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(1999) 07 AP CK 0038

In the Andhra Pradesh High Court

Case No : AAO No. 874 of 1992

Oriental Insurance Company Limited — APPELLANT

Vs

Naravath Najiram and others — RESPONDENT

Date of Decision : 29-07-1999

Acts Referred:

General Clauses Act, 1897 — Section 9
Insurance Act, 1938 — Section 64
Motor Vehicles Act, 1939 — Section 96(2)
Motor Vehicles Act, 1988 — Section 147, 147(5), 149, 149(1)

Citation : (2000) 1 ACC 460 : (2001) ACJ 1709 : (1999) 5 ALD 545 : (1999) 5 ALT 673

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : Mr. Kota Subba Rao, for the Appellant; Mr. V. Tulasi Reddy, for the Respondent

Judgement

1. This Civil Miscellaneous Appeal was filed against the judgment and decree dated 9-3-1992 in OP No.5 of 1990 on the file of the Chairman (District Judge) Motor Accident Claims Tribunal, Nizamabad. The Tribunal held that the respondents 1 and 2 are liable to pay compensation of Rs.42,000/- with interest at 12% p.a. with proportionate costs.

2. The appeal was filed by the Insurance Company mainly on the ground that it is not liable to indemnify the insured of the vehicle on the ground that at the time of occurrence of the accident, the policy was not in operation i.e., the accident was occurred on 23-12-1989 at 7-30 am and the owner of the vehicle has taken the policy covering the vehicle in question on 26-12-1989 which relates back to 23-12-1989. Further it is operative from 23-12-1989 to 22-12-1990, therefore, when the accident was occurred at 7-30 am and the office of the company opens at 10-30 a.m., it can be presumed that the policy was issued after 7-30 p.m. i.e., after occurrence of the accident. It is further stated that the premium was paid three days after the issuance of policy by the

owner of the vehicle, therefore, it is not a valid policy under law.

3. In support of the above said contentions, the learned Counsel for the appellant has relied on a decision of this High Court between The New India Assurance Company Ltd. Vs. Nandyala Venkatamma and Others, . The facts leading to the above decision are that the accident took place at about 8-30 a,m. on 5-5-1988, by which time there was no insurance policy covering the vehicle AAW-8938 and the policy was issued on 5-5-1988, the renewal dates back from the date of expiry of the previous term and hence, there was a valid policy, and it must be deemed that the policy relates back from the mid-night of 4/5-5-1988 and therefore, the vehicle is covered by the Insurance Policy and the Company is liable to pay the compensation.

4. Considering the above facts and circumstances of that case, the learned Judge in para 20 of the judgment held as under:

"..... A combined reading of Section 96(2)(c) of the Motor Vehicles Act, 1939 and Section 64-V(b) of the Insurance Act, would clearly disclose that so far as the accident that occurred at 8-30 am is concerned, it has to be construed that there was no coverage of policy at that time and the policy renewed on 5-5-1988 is a void policy on the ground that it was obtained by non-disclosure of a material fact viz., that accident took place at 8-30 a.m. No material evidence has been let in on behalf of the claimants to show that the particular fact of accident was brought to the notice of the Insurance Company and the Insurance Company having noticed the same issued the policy. On the other hand, the witnesses examined on behalf of the Insurance Company whose evidence has been accepted by the Tribunal lends more credible support to the contention of the Insurance Company the payment of the premium or the issuance of the policy is only subsequent to the accident in question. When the payment is made subsequent to the accident, which has been established beyond doubt on the the evidence on record, it can not be said that the Insurance Company is liable to pay the compensation."

This decision was rendered by the learned single Judge of this Court distinguishing the judgment in New India Assurance Co. Ltd. Vs. Ram Dayal and Others, , wherein it was held that when the time of operation of the policy was not mentioned, the policy becomes operative from the commencement of the date of insurance i.e., from the previous mid-night. This judgment was renedered on the provisions of General Clauses Act. In the facts and circumstances of that case, the Supreme Court held as under:-

"... The insurance policy obtained on the date of the accident became operative from the commencement of the date of insurance i.e., from the previous midnight and since the accident took place on the date of the policy, the insurer was liable in terms of the Act to meet the liability of the owner under the award of compensation."

5. The observation of the learned Judge in Nandyala Venkatamma''s case (supra)

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is that it is for the claimants to show that particular fact of accident was brought to the notice of the Insurance Company and the Insurance Company having noticed the same issued the policy and renewed the policy from 5-5-1988. It is not like that the claimants are not parties to the contract of insurance of the vehicle, but it is the owner of the vehicle to insure and receive policy from the insurer. The Insurance Company is the custodian of the records and the burden lies on the Insurance Company to prove that the policy was obtained by mis-representation of facts, because there is no duty cast on the claimants to prove that the Insurance Policy was obtained by the owner after suppressing the material fact of occurrence of the accident. Therefore, the above observation of the learned single Judge is distinguishable from Ram Dayal''s case (supra). The above decision of the learned single Judge has no bearing on the facts and circumstances of this case. In the present case, there is no contention that the policy was obtained by the owner of the vehicle suppressing the marterial fact that the accident occurred at 7-30 a.m. In the instant case, the accident was occurred at 7-30 a.m. on 23-12-1989 and the policy was obtained on 26-12-1989 which relates back to 23-12-1989 but the time of operation of the policy was not mentioned in it.

6. The learned Counsel for the appellant also relied on a judgment of the Supreme Court between Oriental Insurance Company Limited v. Sunita Rathi and others, AIR 1998 SC 257. A short point relating to the liability of the Insurance Company under the policy of insurance issued subsequent to the accident, even though it was issued some time later on the same day was involved. The facts in nutshell, of Sunita Rathi''s case (supra) are that a motor accident occurred on 10-12-1991 at 2-20 p.m. and it was only there after on the same day at 2-55 p.m. the insurance policy and cover note were obtained by the insured, owner of the motor vehicle, involved in the accident and there was an 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. In the light of the facts of the case, the Supreme Court has considered its earlier judgment in Ram Dayal''s case (supra), and distinguished the same. In that case, the facts are 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 situation, it was held in Ram Dayal''s case (supra) that in the absence of any specific time being mentioned, the logical inference to draw was that the insurance became effective from the previous mid-night and therefore, for an accident which took place on the date of the policy, the insurer became liable. There is no such difficult 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.. Therefore, the dicta laid down in Ram Dayal''s case (supra) has no application to the facts of the case. It was also held

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therein that the insurer cannot be held liable on the basis of the above policy in the present case and, therefore, the liability has to be of the owner of the vehicle. However, the Supreme Court, found that the High Court, without assigning any reason, has simply assumed that the owner of the vehicle was not laible in the present case, and the conclusion reached by the High Court was held to be erroneous. Their Lordships further observed that the liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract of insurance.

7. The learned Counsel for the appellant further relied on yet another judgment of the Supreme Court between M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others, . The point for consideration in that judgment was whether the accident had occurred during the operation of the insurance policy in controversy. The admitted position was that the renewal of the insurance was effected as under:

"..It is hereby understood and agreed that the renewal premium of Rs.1307/- only under this policy having been paid on 25-10-1983 and not within the renewal date viz., 14-10-1983 the insurance by this policy is suspended from 14-10-1983 (4-00 p.m.) to 24-10-1983. Further it is declared and agreed that the cover under this policy is reinstated and renewed for a further period of twelve months from 25-10-1983 to 24-10-1984 at a premium of Rs.1307A.

The Tribunal also had recorded, as a fact, that on October 25, 1983 at 4 p.m. the contract of renewal had come into force and it would be operative upto October 24, 1984. The Tribunal also recorded, as a fact, that the accident had occured on October 25, 1983 at 11.14 a.m. that is, before the renewal of the contract. Under these circumstances, it would be clear that the accident had occured when the renewal had not taken effect......"

8. In those circumstances, relying on the judgment in Ram Dayal''s case (supra), 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. But in view of the special contract mentioned in the insurance policy, namely, it would be operative from 4-00 pm on October 25, 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.

9. Therefore, from the above judgments of the Supreme Court, it is clear that in the absence of any specific time mentioned in the policy, it operates from the previous day mid-night and if specific time and date is mentioned, it comes into effect from the time which is mentioned in the policy and cover note. Applying the principles laid down in the above decisions of the Supreme Court, to the facts of the instant case, though the accident was occurred on 23-12-1989 at 7-30 am the policy was obtained by the insured, owner of the vehicle on 26-12-1989, but the Company has issued the policy with a note that it will come into effect from

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23-12-1989 but no specific time is mentioned in it. Therefore, in the absence of any specific time, mentioned in the policy, the principle laid down in Sunith Rathi''s case (supra) does not apply but the principle laid down in Ram Dayal''s case and Smt. Jijubhai''s case (supra) applies. Basing on the above said judgments of the Supreme Court, I have no hesitation in holding that the insurer in the present case is liable to indemnify the third parties, as no specific time was fixed for commencement of the contract, but only date was mentioned and hence, the policy becomes operative from the previous day mid-night.

10. The learned Counsel for the appellant further contends that the premium was not paid on 26-12-1989, but subsequently not liable to indemnify the owner of the vehicle.

11. The Supreme Court had an occasion to consider this aspect in Oriental Insurance Company Limited v. Inderjit Kaur and others, AIR 1998 SC 588. The facts of the case are that a bus met with an accident, the policy of which was issued by the appellant on 30-11-1989. The premium for the policy was paid by cheque which was dishonoured and the appellant sent a letter to the insured on 23-1-1990 stating that since the cheque was not encashed, the appellant was not at risk. Therefore, the insured paid the premium in cash on 2-5-1990 and in the meantime, on 19-4-1990 accident took place. The bus collided with a truck whose driver died and the truck driver''s widow and minor sons filed claim petition and the appellant pleaded the defence u/s 64V-B of the Insurance Act asserting that no risk was assumed by an insurer unless the premium thereon was received in advance. The Tribunal rejecting the said contention awarded a compensation of Rs.96,000/- to be paid by the insurer and the insured jointly and the appeal filed by them before High Court of Punjab and Haryana was also summarily dismissed. Considering the above facts and circumstances of the case, their Lordships of the Supreme Court held that despite the bar created by Section 64-V(b) of the Insurance Act, the appellant, an authorised insurer, issued a policy of insurance to cover the bus without receiving the premium thereof. But reason of the provisions of Sections 147(5) and 149(1) of the Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of the liability, which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement, to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured.

12. Therefore, following the dicta laid down by the Supreme Court in the above cases, and in view of the facts and circumstances of this case, as the accident was occurred on 23-12-1989 at 7-30 am and the policy was taken on 26-12-1989 which relates back to 23-12-1989 when the specific time of operation of the policy was not mentioned in the policy, I am of the view that the policy operates from the previous day mid-night. Therefore, in the instant case, though the accident occurred on 23-12-1989 at 7-30 a.m. and as such the policy was in operation from the previous mid-night and therefore, the appellant is

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under Sections 147, 149 of MV Act, 1988 read with Section 9 of General Clauses Act liable to indemnify the third parties. Therefore, the appeal fails and accordingly dismissed, in the circumstances without costs.

13. After dictating the judgment, the learned Counsel for the appellant requested that the Company may be permitted to proceed against the owner, as he has suppressed material facts and obtained the policy.

14. It is needless to mention that the accident was occurred on 23-12-1989 at 7-30 am, but the respondent, owner of the vehicle obtained the policy on 26-12-1989 relating back to 23-12-1989. If the same is obtained by suppression of the fact that the accident occurred on 23-12-1989, the company is at liberty to proceed against the insured, owner of the vehicle, in accordance with law. Further if the Company comes to the conclusion that the Officers of the Company are also involved in such issuance of the policy with the knowledge that the vehicle was involved in the accident on 23-12-1989, it is at liberty to initiate disciplinary action against the officers who are involved in the above said transaction.

15. In the result, the appeal fails and is accordingly dismissed. No costs.

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