

(1999) 08 MAD CK 0054
In the Madras High Court
Case No : C.M.A. No. 51 of 1994

Manager Oriental Insurance Company Ltd. Namakkal

APPELLANT

Vs

Latha and five others

RESPONDENT

Date of Decision : 05-08-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2000) 1 CTC 626 : (2000) 1 LW 739

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : Mr. N. Vijayaraghavan, for the Appellant; Miss N.S. Nappinai and Mr. V. Krishnan, for the Respondent

Judgement

1. This appeal is directed against the award of the Motor Accident Claims Tribunal, (Subordinate Judge), Namakkal in M.C.O.P.N0.246 of

1988. The Insurance Company, 4th respondent in the O.P. is the appellant in the above appeal.

2. The only question which arises for consideration in this appeal is as regards the liability of the insurance company in the context of the date and

time from which the policy will become enforceable. The admitted facts of the case are that the accident occurred at 3.10 p.m. on 9.6.1998 but

the policy was issued with effect from 5 p.m on 9.6.98.

3. According to the owner of the vehicle, the premium amount was paid in the forenoon itself at 10.a.m, but the policy was issued at 5.00p.m.. The

Tribunal accepted the evidence adduced on the side of the owner of the vehicle and also relying on the judgment of this court reported in 1992

LW 493, the Tribunal held that when the date is mentioned in the policy, it would be operative from the commencement of that particular date. In

this background, the Tribunal upheld the case of the owner and held that the Insurance Company was liable to pay compensation. Hence, the present appeal by the Insurance Company.

4. The learned counsel for the appellant states that when the policy itself mentioned specific time, it is not open to the owner to state that he paid

the amount during the earlier part of the day and that the policy would become operative. The very contract under the policy would commence

only from the commencement of the time mentioned in the policy . He also relied on the Judgment of the Supreme Court reported in M/s. National

Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others, . In that judgment, reference was made to an earlier judgment of the Supreme

Court reported in New India Assurance Co. Ltd. Vs. Ram Dayal and Others, . The said earlier ruling was distinguished on the ground that no time

was mentioned in the policy with reference to the case reported in New India Assurance Co. Ltd. Vs. Ram Dayal and Others, . It would therefore

be distinguishable on the facts of the case reported in 1997 A.C.J. 351. It was held in as much as the time was mentioned as 4.00 p.m, the

insurance coverage would become operative only subsequent to that time specifically mentioned in the policy. The Insurance policy is a special

contract and it becomes operative only from the time specifically mentioned in the policy. This view was also subsequently followed in another

judgment of the Supreme Court reported in Oriental Insurance Company Ltd. v. Sunita Rathi and others, 1998 (1) LW 14. In that case also, it

was held that the facts relating to the prior judgment reported in New India Assurance Co. Ltd. Vs. Ram Dayal and Others, , will not apply to a

case where timing is specifically mentioned. In fact, also in the case reported in Oriental Insurance Company Ltd. v. Sunita Rathi and others, 1998

(1) LW 14, Oriental Insurance Co. Ltd. v. Sunita Rathi & others, 1998 (1) LW 14 the accident occurred at 2.20.p.m. but in the Insurance Policy,

the cover note mentioned the renewal timing as 2.55p.m. It was held that it would be effective only from the time specifically mentioned in the

policy.

5. The very same view has been taken by Padmanabhan, J. in the case reported in Oriental Insurance Co., Ltd., Nagercoil v. S. Mariyal and

others, 1999 (1) LW 578.

6. Therefore, the document of contract namely, the policy, speaks itself and when specific time has been mentioned in the policy, it is not open to the parties to go beyond the timing mentioned in the contract itself. Even otherwise there is also no evidence to show that the owner had at any time represented either orally or in writing objecting to the timing disclosed in the policy. Mere assertion by the owner himself in the oral evidence cannot weigh against what has been specifically mentioned in the policy itself. Therefore, I am unable to uphold the finding of the Tribunal fixing the responsibility on the Insurance company.

7. In the result, the Civil Miscellaneous Appeal is allowed and the insurance company is absolved from its responsibility to bear the compensation.

No costs.