(2001) 08 SC CK 0160

In the Supreme Court Of India

Case No : Civil Appeal No. 7211 Of 2001

J. Kalaivani and Others — APPELLANT

Vs

K. Sivashankar and Another — RESPONDENT

Date of Decision : 31-08-2001

Acts Referred:

Citation : (2002) 1 ACC 613 : (2002) ACJ 613 : (2002) 5 ALD 91 : (2001) 10 JT 396 : (2008) 1 MhLj 565

Hon'ble Judges : S. N. Variava, J;K. T. Thomas, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

1. Leave granted.

2. This appears to be an unfortunate case where the dependants of a victim in a motor accident though succeeded in getting an award from the Motor Accidents Claims Tribunal in a sum of Rs. 4.95 lakhs are disabled from collecting the amount from the Insurance Company. The Tribunal directed New India Assurance Company to pay the awarded sum but the Insurance Company wanted to disown the liability on the premise that at the time of the accident there was no policy of insurance covering the vehicle concerned. Hence they filed an appeal before the High Court. The impugned judgment rendered by a Division Bench of the High Court exonerated the Insurance Company from the liability under the award by holding that at the time when the accident took place there was no policy of insurance for the vehicle.

3. The vehicle involved in the accident was in fact covered by a policy of insurance issued by the same Insurance Company on 8-2-1995 which was to expire by the midnight of 7-2-1996. It was the ill-luck of the claimants that the accident took place at 4.30 a.m. on 8-2-1996 which is only four and a half hours after the expiry of the erstwhile policy. On the succeeding day the owner of the vehicle went to the Insurance Company and got another policy issued in respect

of the same vehicle, but in which the Company specifically indicated the time of commencement of the policy as 10 a.m. on 8-2-1996.

4. The question posed before us is whether the policy issued by the Insurance Company on 8-2-1996 can be regarded as renewal of the earlier policy.

5. Three decisions have been cited before us. In New India Assurance Co. Ltd. Vs. Ram Dayal and Others, it was held that in the absence of any specific time mentioned in that behalf the contract of insurance would be operative from the midnight of the day by operation of the provisions of the General Clauses Act, 1897. In M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others, a three-Judge Bench of this Court approved the legal position adopted in the said decision. However learned Judges observed thus:

But in view of the special contract mentioned in the insurance policy, namely, it would be operative from 4.00 p.m. on 25-10-1983 and the accident had occurred earlier thereto, the insurance coverage would not enable the claimant to seek recovery of the amount from the Appellant company.

This question was again considered by another three-Judge Bench of this Court in New India Insurance Co. Vs. Bhagwati Devi and Others, and after following the dictum in the earlier decision the Bench has stated thus:

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 for 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. Therefore the position has become now well-nigh settled. The Court has to look into the contract of insurance to discern whether any particular time has been specified for commencement or expiry, as the case may be, of the policy of insurance. The copies of the erstwhile policy as well as the present policy have been produced for our perusal, the authenticity of which has not been questioned before us. The erstwhile policy shows that it expired by the midnight of 7-2-1996 by specific terms incorporated in the policy. The next policy has clearly indicated that it had commenced only at 10.00 a.m. on 8-2-1996. The interregnum created the void in respect of the vehicle vis-a-vis the Insurance Company. The unavoidable consequence of it is that the Insurance Company cannot now be mulcted with the liability in respect of the award granted by the Tribunal.

7. We understand that the High Court has allowed the claimants to realize the amount from the owner. It is open to the claimant to take steps and we have no manner of doubt that the Tribunal and/or the other enforcing authorities would resort to all steps necessary for recovery of the amount covered by the award for disbursement to the claimants. The appeal is disposed of accordingly.