

(2016) 10 KAR CK 0033

In the Karnataka High Court

Case No : M.F.A. Nos. 4070 and 6866 of 2011 (MV)

Divisional Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

Honnappa Sevyanaik

RESPONDENT

Date of Decision : 04-10-2016

Acts Referred:

Insurance Act, 1938 — Section 64VB

Citation : (2017) 1 AirKarR 181

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : Served, for the Respondent No. 2; Sri. R. Shashidhara, Advocate, for the Respondent No. 1; Sri. O. Mahesh, Advocate, for the Appellant

Final Decision : Disposed Off

Judgement

Mrs. S. Sujatha, J. - The Insurer as well as the claimant are before this Court challenging the Judgment and Order passed by the Motor Accident Claims Tribunal, Chitradurga, [the "Tribunal", for short] in MVC No.928/2008.

2. Briefly stated the facts are :

That the injured/claimant instituted a claim petition before the Tribunal seeking compensation contending that he sustained accidental injuries in the vehicular accident which occurred on 19.3.2008, alleging actionable negligence of the rider of the motor cycle bearing registration No. KA-16/H-6691, duly insured with the Insurer. On service of notice, the Insurer entered appearance and resisted the claim. The Tribunal, after appreciating the evidence on record, awarded the total compensation of Rs. 1,27,000/- with interest at 6% per annum, fastening the liability on the Insurer. Being aggrieved, the Insurer is in appeal challenging the liability whereas the claimant is in appeal seeking enhancement of compensation.

3. The learned Counsel appearing for the Insurer placing reliance on the judgment of the Hon'ble Apex Court in the case of "Oriental Insurance Company Limited v. Porselvi and another" reported in 2009 [6] SCR 289 and the judgment

of this Court in the case of "Oriental Insurance Company Limited v. K.G. Vinayagam and another" in MFA No.2930/2007 [DD-24.11.2008] would contend that undisputedly the accident occurred on 19.03.2008 at 1.45 p.m. whereas the insurance policy coverage was with effect from 00.00 from 20.03.2008 to midnight of 19.03.2009 as per Exhibit R2. As such, mention of specific time and date for the purchase of the policy, a special contract comes into being and the policy becomes effective from the time mentioned in the policy itself. The Tribunal grossly erred in not appreciating this vital aspect and the liability fastened on the Insurer is wholly unsustainable.

4. Per contra, learned Counsel appearing for the claimant, placing reliance on the Division Bench judgment of this Court in the case of "National Insurance Company Limited v. Smt. Bhadramma and others, reported in ILR 2009 Kar 3332 would contend that in a contract of insurance in respect of motor vehicles, the issuance of policy becomes effective when the premium is received.

5. The learned Counsel emphasizes that the premium was received by the Insurer on 19.03.2008 at 10.47 a.m. as per Exhibit R2[a]. Irrespective of the period of insurance mentioned in the policy, the policy cover comes into effect from the time and date of receipt of the premium i.e., on 19.03.2008 at 10.47, prior to the time of the accident. As such, the Insurer cannot be absolved from the liability.

6. The learned Counsel would further place reliance on Regulation No.4 of the Insurance Regulatory and Development Authority [Manner of Receipt of Premium) Regulations, 2002 ["Regulations", for short], to contend that in all cases of risks covered by the policies issued by an insurer, the attachment of risk to an insurer will be in consonance with the terms of section 64VB of the Insurance Act, 1938 and except in the cases where the premium has been paid in cash, in all other cases, the insurer shall be on risk only after the receipt of the premium by the insurer. Considering these aspects, the Tribunal rightly fastened the liability on the Insurer which cannot be found fault with.

7. It is further contended that the quantum of compensation awarded by the Tribunal is grossly inadequate and the same requires to be enhanced suitably considering the factual matrix of the case.

8. Heard the rival submissions of the parties and perused the material on record.

9. The undisputed facts are that the accident occurred on 19.3.2008 at 1.45 p.m. The premium was received by the Insurer on 19.3.2008 at 10.47. The policy was issued mentioning the period of insurance from 00.00 on 20.03.2008 to midnight of 19.03.2009.

10. The question that arises for consideration would be whether the risk of the insurer would commence from the time mentioned in the policy or from the time of acceptance of premium ?

11. It is apt to refer to the judgment of the Hon"ble Apex Court in the case of

Porselvi and another (2009 (6) SCR 289) (supra), wherein the Hon"ble Court had the occasion to consider the very same set of facts now present before the case on hand. The relevant portion of the policy therein reads as under :

"Effective date of commencement of insurance for the purpose of the Act, from o'clock on [date] 29.5.1996 to midnight of 28.5.1997."

In the said context, placing reliance on "New India Assurance Company v. Bhagwati Devi" reported in [1998] 6 SCC 534], whereby the Hon"ble Apex Court had relied upon the view taken in National Insurance Company Limited v. Jikubhai Nathuji Dabhi" reported in [(1997) 1 SCC 66] had 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 where no time from which the 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 policy becomes effective from the time mentioned in the cover note/the policy itself. Similar was the question before this Court in Vinayagam's case (supra), wherein placing reliance on the Judgment of the Hon"ble Apex Court and this Court, the co-ordinate Bench of this Court has held that the law laid down insofar as the interpretation of the effect of the time prescribed, whereby the cover would commence and if, such time being mentioned after the accident, the insurer would be absolved from its liability. In the case of Bhadramma (supra), the question that fell for consideration was whether the risk of the insurer would commence from the time of the acceptance of premium or whether it commences from the time of issue of the policy/cover note. It is beneficial to refer to the important dates in the said case, the insured had paid the premium on 13.7.1994, the insurer had issued a receipt to that effect and also issued a policy with effect from 14.7.1994. It is pertinent to note that no time was mentioned in the policy issued. In that context, placing reliance on the judgment of the Hon"ble Apex Court in the case of "Oriental Insurance Co., Ltd. v. Sunita Rati", reported in AIR 1998 SC 257, this Court held that the policy shall be effective from the midnight of the previous date. However, it was also held that in the context of the factual situation of that case that the contract of insurance in respect of motor vehicles, the issuance of policy becomes effective when premium is received. This judgment is distinguishable from the case on hand since no specific time was mentioned for the period of insurance in the policy issued in that case whereas a specific time is mentioned in the present case for the policy coming into force. Thus, it is clear that a special contract comes into being, once the time is mentioned in the policy and the policy becomes effective from the time mentioned in the policy itself as per the judgment of the Hon"ble Apex Court in the cases of Porsel VI (2009 (6) SCR 289) and Sunita Rati (AIR 1998 SC 257) (supra). Regulation 4 of the Regulations also would not come to the assistance of the claimant in view of the judgments

of the Hon''ble Apex Court referred to above, since the policy specifically mentioned the time of the policy coming into force. Such time being mentioned after the accident would absolve the insurer of its liability. As such, liability fastened by the Tribunal on the insurer is set aside and the liability is fastened on the owner of the vehicle to satisfy the Award.

12. As regards the quantum, the Tribunal after extensively examining the evidence on record, awarded the just and equitable compensation which does not call for any interference by this Court. The quantum of compensation awarded by the Tribunal is approved.

13. In the result, the appeal filed by the Insurer is allowed and the appeal filed by the claimant is dismissed.

14. The amount in deposit shall be refunded to the appellant/insurer forthwith.