
(2015) 02 AP CK 0056

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 1403 of 2006

National Insurance Company Limited

APPELLANT

Vs

Annaradii and Others

RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2015) 2 AnWR 819

Hon'ble Judges : A. Shankar Narayana, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A. Shankar Narayana, J—The second respondent in O.P. No. 110 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, Hindupur (for short "the Tribunal")/National Insurance Company Limited, represented by its Divisional Manager, filed the present appeal aggrieved of the order dated 27.02.2006, whereby and whereunder a sum of Rs. 30,000/- was granted as compensation for the injuries sustained by the petitioner fastening liability on respondent Nos. 2 and 3 jointly and severally with interest at the rate of 5% per annum while dismissing the petition against respondent No. 1-Sri P. Rama Subba Reddy.

2. The first respondent herein is the petitioner, while the respondent Nos. 2 and 3 and appellant herein, who are the owners and insurance company of the accident vehicle respectively, are the respondents in the Original Petition before the Tribunal.

3. For the sake of convenience, parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 17.06.2002 at 5.30 A.M. while the petitioner was proceeding with two other ladies to attend calls of nature at Suguru Village side on Hindupur-Bangalore road, the driver of the tractor bearing registration

No. ADA 4273 has driven it at high speed in rash and negligent manner and hit the petitioner from behind, due to which, she sustained fractures to her left hand and left thigh and other parts of her person. She was admitted in Government Hospital, Hindupur and she claims that she was treated as an inpatient for twenty (20) days and spent Rs. 50,000/- towards medical expenses, and, therefore, sought to grant compensation of Rs. 60,000/- having laid the claim under Sections 140 and 166 of the Motor Vehicles Act, 1988.

5. Respondent Nos. 1 and 3, who were arrayed as owners of the vehicle, filed their separate counters. The insurance company also filed separate counter. Respondent No. 1 took the plea that he was not the registered owner of the vehicle on the date of accident as he sold it away on 07.07.1995 to respondent No. 3, and, therefore, he is not liable to pay compensation and sought to dismiss the claim. Respondent No. 3 took the stand that he was also not the owner of vehicle on the date of accident and he sold it away to Chinna Venkatareddy and the said Chinna Venkatareddy in turn sold it to one S. Mahmmad Khaleel and he has nothing to do with the accident and he was, therefore, not a necessary party and sought to dismiss the petition.

6. Respondent No. 2 in the O.P. filed counter opposing the claim. It is the specific case of respondent No. 2 in the O.P. that the accident took place on 17.06.2002 at 5.30 A.M. and the policy was effective from 18.06.2002 midnight, and, therefore, no liability can be fastened on it. It is also stated that the petitioner sustained simple injuries and she did not spend Rs. 50,000/- as claimed by her.

7. Based on the above pleadings, the Tribunal framed three issues about responsibility for the accident. During enquiry before the Tribunal, the petitioner, besides examining herself as P.W. 1, examined one Dr. Balaji, Medical Officer, as P.W. 2 and marked exhibits A. 1 to A. 4, X. 1 and X. 2 in order to substantiate her claim. Exhibits B. 1 and B. 2, copy of policy and receipt of premium paid were marked through R.W. 1-E.S. Seetharama Guptha, Branch Manager of the local branch of respondent No. 2 in the O.P.

8. The Tribunal on appraisal of evidence let in by both sides held issue No. 1 in favour of the petitioner. On issue No. 2, having assessed the compensation at Rs. 30,000/- basing on exhibits X. 1 and X. 2 and the evidence of P.W. 2 and placing reliance on the decision of the Hon'ble Supreme Court in New India Assurance Co. Ltd. Vs. Ram Dayal and Others, (1990) ACJ 545 : (1990) 68 CompCas 580 : (1990) 2 JT 164 : (1990) 98 PLR 144 : (1990) 2 SCC 680 Supp : (1990) 2 SCC 680 : (1990) 2 SCR 570 : (1990) 1 UJ 712 construing that the policy was held to be in existence as the accident took place at 5.30 A.M. on 17.06.2002 and since the amount was paid on 17.06.2002, the policy would be effective from the early hours of 17.06.2002 and thereby fastened liability on respondent Nos. 2 and 3 while dismissing the claim petition against respondent No. 1 in view of the fact that respondent No. 1 sold the vehicle in favour of respondent No. 3.

9. The aforesaid order is under challenge by the respondent No. 2/National

Insurance Company Limited in the instant appeal, contending in the grounds of appeal that the Tribunal was not right in recording the finding that the liability of insurance company would not cease, though, the accident has occurred on 17.06.2002, relying on the decision of the Supreme Court in *New India Assurance Co. Ltd. Vs. Ram Dayal and Others*, (1990) ACJ 545 : (1990) 68 CompCas 580 : (1990) 2 JT 164 : (1990) 98 PLR 144 : (1990) 2 SCC 680 Supp : (1990) 2 SCC 680 : (1990) 2 SCR 570 : (1990) 1 UJ 712 and further, contending that the Supreme Court while distinguishing the *Ram Dayal's* case, in *M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others*, (1996) 2 ACC 694 : (1997) ACJ 351 : (1996) 9 AD 403 : AIR 1997 SC 2147 : (1997) 116 PLR 703 : (1996) 8 SCALE 695 : (1997) 1 SCC 66 : (1997) AIRSCW 2001 where the policy was obtained at 4.00 P.M. after the accident which occurred at 11.00 A.M. on the same day, held that the insurance company was not liable and the Hon'ble Supreme Court in *Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others*, (1998) 1 ACC 193 : (1998) ACJ 121 : AIR 1997 SC 4228 : (1998) 91 CompCas 496 : (1997) 9 JT 767 : (1998) 118 PLR 195 : (1997) 7 SCALE 469 : (1998) 1 SCC 365 : (1997) 6 SCR 200 Supp reiterated the said principle, and, therefore, sought to set aside the order and decree so far as respondent No. 2/ insurance company is concerned.

10. Heard Sri Sriman, learned counsel for the appellant, and Sri P. Narahari Babu, learned counsel for respondent No. 3. None appears for respondent No. 1. No representation for respondent No. 2.

11. It is submitted by the learned counsel for the appellant that in view of the decisions of the Hon'ble Supreme Court in *M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others*, (1996) 2 ACC 694 : (1997) ACJ 351 : (1996) 9 AD 403 : AIR 1997 SC 2147 : (1997) 116 PLR 703 : (1996) 8 SCALE 695 : (1997) 1 SCC 66 : (1997) AIRSCW 2001 and *Oriental Insurance Co. Ltd. Vs. Porselvi and Another*, (2009) 13 JT 76 : (2010) 157 PLR 400 : (2009) 6 SCALE 352 : (2009) 15 SCC 116 : (2009) 6 SCR 289 , the policy was not effective at the time of accident, and, therefore, no liability can be fastened on the insurance company and the Tribunal was not right in just placing reliance on *New India Assurance Co. Ltd. Vs. Ram Dayal and Others*, (1990) ACJ 545 : (1990) 68 CompCas 580 : (1990) 2 JT 164 : (1990) 98 PLR 144 : (1990) 2 SCC 680 Supp : (1990) 2 SCC 680 : (1990) 2 SCR 570 : (1990) 1 UJ 712 and fastening liability on the insurance company to pay the compensation.

12. The learned counsel for respondent No. 3 would submit that, though, a definite plea was taken in the counter that even on the date of accident respondent No. 3 had sold away the vehicle in other's favour, still, the Tribunal went wrong in fastening liability on respondent No. 3, and, therefore, sought to set aside the order so far as respondent No. 3 herein is concerned.

13. So far as taking place of the accident is concerned, there is no dispute between the parties.

14. Now the only limited question that requires consideration is whether there was valid and effective policy at the time when the accident has occurred?

15. Admittedly, the accident has taken place in the instant case at 5.30 A.M. on 17.06.2002 and premium was paid subsequent to taking place of the accident on the very same day. The evidence of R.W. 1, Development Officer in National Insurance Company Limited/appellant Company's Branch Office shows that the owner of tractor i.e., insured paid premium of Rs. 1,347/- at about 3.12 P.M. (15.12) under receipt No. 1200201208 on 17.06.2002 and the policy bearing No. 551003/31/02/6701187 was issued with effect from 18.06.2002 to 17.06.2003. This witness was cross examined by the learned counsel for the petitioner before the Tribunal but except suggesting him that the owner paid the amount on 16.06.2002 and a challan was issued on 17.06.2002, nothing else was brought out in his cross-examination to show that the amount was really paid on 16.06.2002, which suggestion was emphatically denied by the witness. The policy marked as exhibit B. 1, would show the period of insurance coverage from 18.06.2002 at 12.00 A.M. to midnight of 17.06.2003. It is, thus, clear that the amount was paid only on 17.06.2002 and hence, the policy became operative from the midnight of 18.06.2002.

16. Coming to the decisions relied on by the learned counsel for the appellant, in M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others, (1996) 2 ACC 694 : (1997) ACJ 351 : (1996) 9 AD 403 : AIR 1997 SC 2147 : (1997) 116 PLR 703 : (1996) 8 SCALE 695 : (1997) 1 SCC 66 : (1997) AIRSCW 2001 (Supra) the Hon'ble Supreme Court, on facts, while distinguishing the law laid down in New India Assurance Co. Ltd. Vs. Ram Dayal and Others, (1990) ACJ 545 : (1990) 68 CompCas 580 : (1990) 2 JT 164 : (1990) 98 PLR 144 : (1990) 2 SCC 680 Supp : (1990) 2 SCC 680 : (1990) 2 SCR 570 : (1990) 1 UJ 712 , held in paragraph No. 3 thus:

"3. This Court in New India Assurance Co. Ltd. Vs. Ram Dayal and Others, (1990) ACJ 545 : (1990) 68 CompCas 580 : (1990) 2 JT 164 : (1990) 98 PLR 144 : (1990) 2 SCC 680 Supp : (1990) 2 SCC 680 : (1990) 2 SCR 570 : (1990) 1 UJ 712 , had held that in the absence of any specific time mentioned in that behalf, the contract would be operative from the mid-night of the day by operation of provisions of the General Clauses Act, 1897. 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."

17. In Oriental Insurance Co. Ltd. Vs. Porselvi and Another, (2009) 13 JT 76 : (2010) 157 PLR 400 : (2009) 6 SCALE 352 : (2009) 15 SCC 116 : (2009) 6 SCR 289 , the Hon'ble Supreme Court while resolving the dispute relating to the date of commencement of policy i.e., the date from which the policy was in operation referring to the observations in paragraph No. 6 of a Three Judge Bench of Hon'ble Supreme Court in New India Assurance Co. Ltd Vs. Smt. Sita Bai and

Ors, (1999) 2 ACC 451 : (2000) ACJ 40 : AIR 1999 SC 3577 : (1999) 98 CompCas 318 : (1999) 6 JT 616 : (1999) 123 PLR 822 : (1999) 5 SCALE 495 : (1999) 7 SCC 575 : (1999) 2 SCR 304 Supp : (1999) 2 UJ 1458 : (1999) AIRSCW 3586 : (1999) 7 Supreme 637 thus;

"6. The correctness and applicability of the judgment in New India Assurance Co. Ltd. Vs. Ram Dayal and Others, (1990) ACJ 545 : (1990) 68 CompCas 580 : (1990) 2 JT 164 : (1990) 98 PLR 144 : (1990) 2 SCC 680 Supp : (1990) 2 SCC 680 : (1990) 2 SCR 570 : (1990) 1 UJ 712 came up for consideration before this Court subsequently in a number of cases. In New India Insurance Co. Vs. Bhagwati Devi and Others, (1999) 1 ACC 439 : (1999) ACJ 534 : (1999) 122 PLR 294 : (1998) 6 SCC 534 a three-Judge Bench of this Court relied upon the view taken in M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others, (1996) 2 ACC 694 : (1997) ACJ 351 : (1996) 9 AD 403 : AIR 1997 SC 2147 : (1997) 116 PLR 703 : (1996) 8 SCALE 695 : (1997) 1 SCC 66 : (1997) AIRSCW 2001 wherein it has been 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 case 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. The judgment in Jikubhai case has been subsequently followed in Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, (1998) 1 ACC 193 : (1998) ACJ 121 : AIR 1997 SC 4228 : (1998) 91 CompCas 496 : (1997) 9 JT 767 : (1998) 118 PLR 195 : (1997) 7 SCALE 469 : (1998) 1 SCC 365 : (1997) 6 SCR 200 Supp by a three-Judge Bench of this Court also.

set aside the impugned judgment of the Hon''ble High Court on the ground that the effect of the factual position therein has not been considered and remitted the matter for fresh consideration in accordance with law.

18. In the instant case, exhibit B. 1 shows that the policy was effective from 18.06.2002 midnight to 17.06.2003 midnight. Therefore, at the time when the accident has taken place, the policy was not effective, and consequently, the insurance company cannot be mulcted with liability. Hence, the appeal is allowed setting aside the order and decree of the Tribunal so far as the appellant herein, the insurance company and respondent No. 2 in the O.P. concerned.

19. Incidentally, adverting to the arguments advanced by the learned counsel for respondent No. 3, since respondent No. 3 has not challenged the finding recorded by the Tribunal, it is not open for respondent No. 3 to contend that since the vehicle was sold away even prior to the date of accident, respondent No. 3 cannot be fastened with liability to pay the compensation. Hence, that argument is rejected.

20. Accordingly, the appeal is allowed as indicated above. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.