
(1961) 11 KL CK 0004
In the High Court Of Kerala
Case No : A.S. No. 527 of 1959

National Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Ramachandra Iyer and Others	RESPONDENT

Date of Decision : 03-11-1961

Acts Referred:

Citation : (1962) KLJ 843

Hon'ble Judges : M.S. Menon, Acting C.J.; T.K. Joseph, J

Bench : Division Bench

Advocate : K. Kuttikrishna Menon and V. Balakrishna Eradi, for the Appellant;
T.S. Krishnamoorthi Iyer, G.R. Menon and P.C. Chacko, for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, Ag. C.J.

1. This is an appeal against the order of the District Judge of Trichur in M.P. No. 852 of 1956 in Company M.P. No. 4 of 1953. The appellant is the National Fire and General Insurance Company Limited and the controversy before us relates to two insurance policies for Workmen's Compensation issued to the Sitaram Spinning and Weaving Mills Limited. The total claim in respect of those two policies amounts to Rs. 16,055/-. The amount represents the premia debited by the Insurance Company in its books less the amounts payable to the mills under those policies. The claim has been negated by the Liquidators, and by the District Judge in his order under appeal.

2. Ext. D1 (Policy No. W/1/4/335) dated 18th June 1952 is the earlier of the two policies. It covers the period from 17th December 1951 to 17th December 1952. The policy shows that it was issued in lieu of Cover Note No. W/490. It also shows that there was an older policy, Policy No. W/1/4/225.

3. Condition No. 7 embodied in the policy reads as follows :

The Company shall not be liable in respect of any accident or disease occurring

before the actual receipt of the premium by the Company or its authorised agents or in respect of any accident or disease occurring after the date of expiry and before the actual receipt of the premium for renewal.

The contention of the liquidators which has been accepted by the court below is that as no premium had been actually paid, the policy never became operative, no liability ever arose as far as the Insurance Company was concerned, and the claim cannot hence be substituted.

4. There is no doubt that a clause like clause 7 can be waived by the Insurance Company and we think that is what has happened in this case. In *The Ocean Accident and Guarantee Corporation Co. Ltd. Vs. D.K. Patkar*, the court said :

Prepayment of the premium is not in law a condition precedent to the contract of insurance. But it is almost a common practice of all insurers, except marine, to stipulate that the contract shall not begin to take effect until the premium has been paid. It is well established that the Court will not enforce a contract of insurance where there is such a stipulation in the policy until the premium has been paid. But even in cases where there is such a stipulation, it is competent for an insurer to waive the condition and the Court will readily infer such a waiver. It is equally clear that such waiver may be established either by the evidence of an express agreement or may be inferred from the surrounding circumstances of the case.

5. It is true that the mere handing over of the policy is not sufficient to spell a waiver. In *The South British Insurance Co. Ltd. Vs. J.R. Stenson*, the court quoted the following passage from *Equitable Fire and Accident Office Ltd. v. The Ching Wo Hon* ((1907) A.C. 96):

Their Lordships cannot treat the fact of the executed policy having been handed to the respondents as a waiver of the condition or attach any importance to the circumstance. What was handed to the respondents was the instrument with this clause in it and that was notice to them, and made it part of the contract that there would be no liability until the premium was paid.

and said :

It would, therefore, follow that the handing over of the policy containing the proviso that "no insurance shall be held to be effected until the premium due thereon shall have been paid and accepted in full", would not amount to a waiver of the condition.

6. As pointed out by Mac Gillivray the actual delivery of a policy to the assured without demanding the payment of the premium may, in certain circumstances, constitute a waiver, notwithstanding that the condition is contained in the policy as delivered. According to him the question is, whether the delivery was made on such terms as to imply a giving of credit without prejudice to the immediate validity of the policy, a question of inference from the facts proved. He goes on to say:

Probably the bare fact that a policy was actually delivered to the assured would not be evidence upon which a jury could find that a condition in the policy requiring prepayment of the premium was waived, but very little more might be sufficient; as, for instance, the fact that the insurers usually did insist upon payment before delivery.

7. The contention before us is not that the handing over of Ext. D1 by itself spelt a waiver of condition No. 7; but that the said fact along with the other circumstances of the case do establish that the said condition has been waived. Ext. P. 120 is a letter from the Mills to the Insurance Company, dated 19th December 1952. It refers to Ext. D1 (Policy No. W/1/4/335), mentions its date of expiry as 17th December 1952 and says:

Please therefore renew our above policy for one year from the expiry date at lowest rate possible and advise us. We shall send you the proposal form etc. as early as possible.

This shows that the Mills at the time had no doubts whatsoever as to whether Ext. D1 was effective or not. Except on the assumption that Ext. D1 was effective the Mills could not have asked for a renewal of that policy for another year from the date of its expiry.

8. Ext. P. 121 is letter of the Mills to the Insurance Company, dated 21 January 1953. It refers to Ext. D1 (Policy No. W/1/4/335) and says:

With reference to your letter, dated 23rd December 1952, we are herewith enclosing the proposal form along with the wages adjustment statement for the period of 12 months ended 17th December 1952. Please do the needful.

This also indicates that the Mills were proceeding on the basis that Ext. D1 was an operative policy and that what they wanted was a renewal thereof for a period of twelve months from 17th December 1952, the date of its expiry.

9. Ext. P. 122 is the Proposal Form sent by the Mills. Question No. 6 in the Proposal Form is:

Are you at present insured or have you ever proposed for an insurance in respect of your liability to your employees? If so, please give the name of the Company or Companies.

The answer of the Mills is :

Yes. Messrs. National Fire and General Insurance Company Limited, Madras.

The proposal was accepted.

10. Ext. P. 50 is a letter from the Insurance Company to the Mills, dated 29th June 1953. It shows the date of the expiry of the policy as 17th December 1952. It also shows that an additional premium of Rs. 1,874-10-0 was being charged in respect of Ext. D1.

11. We have been taken through the entire evidence on record and we must say that it is sufficient to establish that the Company also was proceeding on the assumption that Ext. D1 was a valid and operative policy, covering the specified risks between the dates mentioned in the policy, namely, 17th December 1951 and 17th December 1952; or in other words, that it had waived condition No. 7.

12. The original of the second of the two policies has not been produced by the Liquidators. A copy has been produced by the Insurance Company and marked as Ext. P. 32 (Policy No. W/1/4/414). It shows that it is a continuation of Ext. D1 (Policy No. W/1/4/335) and that it is for the period from 17th December 1952 to 17th December 1953. A condition like condition No. 7 of Ext. D1 does not occur in this policy. The opening clause has also been reworded, and says :

WHEREAS the insured.....has paid or agreed to pay the Premium as Consideration.

13. The only question, therefore, that arises for consideration as far as Ext. P. 32 is concerned is whether it is a true copy of the original policy issued to the Mills. We entertain no doubt that it is.

14. Ext. P. 32 shows that the form was printed in July 1952, and we see no reason why that form should not have been used for a policy covering the period from 17th December 1952 to 17th December, 1953.

15. Ext. P. 53, dated 17th July 1953 and Ext. P. 54 dated 21st July 1953 are two letters from the Mills to the Insurance Company. Both of them would indicate that there was a policy in force in respect of the period concerned.

16. Ext. P. 51 is a letter of the Insurance Company to the Mills, dated 29th August 1953. It refers to Ext. P. 32 (Policy No. W/1/4/414). It shows its date of expiry as 17th December 1953, and says :

At the opinion of the Company, insurance under the within mentioned policy is hereby cancelled as from 6th August 1953 charging the premium on pro rata basis for the period we were on risk and a sum of Rs. 6,913-13-0 is hereby held as refund.

17. The petition for winding up was filed on 14th July 1953, and a point was sought to be made of the fact that Exts. P. 53 and P. 54 and P. 51 were subsequent to that date. We are not prepared to say that those letters have in any way been coloured by the presentation of the petition. In the light of what is stated above the appeal has to be allowed with costs here and in the court below. We do so.