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(1994) 03 KAR CK 0033

In the Karnataka High Court

Case No : M.F.A. No. 945 of 1991

Oriental Insurance Co. Ltd. APPELLANT

Vs

Srinivasa Setty RESPONDENT

Date of Decision : 16-03-1994

Acts Referred:

Citation : (1994) 2 ACC 466 : (1994) ACJ 1140 : (1994) ILR (Kar) 964 : (1994) 2 KarLJ 511

Hon'ble Judges : Mohan Kumar, J;M. Ramakrishna, J

Bench : Division Bench

Advocate : H.G. Ramesh, for the Appellant; V. Markande Gowda, for R-1 and S.M. Latur, for R-2, for the Respondent

Final Decision : Allowed

Judgement

M. Ramakrishna, J

1. The insurer being aggrieved by the Judgment and award dated 21.1.1991 made by the Motor Accidents Claims Tribunal II, Bangalore Rural District, Bangalore, in M.V.C. No. 176/88, awarding a sum of Rs. 18,500/- by way of compensation along with costs and interest at 6 per cent per annum, has approached this Court in this Appeal challenging the correctness and legality of the finding recorded by the Tribunal as to the liability of the insurer to answer the claim, on more than one ground.

2. We have heard the learned Counsel on both sides. Sri H.G. Ramesh, learned Counsel for the appellant-insurer, while taking us to the facts of the case that could be gathered from the judgment and award, pointed out that by virtue of Ex.R-1, produced and marked on behalf of the insurer in the Tribunal, it was undisputed that the Insurance Policy came to be issued in favour of the insured on the 17th November, 1987 at 4 P.M. It was valid till 16.11.1988. The contention urged in support of the appeal is that when a specific time of commencement of risk is noted in the policy, apart from taking into consideration

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the date on which the policy came to be issued, for the purposes of tracing the liability of the insurer, the Court must take into consideration the time at which the insurance Policy came to be issued.

3. Sri Ramesh placed strong reliance upon the Decision of this Court in United India Insurance Co. Vs. Kalavathi, and contended that the accident had taken place at about 8.15 A.M. earlier to 4 P.M. on 17.11.1987 when the policy was issued and that, therefore, the insurer would not be liable to answer the claim. This is the view taken by this Court in Kalavathi''s case.

4. Before referring to the Ruling in Kalavathi''s case, it is better to note the Decision of the Supreme Court in New India Assurance Co. Ltd. Vs. Ram Dayal and Others, relied upon by the Tribunal. In that case the Supreme Court held that ''Date'' means day, so that where a cover note providing for temporary insurance of a motor car expires 15 days after the date of commencement, it runs for the full 15 days after the day on which it was to commence. This is based upon the interpretation of Stroud''s Judicial Dictionary. The Supreme Court also held that the date expressed on the face of the Insurance Policy and not the time when it is actually issued, is to be considered. It is apparent by looking at the Decision of the Supreme Court in Ram Dayal''s case that though the date was mentioned in the policy, no time of issuance of the policy was mentioned. Therefore, the Supreme Court had no occasion to consider a case where the policy disclosed the time and date of commencement of risk.

5. In the instant case, as we have already noted, Ex.R-1 discloses the time at which the policy came to be issued, namely, at 4 P.M. on 17-11-1987.

6. In Kalavathi''s case, distinguishing the Ruling of the Supreme Court in Ram Dayal''s case, supra, a Division Bench of this Court held at paras-10 & 11 as follows:

"The facts of this Appeal presented by the United India Insurance Company demonstrates that the Insurance Company has to safeguard itself against the acts of its own agents and Officers in order to avoid the foisting of non-existent liability against it... In the present case, at the relevant column of the cover note the genuine entries found In the carbon copy of the cover note as against the column "effective date and commencement of the Insurance for the purpose of the Act, it is entered as 9-30 AM -7-5-1984 to 6-5-1985". It is true in the Certificate of Insurance and the Insurance Policy the commencement of the date of Policy alone is mentioned, but the fact remains that the Insurance Policy and the Certificate of Insurance are issued in continuation of the cover note and therefore in order to find out the actual date and time of commencement, we have to look to the cover note as it happens to be the earliest document. On it the date and time of commencement of the risk is expressly mentioned as 9.30 AM on 7.5.1984. There is no dispute that the accident which gave rise to the claim petition had taken place at 6.30 AM on 7.5.1984. Therefore, it should be held that the appellant - Insurance Company is not liable to pay any

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compensation as the vehicle in question was not covered by the Insurance Policy at the time of the incident."

7. In the light of the Ruling of the Division Bench in Kalavathi''s case and applying the same to the facts of the present case, it is abundantly clear that Ex. R-1 clearly disclosed not only the date i.e., 17.11.1987 but also time as 4 P.M. of commencement of the risk under Insurance Policy. Therefore, the Court ought to have taken into consideration the question whether on the date and time of the accident, the insurer had taken that risk or liability to indemnify the insured. It is brought to the notice of the Court that the accident having taken-place earlier to 4 P.M. on 17.11.1987 when the Policy was issued covering the risk, the Tribunal ought to have applied its mind to the Ruling of this Court which was available on the date of delivery of judgment in this case, before coming to the conclusion on facts.

8. Sri Markande Gowda, learned Counsel for respondent No. 1, has not been able to persuade us to take a view different from the view expressed in Kalavathi''s case. Therefore, for the reasons stated above, this Appeal succeeds. It is accordingly allowed. The finding recorded by the Tribunal holding that the insurer was liable to pay compensation to the claimant, is set-aside. However, the liability to answer the claim is against the insured S. Bheernappa, second respondent herein. It is open to the claimant to proceed against the insured S. Bheernappa to recover the award amount. Ordered accordingly.

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