proceedings.

30. In ***Meera Bai v. ICICI Lombard General Insurance Company Ltd. & Anr.*** 2025:INSC:600, the Supreme Court has observed that in cases where the eyewitness was not examined, reliance on FIR and charge-sheet was

enough for the finding of negligence to be established. In this regard, the relevant paragraphs are as under:

> "*2. The claimants before the Tribunal have filed an appeal from the order of the High Court which allowed the appeal of the insurance company and dismissed the claim petition for reason of no eyewitness having been examined to prove the rash and negligent driving.*
>
> *3. On facts, it needs to be stated that the accident occurred on 29.01.2015 when the deceased was travelling pillion in a motorbike driven and owned by the second respondent. <u>The FIR was lodged against the owner driver of the vehicle for the offence of rash and negligent driving</u>. A charge sheet was filed against the owner driver. The owner driver filed a written statement before the Tribunal denying the rash and negligent driving on his part, however he did not mount the box to depose that it was not due to his fault that the accident occurred.*
>
> *4. <u>As far as examining the eyewitness, such a witness will not be available in all cases. The FIR having been lodged and the charge sheet filed against the owner driver of the offending vehicle, we are of the opinion that there could be no finding that negligence was not established</u>.*"
>
> (emphasis added)

31. In ***Srikrishna Kanta Singh v. Oriental Insurance Co. Ltd***. 2025 SCC OnLine SC 636, the Supreme Court observed as under:

> "*11.<u>In a motor accident claim, there is no adversarial litigation and it is the preponderance of probabilities which reign supreme in adjudication of the tortious liability flowing from it, as has been held in Sunita v. Rajasthan State Road Transport Corporation. Dulcina Fernandes v. Joaquim Xavier Cruz is a case in which the rider, who also carried a pillion, died in an accident</u>*

involving a pick-up van. There was a contention taken that the claimants who were the legal heirs of the deceased had not cared to examine the pillion rider and hence the version of the respondent in the written statement that the moving scooter had hit the parked pick-up van, was to be accepted. It was found, as in the present case, that the Police had charge-sheeted the driver of the pickup van which prima facie showed negligence of the charge-sheeted accused. Similarly in the present case also, the Police after investigation, charge-sheeted the driver of the trailer finding clear negligence on him, which led to the accident. This has not been controverted by the respondents before the Tribunal by any valid evidence nor even a pleading. In fact, the Tribunal, on a mere imaginative surmise, found that since the scooter collided with the tail-end of the trailer, it can be presumed that the driver of the scooter was not cautious, which in any event is not a finding of negligence.

12.Finding that the driver was not cautious is one thing and finding negligence is quite another thing. Prima facie, we are satisfied that the negligence was on the trailer driver as discernible from the evidence recorded before the Tribunal; standard of proof required being preponderance of probability as has been reiterated in Mangla Ram v. Oriental Insurance Company Limited"

(emphasis added)

32. In ***Prabhavathi v. Bangalore Metropolitan Transport Corpn.*** 2025 SCC OnLine SC 455, the Supreme Court observed as under:

"***13.*** *It is the settled law that under the Motor Vehicle Act, 1988 it is established that in compensation cases, the strict rules of evidence used in criminal trials do not apply. Instead, the standard of proof is based on the preponderance of probability. This Court in Sunita v. Rajasthan SRTC*[3] *observed that:*

"22. It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases."

The exposition came to be reiterated in Rajwati alias Rajjo v. United India Insurance Company Ltd.[4]*, wherein it was observed that:*

*"**20.** It is well settled that Motor Vehicles Act, 1988 is a beneficial piece of legislation and as such, while dealing with compensation cases, once the actual occurrence of the accident has been established, the Tribunal's role would be to award just and fair compensation. As held by this Court in Sunita (Supra) and Kusum Lata (Supra), strict rules of evidence as applicable in a criminal trial, are not applicable in motor accident compensation cases, i.e., to say, "the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases"."*

(emphasis added)

33. The aforesaid decisions, however, have to be understood in their proper context. The observations regarding the standard of preponderance of probabilities concern the manner in which the accident occurred, involvement of the offending vehicle and negligence of its driver. The said principle cannot be invoked to dispense with the requirement to establish the

necessary facts for fastening liability upon Insurance Company. The question whether a particular vehicle was insured with a particular insurer is a separate issue and has to be established by appropriate evidence.

34. Therefore, the Insurance Company cannot be held liable merely by invoking the principle of preponderance of probabilities on the basis that a photocopy of a cover note has been produced and negligence on the part of the offending vehicle has been established.

35. For fastening liability upon the Insurance Company under Section 166 of MV Act, the following foundational requirements must be satisfied:

i. Offending vehicle must have been insured with the Insurance Company under a valid insurance policy covering the relevant period;
ii. Negligence of the driver of offending vehicle must be established; and
iii. There must be no legally sustainable defence available to the Insurance Company, including a breach of the terms and conditions of the insurance policy; and even if it is then there is a possibility of pay and recover direction by the Tribunal.

36. In the present case, the first and foremost requirement, namely, the existence of a valid contract of insurance, has not been established by reliable and cogent evidence.

37. It was submitted on behalf of the appellant that the claimant was entitled to ensure that the compensation was recovered from the Insurance Company rather than from the driver or owner of the offending vehicle. However, the evidence led on behalf of the Insurance Company does not establish existence of any valid insurance policy in respect of the offending vehicle.

38. **R3W2**, *Mr. N.K. Sharma*, Assistant Manager, Oriental Insurance Co. Ltd., in his affidavit ***Ex. R3W2/A***, deposed that *Cover Note No.465971* had been issued in the name of one *S.K. Malhotra* in respect of a different vehicle, whereas *Cover Note No.465931* had been issued in the name of *one Vipin Kumar Jain*, again in respect of a different vehicle.

39. This evidence was further corroborated by **R3W3**, *Mr. Hakumat Rai*, Deputy Manager, who deposed that *Cover Note No.465971* had been issued by the Regional Office in respect of vehicle No. DL-1LE-4815 in the name of *one Ravinder Kumar*. He further stated that the said cover note was subsequently cancelled on account of dishonour of the cheque. In respect of *Cover Note No.465931*, he stated that, as per the records of the Insurance Company, the same had been issued in the name of *Sh. Ravinder Singh Sethi* in respect of a different vehicle.

40. Conjoint reading of the testimony of **R3W2** and **R3W3** shows that the cover notes relied upon by appellant were not issued in respect of the offending vehicle. Rather, the evidence on record establishes that the said cover note numbers pertained to different vehicles and different persons. There is, therefore, no evidence on record to establish that either of the aforesaid cover notes was ever issued by the Insurance Company in respect of the offending vehicle.

41. Furthermore, the driver and owner neither appeared before the Tribunal nor are they present before this Court to establish the authenticity of the alleged cover note.

42. However, even if driver and owner did not appear before the Tribunal, it was incumbent upon the appellants to take appropriate steps before the

Tribunal for obtaining the necessary evidence to prove the authenticity and genuineness of the alleged cover note. Appellants could have invoked the powers conferred upon the Tribunal under Section 169 of MV Act, which empowers the Tribunal to exercise, for the purposes of taking evidence on oath, enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, and for such other purposes as may be prescribed, the same powers as are vested in a Civil Court, and to conduct a proper inquiry into the claim.

43. However, no such steps were taken by the appellants to seek to summon the relevant forensic or other expert evidence for examination of the alleged cover note, nor did they seek production of the original records from the concerned insurer or any other material which could establish that the cover note was forged, fabricated or otherwise not genuine. Therefore, appellants cannot now seek to rely merely upon the absence of the driver and owner as a ground to sustain their contention regarding the genuineness of the cover note.

44. Appellant also did not bring on record any material to rebut the aforesaid evidence. No receipt of payment of the insurance premium in respect of the offending vehicle has been produced. Neither has the original cover note or policy document been placed on record.

45. Accordingly, the evidence on record, rather than establishing that the offending vehicle was insured with the Insurance Company, establishes the contrary. In the opinion of this Court, the Insurance Company has discharged its burden by not only giving a written statement with details but also providing evidence through **R3W2** and **R3W3**. The details of the testimony have already been noted above.

46. Mere production of a photocopy of a cover note cannot be treated as sufficient proof of the existence of a valid policy of insurance, when Insurance Company has led evidence to the contrary showing that the said document was not issued in respect of the offending vehicle. Moreover, the principle of preponderance of probabilities would also not come to the rescue as the same, by itself, cannot be invoked to fasten liability upon the Insurance Company in the absence of proof of the underlying contract of insurance.

47. The decisions relied upon by the appellants do not advance their case, as they proceed on materially different factual circumstances.

48. In ***Mangla Ram*** (*supra*), the Supreme Court was dealing with an issue of whether the Insurance Company can be absolved of liability where no premium was received by the Insurance Company nor was any insurance policy ever issued by the Insurance Company in relation to the offending vehicle. In this regard, the Supreme Court observed as under:

> "*35. The next question is about the liability of insurer to pay the compensation amount. The Tribunal has absolved the Insurance Company on the finding that no premium was received by the Insurance Company nor was any insurance policy ever issued by the Insurance Company in relation to the offending vehicle. Respondents 2 and 3 had relied on a cover note which according to Respondent 1 Insurance Company was fraudulently obtained from the then Development Officer, who was later on sacked by Respondent 1 Insurance Company. The possibility of misuse of some cover notes lying with him could not be ruled out.*
>
> *36. Respondents 2 and 3 have relied on the decision of this Court in Rula. That decision will be of no avail to Respondents 2 & 3. In that case, the Court found that the insurance policy was already issued after accepting the cheque; whereas in the present case, Respondent 1*

Insurance Company has been able to show that no payment was received by the Company towards the insurance premium nor had any insurance policy been issued in respect of the offending vehicle (jeep). However, the claim of Respondents 2 & 3 to the extent that they possessed a cover note issued by the then Development Officer of Oriental Insurance Company (Respondent 1) will have to be accepted coupled with the fact that there is no positive evidence to indicate that the said cover note is ante-dated. Pertinently, the cover note has been issued by the then Development Officer at a point of time when he was still working with Respondent 1 Insurance Company. It must follow that the then Development Officer was acting on behalf of the Insurance Company, even though stricto sensu Respondent 1 Insurance Company may not be liable to pay any compensation as no insurance policy has been issued in respect of the offending vehicle, much less a valid insurance policy. But for the cover note issued by the Development Officer of Respondent 1 Insurance Company at a point of time when he was still working with Respondent 1, to do substantial justice, we may invoke the principle of "pay and recover", as has been enunciated by this Court in National Insurance Co. Ltd. v. Swaran Singh"

(emphasis added)

49. In this case, although the insurer had established that no premium had been received and no policy had been issued, the claimants were admittedly in possession of a cover note issued by the concerned Development Officer, and there was no evidence to the contrary to establish that the cover note was ante-dated. Therefore, the Supreme Court relied upon the judgment in ***National Insurance Co. Ltd. v. Swaran Singh*** (2004) 3 SCC 297, and awarded *recovery rights*.

50. Similarly, in ***Sundar @ Sunderi Devi*** (*supra*), the owner himself asserted that the vehicle was insured and produced the cover note, while the

insurer had not produced the relevant cover-note register and had failed to establish the circumstances in which the cover note was allegedly lost or forged.

51. In the decision of ***S. Latha*** (*supra*), the Supreme Court was dealing with an issue of whether the High Court was justified in fastening the entire liability to pay the compensation upon the owner of the vehicle, and absolving Insurance Company from liability or should Insurance Company have been directed to pay the compensation to the claimants with recovery rights. While dealing with this issue the Supreme Court held as under:

> "*6. It is submitted before us that the owner of the vehicle is financially incapable of paying the compensation. The High Court did not consider that shifting the liability to pay onto the owner of the vehicle, who does not possess the financial resources to be able to do so, only results in the claimants suffering. In cases of motor accident claims, the rights of the claimants must be considered. If compensation has been granted, it must be ensured that the rightful compensation reaches the claimants as soon as possible. We find it to be highly unfair to make the claimants suffer in trying to recover the due compensation. Therefore, to protect the interests of the claimants and considering the principles of justice and fairness, the Insurance Company must pay the compensation with the right to recover it later from the owner of the vehicle.*
>
> ***7.*** *The doctrine of "pay and recover" was examined in Shamanna & Others vs. the Divisional Manager, The Oriental Insurance Co. Ltd. & Ors (2018) 9 SCC 650, wherein this Court directed the Insurance Company to pay the compensation and thereafter recover the same from the owner of the vehicle. They held this to be in accordance with the judgements passed by this Court in National Insurance Co. Ltd. v. Swaran Singh (2004) 3 SCC 297 and National Insurance Co. Ltd. v. Laxmi Narain Dhut (2007) 3 SCC 700. This Court noted that:*

"5. In the case of third-party risks, as per the decision in National Insurance Co. Ltd. v. Swaran Singh (supra), the insurer had to indemnify the compensation amount payable to the third-party and the insurance company may recover the same from the insured. Doctrine of "pay and recover" was considered by the Supreme Court in Swaran Singh (supra) case wherein the Supreme Court examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving licence of the driver and held that in case of third-party risks, the insurer has to indemnify the compensation amount to the third-party and the insurance company may recover the same from the insured."

8. *In light of the above discussion, this appeal is allowed and the impugned judgement of the High Court directing the owner of the vehicle to pay the entire compensation is set aside. The amount awarded by the Tribunal shall be paid by the Insurance Company to the claimants-appellants within two months from today and will thereafter have a right to recover it from the owner of the vehicle."*

(emphasis added)

52. This case would also not come to the help of the appellant. The direction to '*pay and recover*' necessarily requires a pre-existing contractual relationship for fastening liability upon the insurer in the first instance. The same cannot be awarded where the very existence of a valid policy covering the offending vehicle has not been established.

53. Therefore, all the judgments relied upon by appellants are distinguishable from the facts of the present case. Herein, the alleged cover note is only a photocopy; neither the driver nor the owner has appeared to affirm its issuance or genuineness; no evidence of payment of premium in

respect of the offending vehicle has been produced; and, significantly, the Insurance Company has led evidence in its support showing that the cover note number relied upon by the appellants pertained to different vehicles.

54. Elaborating on this, it is admitted that the cover note, which was part of the proceedings before the MACT, is only a photocopy which was filed along with the criminal documents. **R3W1**, *Sh. Daya Chand, Retd. ASI, Rio Village & PO Jasaur Kheri, Oistt. Jhajhar, Haryana*, in his examination has stated that the cover note was not part of the seizure by the Investigating Officer and no original note ever came into play. He further stated that, as per records, there is no seizure memo of the insurance policy and only photocopy of the insurance policy has been filed along with the criminal documents. Even when the owner applied for *superdari* of the vehicle, he did not produce the original documents of the vehicle, and the vehicle could not be released on *superdari*.

55. The claimants attempted to shift the burden onto the Insurance Company by contending that its failure to take steps pursuant to the complaint should operate against it. However, the omission of the Insurance Company to pursue its complaint cannot reverse the entire situation and result in the insurance policy being treated as genuine. No doubt, the Insurance Company did not take steps to pursue its complaint in an expeditious or even diligent manner. Such omission on the part of the Insurance Company was viewed adversely by the Coordinate Bench of this Court in ***Kishan Singh Chauhan*** (*supra*).

56. In that case as well, the Insurance Company had taken the plea that the cover note was forged and, therefore, they had to be exonerated. The Court noted that the complaint made to the SHO, P.S. Green Park was merely a

formal complaint, never pursued and no proceedings were initiated and it did not even result in an FIR. However, the Court further noted that the factum of lodging the complaint with the police was itself not proved, as no witness had been summoned by the Insurance Company for that purpose. There is nothing further which the Court states in this regard, and importantly, does not enunciate a principle of law that lack of pursuit of criminal proceedings in respect of fake cover note would result in the insurance cover being considered as genuine. In ***Kishan Singh Chauhan*** (*supra*), the Court, on the facts of that case, also noted that recovery rights had already been granted to the Insurance Company.

57. In ***Md. Khalil Nai*** (*supra*), the Tribunal, while awarding compensation, had observed that the Insurance Company may take legal action against the owner and driver of the vehicle. The High Court held that the Tribunal, in a summary proceeding, could not adjudicate upon the plea raised by the Insurance Company that the insurance cover was forged, fabricated, and fake. It therefore rightly observed that the Insurance Company may take such legal action as may be available to it against the owner and driver of the vehicle. In any event, on the facts of that case, the Tribunal found that the vehicle was insured with the Insurance Company at the time of the accident and accordingly held the Insurance Company liable to satisfy the award.

58. Moreover, though not argued, Section 64 VB of the Insurance Act, 1938, the Insurance Company is not liable to cover any risk unless premium for the same has been received in advance, i.e. before the date of accident in the present case.

59. For ease of reference, Section 64 VB of the Insurance Act, 1938 is extracted as under

> "*64VB. No risk to be assumed unless premium is received in advance.—(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by [it] or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.*
>
> *(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.*
>
> *Explanation.—Where the premium is tendered by postal money order or cheque sent by post [or by any online mode], the risk may be assumed on the date on which the money order is booked or the cheque is posted [or the money is received in insurer's bank account], as the case may be.*
>
> *(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.*
>
> *(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.*
>
> *(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies.*

> *[(6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer.]*"
>
> (emphasis added)

60. Recently, the Supreme Court in the ***New India Assurance Company Ltd. & Ors. v. M/s Louis Dreyfus Commodities India Pvt. Ltd***. 2026 INSC 876, while dealing with the Insurance Company's liability to indemnify the insured for a fire loss, held that Section 64VB of the Insurance Act, 1938 imposes a mandatory statutory embargo on an insurer to compensate the insured unless the premium is received in advance or its payment is validly guaranteed in the prescribed manner and within the prescribed time.

61. In the present case, as noted above, neither the driver nor the owner appeared before the MACT or this Court. The claimants were also unable to produce any evidence showing payment of the premium. Therefore, even otherwise, having regard to Section 64 VB of the Insurance Act, 1938 and the judgment of the Supreme Court, and in the absence of proof of payment of the premium, the Insurance Company cannot be held liable to satisfy the claim of the claimants.

62. *Mr. Maini* had further raised the issue that the signature on the cover note which was produced was matching that found on the register of the cover notes of the same official. However, this in itself cannot persuade the Tribunal or the Court to consider the cover note as being properly issued after receipt of premium and proper contract precipitating. Relying on such oral assertion, without any evidence, either forensic or otherwise, would run the danger of accepting fake cover notes as genuine merely on such assertions. The claimant never took any steps to take a plea before the MACT to requisition any forensic analysis on the cover note, as it could have done

under Section 169 of the MV Act, since the Tribunal has all the powers of the Civil Court in this regard.

63. Even though the counsel for claimant stated that the officials of the Insurance Company were responsible for issuing multiple insurance cover notes bearing nos. *465971 and 465931*, that circumstance, by itself, cannot lead the Court to conclude that there was any duplicitous or unlawful conduct on the part of unidentified officials of the Insurance Company. Such officials would, in any event, have to be specifically identified and held accountable for their actions. Moreover, even if such a conclusion were to be independently arrived at on the basis of other material, it would not automatically establish that the cover note produced in the present case was genuine or authentic.

64. No doubt, there is a duty cast upon the Insurance Company to take appropriate action upon discovering a false or fake cover note by lodging a complaint and pursuing the matter in accordance with law. Needless to state, the issuance of fake cover notes is a serious issue, as it affects not only compensation proceedings but also the assessment and assumption of risk by the Insurance Company. If vehicle owners choose to procure fake cover notes, or fail to ensure that insurance has been obtained through the proper process of payment of premium and issuance of a valid policy by the Insurance Company, albeit through an agent, they are either negligent or have themselves been deceived. In either eventuality, the contract of insurance may never have come into existence, and the Insurance Company may not be held liable. No doubt, facts of each case would be different, and if found that the owner has legitimately paid premium and risk has been assumed

through a cover note or some communication, the Insurance Company may be held liable to pay.

65. Once a fake cover note is brought to the notice of the Insurance Company, steps must be taken of sanitizing process, as also in public interest, to get to the bottom of why the fake cover note exists in the first place and who was responsible for it. This would help reduce the occurrence and recurrence of such situations. It would also be incumbent upon insurance companies to initiate internal inquiries to investigate why such a cover note has been issued without due process, or procured, and take disciplinary or penal action against errant officers.

66. Accordingly, in view of the above findings, the appeal is dismissed.

67. Pending applications, if any, are rendered infructuous.

68. Copy of this judgment be sent to the concerned MACT/bank for information and compliance.

69. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

SEPTEMBER 18, 2026/ak/bp