(1991) 03 OHC CK 0036

In the Orissa High Court

Case No : Misc. Appeal No. 339 of 1988

Divisional Manager, National Insurance Company Ltd. APPELLANT

Vs

Subash Parida and Another RESPONDENT

Date of Decision : 13-03-1991

Acts Referred:
Motor Vehicles Act, 1939 — Section 110D

Citation : (1991) 1 OLR 433

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : Deepak Misra, Anil Deo and R.N. Nayak, for the Appellant; S.K. Samantray, A.K. Choudhury and A. Bal, for the Respondent

Final Decision : Dismissed

Judgement

A. Pasayat, J.—In this appeal u/s 110-D of the Motor Vehicles Act, 1939 (in short the ''Act'') by National Insurance Company Ltd. (hereinafter referred to as the ''insurer''), a short but interesting point has been raised for determination,

2. The insurer calls in question legality of an award made by Second Motor" Accident Claims Tribunal (S. D.), Berhampur (in short ''the ''Tribunal'') quantifying entitlement of one Subash Parida, respondent No 1 at Rs. 8,500/- being compensation for loss of two buffaloes who died on account of an accident, damage to his cart and personal injury received. The offending vehicle bearing registration No. ORG 7797 was claimed to be insured with the insurer. The insurer denies its liability to indemnify the award, so far as the owner of the vehicle is concerned, on the ground that though the vehicle was insured with it on the date of accident i.e. 11-1- 1986, it was not insured by the time the accident took place, and the insurance was taken some hours later. The Tribunal came to hold that insurance operates from the previous mid-night and therefore, contention of the insurer was not acceptable. According to the learned counsel for the insurance company, cover-note (Ext. A-1) issued clearly indicated time of issue to be 12 noon and therefore, the vehicle was not insured at the time of

accident. The claimant however, places reliance on the copy of the insurance policy which was exhibited as Ext. A/2 as well as cover-note in both of which effective date of insurance was indicated to be 11-1-1986.

3. Insurance is a contract between the person who desired to be Insured and the insurer, and such contract is ''uberrima fides'' founded upon utmost good faith, and the doctrine of ''caveat umptor'' has no place in insurance contract. Non disclosure of a material factor is regarded as fatal to the validity of the contract. A legal obligation is cast upon the party proposing the insurance to communicate all material facts of which he had actual knowledge, as well as of those material facts which he ought in the ordinary course of business to have knowledge. As observed by the Supreme Court in Mithoolal Nayak Vs. Life Insurance Corporation of India, ; where material facts where suppressed the policy is vitiated and there can be no right to be indemnified. As indicated above, it is a contract and obviously becomes operative from the time of its execu- tion. Instrument of agreement has to be read as a whole and that is true rule of construction. A look at the cover-note and the policy of Insurance exhibited on behalf of the insurer shows indication of date of commencement of insurance to be 11-1-198''), and the date of expiry to be 11-1-1987. Stress on the time of issue of cover-note is made to emphasize that at the point of time cover-note was issued, the accident had already taken place and therefore, policy did not cover the accident. This contention overlooks a very material factor i. e. ''date'' means day, so that where cover-note and also insurance policy provided a particular date to be day of commencement, the day relates bark to first moment of the day on which it is to operate. This view gets sustenance from a decision of the Supreme Court reported In 1990 (II) ACJ 545 : New India Insurance Co. Ltd v. Ram Dayal and Ors. I and others. Considering the question as to when the effectiveness of a policy begins, the Court held that it begins from previous mid-night. I have "therefore, no hesitation in holding that the vehicle was insured on the date of accident and therefore, policy covered it. I may however, indicate that it is open to an insurer to satisfy that insurance is intended to be effective from a particular time of a particular date and what would be effect of such a contract would depend on several factors, with which the present dispute Has no nexus. In the instant case, it is not brought on record that policy was intended to be operative from the time of issuance of cover- note. On the contrary, both cover-note and policy of insurance indicate the accepted position that the parties intended that it should operate from a particular date i.e. 17-1-1986 and therefore, policy operated from the previous mid-night. A faint attempt was made to urge that the factum of accident having been suppressed, policy was not available, to be acted upon being outcome of fraud. Such a plea does not appear to have been urged before the Tribunal and therefore, I do not feel inclined to consider this plea.

4. The appeal being devoid of merit is dismissed, but without any cost. The claimant would be entitled to a sum of Rs. 8,500/- with interest ''6%per annum from the date of application till payment. This rate of interest would be applicable

if the amount is paid within two months from today. In case payment is not made within the said time, amount shall carry interest '' 12 % per annumfrom the date of application till realisation. Costs awarded by the Tribunal stand.

