

(1989) 11 KAR CK 0040
In the Karnataka High Court
Case No : M.F.A. No. 349 of 1987

Smt. Asma Begum and others

APPELLANT

Vs

Nisar Ahmed and others

RESPONDENT

Date of Decision : 08-11-1989

Acts Referred:

Insurance Act, 1938 — Section 64 V (b)
Motor Vehicles Act, 1988 — Section 110 A

Citation : (1990) 2 ACC 501 : (1990) ACJ 832 : AIR 1990 Kar 353 : (1990) ILR (Kar) 357 : (1990) 1 KarLJ 182

Hon'ble Judges : M. Ramakrishna, J; M. Rama Jois, J

Bench : Division Bench

Advocate : C.V. Nagesh, for the Appellant; C.K. Kambeyanda, for the Respondent

Judgement

1. This appeal is by the claimants in a claim petition presented u/s 110-A of the Motor Vehicles Act before the Motor Accidents Claims Tribunal, Bangalore City.
2. The claim petition was filed on the allegation that one Mirza Nazuriddin, husband of the 1st claimant died in a motor accident which took place on 17-11-1983 at 10.05 a.m. involving lorry bearing Registration No. MYM 3403 belonging to the 2nd respondent in the claim petition which was being driven by the 1st respondent in the claim petition. M/s. New India Assurance Company was made the 3rd respondent as the insurer of the vehicle.
3. The Tribunal, on the issue, as to whether the accident occurred on account of the rash and negligent driving of the lorry bearing Registration No. MYM 3403 recorded a finding in the affirmative. Regarding the quantum of compensation the Tribunal fixed the total compensation payable at Rs. 67,440/-. On the issue, as to which of the respondents is liable to pay compensation, the Tribunal held that at the time of accident, the vehicle was not covered by an insurance policy and therefore the 3rd respondent -- Insurance Company was not liable to pay the compensation. The appellant, the owner of the vehicle has presented this appeal aggrieved both by the quantum of compensation awarded and the finding

that the Insurance Company is not liable to pay the compensation.

4. The learned Counsel for the appellants in support of the appeal submitted as follows:-- Admittedly the accident took place on 17-11-1983 at 10.05 a.m. The Insurance Policy was issued to be effective from 17-11-1983 to 16-11-1984. Once the policy was issued with the commencement date as 17-11-1983 the policy becomes effective from the minute the day commenced. In the alternative, as the policy was a renewal policy, earlier policy must be deemed to have continued and therefore the Insurance Company was liable to pay the compensation.

5. From the documents produced in the Court below, the learned Counsel for the appellants pointed out, that in the receipt issued (Exhibit R-2) for having received the premium, the words "renewal policy" are written. Relying on this, the learned Counsel submitted that the Insurance Policy must be deemed to have been renewed from the date on which the earlier policy expired and therefore the Insurance Company must be held to be liable to pay the compensation and they cannot be allowed to contend that the policy commenced after the accident and therefore the risk was not covered.

6. Sri Chinnappa, the learned Counsel for the Insurance Company, relying on the documents produced before the Court below as also the additional documents produced before this Court, which we have admitted as additional evidence submitted as follows: These documents establish that the earlier policy in respect of the vehicle in question was for a period of one year from 5-11-1982 to 4-11-1983. The policy which was issued on 17-11-1983 was for a period of 12 months commencing from 17-11-1983(11 a.m.) to 16-11-1984, as expressly stated in the policy. As it had become the experience of the Insurance Companies from some time past that owners of the vehicles who had not taken insurance policies before the accident, rush to the office of agents of the Insurance Companies, immediately after the accident and either by suppression of the information regarding the accident and, or with the connivance of the officials/agents of the Insurance Companies, take policies so as to cover the risk arising out of an accident which had already taken place, instructions had been issued to note not only the date but also the time with effect from which the policy becomes effective. Accordingly, in the policy in question the time of commencement of policy was noted as 11 a.m. on 17-11-1983. Admittedly the accident had occurred at 10 a.m. in Bangalore on 17-11-1983 and therefore the policy was not in existence at the time of the accident and therefore the Insurance Company was not liable.

7. The learned Counsel for the appellants, however, submitted that irrespective of the date and time of the issue of the policy, once it is held to be a renewal policy, and it is stated so on the receipt issued to the owner of the vehicle, while receiving the premium, the policy dates back to the date on which the earlier policy expired i.e., 4-11-1983 and therefore the policy must be held to be in force even at the time of the accident. In support of this submission, the learned

Counsel for the appellants relied on a Judgment of this Court in *The Oriental Fire and General Insurance Co. Ltd. Vs. Tippanna Gadageppa Kundgol and Another*, . In that case, the date of the motor accident, which occasioned the presentation of the claim petition u/s 110-A of the Act, was 11-2-1978. By that time the period of earlier insurance had expired. The Insurance Company though received the premium only on 13-2-1978 from the owner issued an insurance policy covering the risk for a period of one year from 10th February, 1978. It is in view of this act of Insurance Company issuing a policy with effect from 10-2-1978 i.e. a day earlier to the accident this Court held that the Insurance Company could not escape the liability. The ratio of that decision would have covered this case if the Insurance Company had issued the policy on 17-1-1983 to be effective from 4-11-1983 or 5-11-1983 or from any date earlier to the date of the accident for a period of one year from the said date. But in the present case, the Insurance Company has not committed any such mistake. It has issued the policy to be effective from 11 a.m. on 17-11-1983. Admittedly, the accident occurred earlier. Hence there is no merit in the contention of the appellants that by the policy issued on 17-11-1983 at 11 a.m. the risk in respect of the accident which had taken place even before the issue of the policy was covered . The two other decisions relied upon by the learned Counsel for the appellants namely, AIR 1970 Bom 304 (Sic) and *Life Insurance Corporation of India, Madame Cama Road, Bombay Vs. Vesasi Bharathi*, are also of no assistance to the appellants.

8. As regards the principle of renewal of a permit or licence taking effect from an earlier date, it appears to us, that it would be applicable to a case where under the scheme a permit or licence issued is permanent and requires periodical renewal on payment of prescribed fee and satisfying the prescribed terms and conditions subject to which it had been issued. Examples of such licences are the permanent driving licence, a permanent cinema licence or a permanent stage carriage permit. As far as motor vehicle insurance is concerned, there is nothing like issuing of permanent policy, subject to periodical renewal. It is an insurance only for the period specified in the policy. There is no question of renewal of that policy. It is true that if during any particular period for which the vehicle insurance policy was taken there had been no claim in respect of the vehicle concerned, some reduction is given in the amount of premium in the form of "no claim bonus". That is only an incentive given to the customers to take the insurance policy for the succeeding years from the same company, but the allowing of no claim bonus is no ground to hold that the policy, whenever, it is issued had continued from the date of expiry of the previous policy. There is no continuation in the case of Motor Vehicle Insurance. Each policy is separate and independent and holds good only for the period mentioned in the policy. The word "renewal" used both in *The Oriental Fire and General Insurance Co. Ltd. Vs. Tippanna Gadageppa Kundgol and Another*, and in this case on the receipt, as submitted by the learned Counsel for the 3rd respondent, was only to indicate that the vehicle was insured earlier with the same company and for the purpose of giving rebate in the amount of premium and that by itself would not have the

effect of the policy being effective from the date of expiry of the previous policy and of filling up the gap and foisting the liability arising out of an accident which had taken place at a time when the policy was not in existence, on the Insurance Company, in Tippanna's case because the Insurance Company, for whatever be the reason, had issued a policy to be effective from 10-2-1978, a date earlier to the date of the accident, this Court held that risk arising out of an accident which had taken place on 11-2-1978 was covered. But in this case it is clear the period commencing from 4-11-1983 till 17-11-1983 is not covered by the Policy. The premium was paid only on 17-11-1983 for a period of one year and on the payment of premium the policy was issued on 17-11-1983 at 11 a.m. to be effective till 16-11-1984. Therefore, there can be no doubt that it covers the risk arising after the date and time specified on the policy.

9. There is an additional ground urged by the learned Counsel for the Insurance Company which leads to the same result. It is based on Section 64-V(b) of the Insurance Act. Relevant part of the Section reads :--

"64VB. No risk to be assumed unless premium is received in advance:-- (1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer."

In view of the above provision the risk of the Insurance Company commences only on the payment of the premium either in cash or by cheque. In the present case, as can be seen from the receipt Exhibit R-2 the amount of premium of Rs. 256/- was received at 11 a.m. as expressly stated in the receipt. Therefore, it is beyond doubt that the premium amount was accepted after the accident which had occurred at 10 a.m. Therefore, the risk of the insurer commenced after the accident, and therefore did not cover the risk arising out of the accident. The words "renewal policy" written on the receipt does not, in our opinion, give the policy a retrospective effect, but is only to indicate that the amount of premium taken is after giving due rebate in consideration of no insurance claim in the previous year.

10. To sum up, our conclusions are :

(i) A motor vehicle insurance policy is effective only for the period specified in the policy and not from the date of expiry of an earlier policy, if any, in respect of the same vehicle, issued by the same insurer.

(ii) In view of Section 64-V(b) of the Insurance Act the risk on the part of the

insurer commences only on the payment of the premium by the insured.

(iii) In the present case the premium was paid at 11 a.m. on 17-11-1983 and the policy was also issued to be effective from 11 a.m. on 17-11-1983 till 16-11-1984 and therefore it did not cover the risk arising out of the accident which took place at 10 a.m. on 17-11-1983.

11. For the aforesaid reasons, we find no substance in this appeal.

12. The appeal is dismissed.

13. Appeal dismissed.