

(2006) 07 KAR CK 0012
In the Karnataka High Court
Case No : M.F.A. No. 2636 of 2001

B.N. Jeevan Prakash

APPELLANT

Vs

Shabeer Ahamad Shariff and Others

RESPONDENT

Date of Decision : 15-07-2006

Acts Referred:

Citation : (2007) ACJ 1709 : (2006) 4 RCR(Civil) 635

Hon'ble Judges : V. Jagannathan, J;Chidananda Ullal, J

Bench : Division Bench

Advocate : P. Ganapathy Bhat, for the Appellant; O. Mahesh, for the Respondent

Judgement

V. Jagannathan, J.—The appellant who had sustained fracture of the left forearm in an accident that took place on 1.12.1998 at 9 a.m. was awarded a sum of Rs. 50,000 (sic Rs. 15,000) as compensation and the liability was put on the shoulders of the driver and the owner. It is this order, which is questioned in this appeal.

2. We have heard learned Counsel for the appellant and Mr. O. Mahesh, learned Counsel for respondent No. 3.

3. Insofar as the question of liability is concerned, it is submitted by the learned Counsel for the appellant that the accident took place on 1.12.1998 at 9 a.m. and on the very same day, the owner had paid the premium as per Exh. P3, but, however, the policy was issued, to be commencing from 2.12.1998, as per Exh. R1 and the Tribunal taking note of the time mentioned in the policy, Exh. R1, did not fasten the liability on the insurance company, but on the other hand, directed the owner of the vehicle, respondent No. 2, to satisfy the award amount and as such this finding of the Tribunal is erroneous. Further, the learned Counsel has placed reliance upon the decisions reported in Kantilal Nagarbhai Khristi Vs. Kantibhai Punjabhai Thakor and Another, and Oriental Insurance Company Ltd., Cochin Vs. Sivan and Others, , to contend that the policy would take effect from the midnight of the previous day and such policy will cover the time and date of

the accident in the instant case on hand. Therefore, he submits that the liability be fastened on the insurance company.

4. On the other hand, learned Counsel Mr. O. Mahesh, appearing on behalf of the insurance company submitted that Exh. R1, the policy, makes it clear that it was to commence from "0" clock on 2.12.1998 and, therefore, as on the date of the accident, i.e., on 1.12.1998, the policy was not in force and as such the Tribunal has rightly absolved the insurance company of its liability to satisfy the award amount.

5. Having taken note of the decisions cited by learned Counsel for the appellant, we are of the considered opinion that in view of the policy, Exh. R1, clearly indicating the time of commencement of the policy, namely, from "0" clock on 2.12.1998, the question of policy coming into force on the midnight of the previous day will not arise. In this regard, we place reliance upon the decision of the Hon"ble Apex Court in *New India Insurance Co. Vs. Bhagwati Devi and Others*, , wherein it is observed thus:

(2) The facts giving rise to the appeal are minimal. The appellant insurance company sold a policy at about 4 p.m. on 17.2.1989. Undeniably, it had been bought at a time when an accident pertaining to the vehicle insured had already taken place at about 9 a.m. the same day. The fatal accident occurring thereby gave rise to a claim for damages before the Motor Accidents Claims Tribunal. The same was allowed on the strength of the decision of this court aforementioned, correctness of which has been challenged. The said decision proceeded on the legal fiction that when a policy is taken on a particular date, its effectiveness would start from the commencement of that date which is from the previous midnight. The accident taking place at any time during the day would be covered by the policy. Later a three-member Bench of this court in *M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others*, , has taken the view that when there is a special contract mentioning in the policy the time when it was bought, it would be operative from that time and not fictionally from the previous midnight. In the said case, the policy had been bought at about 4 p.m. on the day of the accident and, thus, was not allowed to be operative from midnight; the accident having occurred around 11 a.m. on that date. The principle deduced is thus clear that should there be no contract to the contrary, an insurance policy becomes operative from the previous midnight, when bought during the day following. However, in case there is mention of a specific time of its purchase then a special contract to the contrary comes into being and the policy would be effective from the mentioned time. The law on this aspect has been put to rest by this court. There is, thus, nothing further for us to deliberate upon.

6. Further, in a recent decision reported in *National Insurance Co. Ltd. Vs. N. Ponnaiyan @ Kolappan and Others*, , the Division Bench of High Court of Madras has also taken a similar view and it has referred to the observation of the Apex Court in the case of *New India Assurance Co. Ltd Vs. Smt. Sita Bai and Ors*, ,

wherein the Supreme Court has observed thus:

(6) The correctness and applicability of the judgment in *New India Assurance Co. Ltd. Vs. Ram Dayal and Others*, , came up for consideration before this court subsequently in a number of cases. In *New India Insurance Co. Vs. Bhagwati Devi and Others*, , a three-Judge Bench of this court relied upon the view taken in *M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others*, , wherein it had been held that if there is a special contract, mentioning in the policy the time when it was bought, the insurance policy would be operative from that time and not from the previous midnight as was the case in *Ram Dayal (supra)*, where no time from which insurance policy was to become effective had been mentioned. It was held that should there be no contract to the contrary, an insurance policy becomes operative from the previous midnight, when bought during the day following, but, in cases where there is a mention of the specific time for the purchase of the policy, then a special contract comes into being and the said policy becomes effective from the time mentioned in the cover note of the policy itself. The judgment in *Jikubhai's case (supra)*, has been subsequently followed in *Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others*, , by a three-Judge Bench of this court also.

7. In the light of the foregoing decisions, in the case on hand also as the insurance policy, Exh. R1, clearly mentions the time of commencement of the policy, the question of policy in question coming into force on the midnight of the previous day, i.e., on 1.12.1998 as contended by the appellant's counsel does not arise. We, therefore, find no error in the finding of Tribunal absolving the insurance company of the liability to satisfy the award and fastening the liability on the insurance company.

8. Coming to the quantum of compensation, the Tribunal has awarded Rs. 15,000 on various heads put together. In view of the medical evidence stating that the appellant has sustained the fracture of left hand forearm and rod is inserted and there is some obstruction in the movement of the wrist, it is clear that the appellant has some disability in the left arm. However, there is no loss of future income as he happens to be a government servant. Having regard to the percentage of disability opined by the doctor, we are of the view that for fracture of the bone, the sum of Rs. 25,000 can be awarded to the appellant. The rest of the amounts awarded by Claims Tribunal are however sustained. Thus, the quantum of compensation gets enhanced by the above sum.

9. Accordingly this appeal is allowed in part by modifying the judgment and award to the above extent.

10. The owner of the vehicle is liable to satisfy the compensation as awarded in this judgment.