
(2005) 12 KL CK 0024
In the High Court Of Kerala
Case No : M.A.C.A. No. 1181 of 2005

New India Assurance Co. Ltd.

APPELLANT

Vs

P. Jayanti and Others

RESPONDENT

Date of Decision : 19-12-2005

Acts Referred:

Contract Act, 1872 — Section 23
Insurance Act, 1938 — Section 64VB
Motor Vehicles Act, 1988 — Section 140, 146

Citation : (2007) ACJ 2804

Hon'ble Judges : J.M. James, J

Bench : Single Bench

Advocate : P.R. Ramachandra Menon, for the Appellant; Nagaraj Narayanan, Nair Ajay Krishnan, A.S. Sabu, V.P.K. Panicker, George Varghese Perumpallikuttiyl and Sreelekha Puthalath, for the Respondent

Judgement

J.M. James, J.—The questions raised for consideration in this appeal are, whether the owner of the vehicle could remit the policy premium on an earlier date and then opt for a future date for the commencement of the insurance policy, when the existing policy had already expired, if so, is it not against the mandatory provision u/s 146 of the Motor Vehicles Act (in short "the Act"), and in such situation, whether the insurer could allow the insured to have his vehicle plied without a policy in force for that vehicle. If that be so, is not such a contract between the insurer and the insured against the public policy and public interest and also what is the impact of such insurance policy on the third party.

2. Applicant Nos. 1 to 4, respondent Nos. 1 to 4 herein, are the legal representatives of one Kamaladharan, who met with a motor vehicle accident on 10.1.2000 at about 3.30 p.m. and died consequently. A claim as O.P. (MV) No. 430 of 2000 had been preferred before the Motor Accidents Claims Tribunal, Attingal (in short "the Tribunal"), pending the claim petition u/s 140 of the Act, an interim award of Rs. 50,000 was allowed. New India Assurance Co. Ltd., respondent No. 3, was directed to deposit the same within two weeks from the

date of the interim award, i.e., 20.5.2002. The same is being challenged by the insurance company on the ground that policy was taken only at 12.14 p.m. (noon) on 10.1.2000 proposing to have the insurance coverage operative from 11.1.2000 to 10.1.2001 and, therefore, the accident that occurred at 3.30 p.m. on 10.1.2000 is not covered by the insurance policy, which would have started only from 11.1.2000.

3. I have elaborately heard advocate Mr. P.R. Ramachandra Menon for the appellant, advocate Mr. George Varghese Perumpallikuttiyil for respondent No. 5 and advocate Mr. Nagaraj Narayanan for the claimants-respondent Nos. 1 to 4.

4. The Apex Court had an occasion to consider *New India Assurance Co. Ltd. Vs. Ram Dayal and Others*, and hold that the policy of any date would cover the liability of the insurer from the midnight preceding the same date. Hence, even where the accident, in point of time, is earlier than the time, when the insurance policy was issued, the insurance company would be liable.

5. The correctness of the decision in *New India Assurance Co. Ltd. Vs. Ram Dayal and Others*, , was challenged in *M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others*, , where the Apex Court had taken the view that when there is a special contract mentioned in the policy, stating the time when it was issued, the policy would be operative from that time and not fictionally from the previous midnight as had been held in *Ram Dayal's* case (supra).

6. The above principle of law had been followed by a three-Judge Bench of the Apex Court, as could be seen from *New India Insurance Co. Vs. Bhagwati Devi and Others*, . The Apex Court endorsing the view of the *New India Assurance Co. Ltd. Vs. Ram Dayal and Others*, and *M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others*, , cited above pointed out that "if there is no contract to the contrary, an insurance policy becomes operative from the previous midnight, when brought 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 thus put to rest by the court. There is, therefore, nothing further for us to deliberate upon". Hence, the Apex Court has differentiated and accepted the principles contained in *Ram Dayal's* and *Jikubhai's* cases through *Bhagwati's* case (supra).

7. In *National Insurance Company Ltd. Vs. Mrs. Chinto Devi and Others*, , the Apex Court had another occasion to consider, wherein, admittedly, the accident occurred at 11.30 a.m. on 23.2.1987. The insurance company, appellant therein, had contended that the policy was taken at 4.45 p.m. on that date, for which reliance was placed on the cover note. However, the respondent owner therein, had contended that the insurance was taken at 10 in the morning and not in the evening. The Apex Court considered the principles laid down in *New India Assurance Co. Ltd. Vs. Ram Dayal and Others*, , *M/s. National Insurance Co. Ltd.*

Vs. Smt. Jijubhai Nathuji Dabhi and others, and New India Insurance Co. Vs. Bhagwati Devi and Others, and accepted the legal principles contained therein. However, the court did not decide on the actual time of issuance of the policy, as there was no evidence on that question of fact and neither the Tribunal nor the High Court dealt with that fact. As the adjudication on the time of issue of insurance policy became necessary, Tribunal was directed to allow the parties to lead any further evidence, for deciding the limited question regarding "the time when the insurance policy was issued and then decide consequential liability, if any, on the insurance company".

8. In the case on hand, the learned Counsel appearing for insurance company, relying on the records in the possession of the company, which he had placed before this court during the hearing, emphasised the point that though the premium was paid at 12.14 p.m. on 10.1.2000, in the proposal form, the insured had proposed to make the insurance coverage to commence for a period of 12 months from 11.1.2000 to 10.1.2001. It is the contention of the appellant, therefore, that there was no policy coverage at 3.30 p.m., when the accident occurred on 10.1.2000. Thus, there is no liability on the insurance company to indemnify the insured, respondent No. 5, owner. Hence, the direction of the Tribunal to pay even the interim award is only to be set aside.

9. Section 146 of the Act of 1988, as amended in 1994, makes it imperative on the owner of the vehicle not to ply a motor vehicle in a public place, unless there is in force, in relation to the use of the vehicle, a policy of insurance accompanying with the requirements of Chapter XI of the Act. The whole reading of Section 146 of the Act makes it mandatory on the owner of the vehicle to have an insurance coverage of the vehicle in force with regard to the third party risk, arising out of the use of the motor vehicle.

10. Section 23 of the Indian Contract Act, 1872 (in short "the Contract Act"), is reproduced below for clarity of discussion:

23. What considerations and objects are lawful and what not.--The consideration or object of an agreement is lawful unless.

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another; or

the court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

11. In Central Inland Water Transport Corporation Limited and Another Vs. Brojo

Nath Ganguly and Another, , the Apex Court had discussed the matters dealing with Section 23 of the Contract Act. The expressions "public policy" or "opposed to public policy" are not defined in Contract Act. The Apex Court held that public policy, however, is not the policy of a particular government. It connotes some matter which concerns the public good and the public interest, which varied from time to time and the courts may accept or reject such concepts of public policy and opposed to public policy. If there is no head of public policy which covers a case, then the court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be opposed to public policy.

12. In *New India Assurance Co. Ltd. Vs. Rula and Others*, , the Apex Court had an occasion to discuss the impact of the policy coverage on the third party risk and on the realisation of the amount paid as awarded, to the third parties, from the insurer. The Apex Court had laid down the principle that the third party is not concerned and does not come into the picture at all, in the matter of payment of premium. Therefore, on the date of accident, if there was a policy of insurance, in respect of the offending vehicle, which was involved in the accident, the third party shall have a claim against the insurance company and owner of the vehicle would be indemnified by the insurer in respect of the claim of the third party. Subsequent developments including the cancellation of the insurance policy, on the ground of non-payment of premium, shall not affect the rights already accrued in favour of the third party. However, the insurer was given the authority to realise the amount so paid to the third party from the owner of the vehicle after the payment is made.

13. In *Divisional Manager, United India Insurance Co. Ltd. Vs. Smt. Labanga Sahu and Others*, , the court had discussed the importance of cover note issued by the agent, indicating the payment of premium, by the insured and it was held that the said cover note amounts to certificate of insurance in respect of the vehicle, having been validly insured. The mere denial of the issuance of the insurance without rebutting the presumption that the vehicle was validly insured with it, will not be sufficient. While discussing, the court also considered, the application of Section 64-VB of the Insurance Act, 1938 (in short the Insurance Act"). In para 8, the Hon"ble court stated that the insurer may assume the risk from the date on which it receives the premium either in cash or by cheque. Insurance agent who collects a premium on behalf of the insurer is obliged either to deposit or dispatch by post the full premium collected to the insurer within 24 hours of the collection. The court rejected the contention of the insurer that the mere issuance of a cover note without an issuance of a policy does not bring about an insurance coverage, as in such situation, no vehicle could be plied till such time a policy is issued, after collecting the premium, which may take some time, days, weeks, or even months. This is not contemplated by the statute.

14. The High Court of Madras in *Oriental Insurance Co. Ltd. Vs. Vedathal and Another*, , also had considered Section 64-VB of the Insurance Act. There, the

insurance company contended that the accident occurred on 20.5.1991. But the insurance policy became valid only from 21.5.1991. Therefore, the company cannot be held liable. The facts of that case reveal that Rs. 1,320 was paid on 20.5.1991 and the policy was signed on the same date. But the commencement of policy was stated as from the midnight of 20/21.5.1991. Relying on Section 64-VB of the Insurance Act, the court concluded that the risk would be from the date of receipt of the premium remitted in cash or by cheque. Therefore, held that in the absence of any time mentioned in the policy regarding the receipt of premium, it is to be assumed that the effective date of commencement of the policy would be just after midnight, i.e., after 12 o'clock on 20.5.1991 and would not disentitle the owner of the vehicle to make a plea that the real and effective date of commencement of the policy would only be the date of receipt of premium. This view had been taken following the principle laid down in *New India Assurance Co. Ltd. Vs. Ram Dayal and Others*, , cited above.

15. There is no evidence before me to accept the proposal form now available with the insurer, the appellant, requesting to commence the insurance coverage from 11.1.2000 to 10.1.2001, for a period of 12 months. It is not in dispute, as the facts now reveal, that the premium was paid by the owner, respondent No. 5, at 12.14 p.m. on 10.1.2000. The vehicle was originally insured with appellant. Letter of renewal was sent by the insurer to the owner of the vehicle, but he did not renew till 10.1.2000. I have already discussed that in the light of the principles that is contained in Section 146 of the Act, no owner of the vehicle is allowed to ply his vehicle, without an insurance coverage for that vehicle. There is a mandate on the part of the insurer also to insure the vehicle for which premium is remitted and to have the coverage commenced, if there is already a policy in existence, from that date and time of its expiry or from the date and time at which the premium was paid, as per the terms of the contract contained in the policy. In view of the principles contained in *New India Assurance Co. Ltd. Vs. Ram Dayal and Others*, , *M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others*, , which have been consequently followed in *New India Insurance Co. Vs. Bhagwati Devi and Others*, and *National Insurance Company Ltd. Vs. Mrs. Chinto Devi and Others*, , it is for the owner as well as for the insurer to adduce evidence to show, in the facts of this case, when the actual liability of the insurer commenced, as the premium was paid on 10.1.2000, I hereby reiterate the mandate contained in Section 146 of the Act, that no vehicle be plied without a valid insurance coverage of that vehicle and in such circumstances, the premium paid by owner of the vehicle, respondent No. 5, shall only be for having an insurance coverage of his vehicle. Therefore, owner cannot escape from his liability to pay the appropriate premium and to have insurance coverage for the vehicle. Hence, he cannot opt for a date of commencement of the insurance coverage, after paying the premium on a particular date, which would be against the public good and the public interest and also falling u/s 23 of the Contract Act.

16. However, the circumstances under which the owner has proposed to have the

insurance policy covered from 11.1.2000, as contended by the counsel for the appellant insurance company and denied by the owner of vehicle, respondent No. 5 herein, are questions of fact. Therefore, the parties shall adduce evidence on this fact and the Tribunal shall decide the same, basing on the evidence so adduced before it.

17. An amount of Rs. 50,000 had been allowed as an interim award in this case to the claimants, who are the legal representatives of the deceased Kamaladharan. I direct the appellant, New India Assurance Co. Ltd., to deposit the entire interim award amount before the Tribunal and the Tribunal shall release the same in favour of the claimants, immediately on its deposit. I make it clear that ultimately, if the Tribunal finds that the insurance company is not liable to pay the award amount, there shall be a direction to realise the award amount so paid by the appellant insurance company, from the insured, the owner of the vehicle.

18. The appeal is disposed of as above.