
(1998) 11 GAU CK 0003
In the Gauhati High Court
Case No : Civil Revision No. 133 of 1994

New India Assurance Co.

APPELLANT

Vs

Jagiya Devi and Others

RESPONDENT

Date of Decision : 10-11-1998

Acts Referred:

Bankruptcy Act, 1914 — Section 45

Life Insurance Corporation Act, 1956 — Section 49

Citation : (1999) 1 GLT 205

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : S.K. Barkataky and D. Sarma, for the Appellant; B.K. Sarma and S.K. Medhi, for the Respondent

Judgement

J.N. Sarma, J.—I have heard Sri S.K. Barkataky, Learned Advocate for the Petitioner, New India Assurance Co., none appeared for the Respondents and as such I requested Sri B.K. Sarma, Learned Advocate assisted by Sri S.K. Medhi, Learned Advocate to appear in this case to help me and that was admittedly done by them. I express my thanks to them.

2. This revision arises out an order dated 24.6.93 passed by the Member, Motor Accident Claims Tribunal, Kamrup, Guwahati and the prayer was made before the Tribunal to modify the earlier order dated 12.1.93. By the order dated 12.1.93 the liability to pay the no fault liability was fixed on the owner of the vehicle and thereafter, the owner of the vehicle filed an application to shift the no fault liability to the Insurance Company i.e., New India Assurance Co. The policy in that case commenced with effect from 31.12.86 at 10.00 AM and the admitted position is that the accident took place at 7 AM i.e., before the commencement of the policy and as such stand of the Insurance Company was that it is not liable to pay any amount as at the time of the accident there was no insurance of the vehicle. The law with regard to this as enunciated by the Apex Court is as follows:

3. In AIR New India Assurance Co. Ltd. Vs. Ram Dayal and Others, The two

judges Bench of the Apex Court considering the question regarding when the policy of insurance company becomes operative when the policy is obtained on the date of the accident, it was held that when the policy is taken on the particular date its effectiveness is from the commencement of that date. The Insurance Policy obtained on the date of accident become operative from the commencement of the date of insurance i.e., from the previous midnight since the incident took place on the date of policy insured became liable. There in paragraphs 3, 4, 5, 6 and 7 the Supreme Court held as follows:

3. Apart from the judgment under appeal, we find that this view is supported by two judgments of the Madras High Court and an earlier decision of the Punjab and Haryana High Court. Two Division Benches of the Madras High Court have taken the view after discussing the law at length that the policy taken during any part of the day becomes operative from the commencement of that day. Besides these judgments a Division Bench decision of the Allahabad High Court in *Jadav Singh v. Malti Devi* supports this view on principle.

4. There is evidence in this case that the vehicle was insured earlier upto August 31, 1984 and the same was available to be renewed but instead of obtaining renewal, a fresh insurance was taken from September 28, 1984, which is the date of the accident. We are inclined to agree with the view indicated in these decisions that when a policy is taken on a particular date, its effectiveness is from the commencement of the date and, therefore, the High Court, in our opinion, was right in holding that the insurer was liable in terms of the Act to meet the liability of the owner under the award.

5. As pointed out in Stroud's Judicial Dictionary "Date" means day, so that where a cover note providing for temporary insurance of a motor car expires 15 days after date of commencement, it runs for the full 15 days after the day on which it was to commence."

6. Similarly it has been stated in Stroud that "a bill of exchange, or note, is of the date expressed on its face, not the time when it is actually issued".

7. To the same effect is the decision in *re F.B. Warren*, where it has been held that a judicial act will be referred to the first moment of the day on which it is done. A payment made by a bankrupt in the morning of a day is, therefore, not made, within Section 45 of the Bankruptcy Act, 1914 before the date of a receiving order made later in the same day.

4. Next case relied on this point is *M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others*, In that case in the policy of the insurance it was specifically mentioned from what time the policy will be effective and the Supreme Court pointed out that in view of the special contract made, the policy must be deemed to be effective from the time mentioned in the policy and in paragraph 3 of the judgment, the law has been laid down as follows:

This Court in *New India Assurance Co. Ltd. v. Ram Dayal* had held that in the

absence of any specific time mentioned in that behalf, the contract would be operative from the midnight of the day by operation of provisions of the General Clauses Act, 1987. 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.

5. To the same effect is another decision in *Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others*, . In that case, the motor accident occurred on 10.12.1991 at 2.20 p.m. it was only thereafter the same day at 2.55 PM that the insurance policy and cover note were obtained by the insured, owner of the motor vehicle involved in the accident. There was express mention in the cover note that the effective date and time of commencement of the insurance for the purpose of the Act was 10.12.1991 at 2.55 p.m. and as such distinguishing the case of *Ramdayal* (Supra) the Supreme Court pointed out that a special contract was made with regard to the commencement of the policy and it is that special contract which shall prevail. In paragraph 2, the Supreme Court *inter alia* pointed out as follows:

Para 2:

The facts of the decision show that the time of issuance of the policy was not mentioned therein and the question, therefore, was of presumption when the date alone was mentioned and not the time at which the insurance was to become effective on that date. In such a situation, it was held in *Ram Dayal* case that in the absence of any specific time being mentioned, the logical inference to draw was that the insurance became effective from the previous midnight and, therefore, for an accident which took place on the date of the policy, the insurer became liable. There is no such difficulty in the present case in view of the clear finding based on undisputed facts that the accident occurred at 2.20 p.m. and the cover note was obtained only thereafter at 2.55 p.m. in which it was expressly mentioned that the effective date and time of commencement of the insurance for the purpose of the Act was 10.12.1991 at 2.55 p.m. The reliance on *Ram Dayal* case by the Tribunal and the High Court was, therefore, misplaced. We find that in a similar situation, the same view which we have taken, was also the view in *National Insurance Co. Ltd. v. Jikubhai Nathuji Dabhi* wherein *Ram Dayal* case was distinguished on the same basis.

6. So, that being the law laid down by the Apex Court, it must be held that where no time is mentioned in the policy, the principle laid down in the case of *Ram Dayal* shall hold the field meaning thereby that the policy will be effective from the date of previous midnight and where time is mentioned in the policy it will be effective from that time mentioned in the policy. But the case will be altogether different if the money is collected by the recognised agent of the insurance company and there the principle held by the Apex Court will apply as held by the Supreme Court in 1997 SCC 2459 (*Harshad J Shah and Anr. v. L.I.C of India and Ors.*) wherein the Apex Court pointed out that if an agent having

actual and apparent authority to collect the premium on a particular date the payment shall be deemed to be made on and from that date and the policy will commence on and from that date. What happened in that case was that the agent obtained the bearer cheque from the insured by way of payment of the premium in the month of June and thereafter encashed the cheque and deposited the amount with the LIC in the month of August after the death of the insured by which time the policy lapsed. The Supreme Court pointed out that the insured has discharged his burden by making payment to the agent and as such it is bound to honour the payment made to the agent. It was further pointed out by the Supreme Court that in the Rules and Regulation of 1972 framed by the LIC in exercise of the power u/s 49 of the LIC Act, 1956, there is a provisions by which express prohibition can be made prohibiting the agent to collect the premium on behalf of the LIC but if such prohibition is not made and if the agent is allowed to collect the premium from the insured, the LIC must be deemed to be bound by such collection on the authority i.e. either on the actual or apparent authority of the agent. The same principle will apply in the case of premium under the Motor Vehicles Act to collect the premium by recognised agent of the General Insurance Company. But, no doubt such collection must be bonafide, if collection is made by the agent in collusion with the insured after the accident takes place in such a case the insurance company will have the right to repudiate the claim but if any bonafide collection is made by the agent and if there is some delay in depositing the money for that the insurance company is not entitled to repudiate the claim.

7. On the background of this law as enunciated by the Apex Court, let us now have a look on the facts of this case. In this particular case in the insurance policy and cover note it was specifically stated that the policy of the insurance company will commence with effect from 10 a.m. of 31.12.86 and the accident took place at 7.00 a.m. So, the insurance company cannot be deemed to be liable in view of the special contract made by it. Accordingly, this revision is allowed, the amount of no fault liability shall be the burden of the owner of the vehicle and not of the insurance company.