
(2014) 06 MAD CK 0019
In the Madras High Court
Case No : C.M.A. No. 1711 of 2014

Srinivasan

APPELLANT

Vs

Selvaranjan and Others

RESPONDENT

Date of Decision : 16-06-2014

Acts Referred:

Constitution of India, 1950 — Article 142

Citation : (2015) ACJ 1021

Hon'ble Judges : S. Manikumar, J.

Bench : Single Bench

Advocate : S. Sounthar, for the Appellant

Final Decision : Dismissed

Judgement

S. Manikumar, J.?In the accident, which occurred on 14.2.2000, the appellant sustained injuries. He claimed compensation of Rs. 5,00,000. Owner of the offending vehicle, viz., tractor bearing registration No. TCO 6630 insured with the respondent No. 2, United India Insurance Co. Ltd., contested the claim petition and opposed the claim for compensation. The accident occurred on 14.2.2000 at 11 p.m. Opposing liability and based on Exh. P1, dated 14.2.2000, copy of the policy, the insurance company contended that at the time of accident, i.e., at 11 p.m. on 14.2.2000, there was no contract of insurance. Premium was paid only on 14.2.2000 in the evening and after considering the particulars, contract of insurance, i.e., Exh. P1, was issued only on 15.2.2000. The accident occurred on 14.2.2000, but the policy commenced only from 15.2.2000. On the above facts, the insurance company contended that liability cannot be fastened on them.

2. Considering the defence put up by the insurance company and placing reliance on the decision of this court in M/s United India Insurance Company Limited, 1 North Car St, Thiruchengode, Salem Dist Vs. Anandavelu and 2 others, , the Claims Tribunal has exonerated the insurance company from the payment of compensation. However, directed the insured to pay a sum of Rs. 77,000 determined as compensation.

3. Though Mr. S. Sounthar, the learned counsel for the appellant-injured, sought for reversal of the above said direction, this court is not inclined to accept the same in view of the following decisions:

"(i) In J. Kalaivani and Others Vs. K. Sivashankar and Another, , the accident occurred on 8.2.1996 at 4.30 a.m. The policy for the offending vehicle was between 8.2.1995 and 7.2.1996. On the succeeding day, the owner of the vehicle went to the insurance company and obtained another policy. The commencement of the policy was from 8.2.1996 at 10 a.m. Following the decisions of the Apex Court in M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others, , New India Insurance Co. Vs. Bhagwati Devi and Others, and New India Assurance Co. Ltd. Vs. Ram Dayal and Others, , the court held as follows:

"(6) Therefore, the position has become now well-nigh settled. The court has to look into the contract of insurance to discern whether any particular time has been specified for commencement or expiry, as the case may be, of the policy of insurance. The copies of the erstwhile policy as well as the present policy have been produced for our perusal, the authenticity of which has not been questioned before us. The erstwhile policy shows that it expired by midnight of 7.2.1996 by specific terms incorporated in the policy. The next policy has clearly indicated that it had commenced only at 10 a.m. on 8.2.1996. The interregnum created the void in respect of the vehicle vis-?-vis the insurance company. The unavoidable consequence of it is that the insurance company cannot now be mulcted with the liability in respect of the award granted by the Tribunal."

(ii) Three decisions of the Apex Court referred to in J. Kalaivani and Others Vs. K. Sivashankar and Another, , extracted from the above judgment, are as follows:

"(5) Three decisions have been placed before us. In New India Assurance Co. Ltd. Vs. Ram Dayal and Others, , it was held that in the absence of any specific time mentioned in that behalf, the contract of insurance would be operative from the midnight of the day by operation of the provisions of the General Clauses Act, 1897. In M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others, , a three-Judge Bench of this court approved the legal position adopted in the said decision. However, the learned Judges observed thus:

"But in view of the special contract mentioned in the insurance policy, namely, it would be operative from 4 p.m. on 25.10.1983 and as the accident had occurred earlier thereto, the insurance coverage would not enable the claimant to seek recovery of the amount from the appellant company."

This question was again considered by another three-Judge Bench of this court in New India Insurance Co. Vs. Bhagwati Devi and Others, and after following the dictum in the earlier decision that Bench has stated thus:

"...The principle deduced is thus clear that should there be no contract to the contrary, an insurance policy becomes operative from the previous midnight, when bought 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 put to rest by this court. There is, thus, nothing further for us to deliberate upon".

(iii) In *Oriental Insurance Co. Ltd. v. Vedathal, L.P.A.* No. 190 of 1999; decided on 12.11.2002 (Madras), the accident had occurred on 20.5.1991 about 2 p.m. The policy was effective from the midnight of 21.5.1991. Both the Claims Tribunal as well as a learned single Judge of this court took the view that the insurer is liable, on the premise that the insurer had collected the premium on 20.5.1991 and the policy had also been issued from the said date. The assumption of liability by an insurer was on account of receipt of the premium. On appeal, an Hon'ble Division Bench in the Letter Patents Appeal, at paras 3 and 4, held as follows:

"(3) The assumption of liability by an insurer is only after the receipt of the premium. Neither the Motor Vehicles Act nor the Insurance Act requires that the insurer assume liability the moment the premium is tendered. The policy issued provides for specifying "effective date of commencement of insurance for the purpose of the Act, from..... o'clock on.....to midnight of.....". The date of issue of the policy, therefore, is not decisive as to the date of the commencement and the date and time with effect from which the insurer assumes the risk. If no time is mentioned, but a mere date is mentioned, the insurer would be presumed to have assumed the risk from the commencement of the day. If, however, besides specifying the date, the time is also specified, the insurer's liability would be only from the date and time specified, and not earlier. The Supreme Court in the case of *Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others*, , has held to that effect.

(4) In this case, the date specified in the policy is the effective date of commencement which is subsequent to the date of occurrence of the accident. It was open to the insurer to specify such a date, as the law does not mandate that the risk should be assumed on the date on which the premium is received. The insurer's liability, therefore, can only be regarded as having commenced from the date specified in the policy as the effective date of commencement of the insurance, and not earlier."

(iv) In *Oriental Insurance Co. Ltd. Vs. Porselvi and Another*, the accident occurred on 28.5.1996. The policy cover was for the period from 29.5.1996 to 28.5.1997. Since cover note had been issued on 28.5.1996, which was also entered in the policy, the High Court felt that the finding of the Tribunal, fastening liability on the insurance company, cannot be termed as perverse. Being aggrieved by the same, the insurance company took the matter on appeal to Apex Court. Though strong reliance has been made on the cover note, dated 28.5.1996, after examining the same, and the relevant portion in the policy "effective date of commencement of insurance for the purpose of the Act, from... o'clock on (date) 29.5.1996 to midnight of 28.5.1997" and following a three-

Judge Bench judgment of the Apex Court in *New India Assurance Co. Ltd Vs. Smt. Sita Bai and Ors*, , the Apex Court in *Porselvi's* case, referred to above, set aside the judgment of the High Court. *Sita Bai's* case (supra), referred to in the above reported case, is extracted hereunder:

"The correctness and applicability of the judgment in *New India Assurance Co. Ltd. Vs. Ram Dayal and Others*, , came up for consideration before this court subsequently in a number of cases. In *New India Insurance Co. Vs. Bhagwati Devi and Others*, , a three-Judge Bench of this court relied upon the view taken in *M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others*, , wherein it had been held that if there is a special contract, mentioning in the policy the time when it was bought, the insurance policy would be operative from that time and not from the previous midnight as was the case in *Ram Dayal's* case, where no time from which the insurance policy was to become effective had been mentioned. It was held that should there be no contract to the contrary, an insurance policy becomes operative from the previous midnight, when bought during the day following; but in cases where there is a mention of the specific time for the purchase of the policy, then a special contract comes into being and the policy becomes effective from the time mentioned in the cover note/the policy itself. The judgment in *Jikubhai's* case (supra) has been subsequently followed in *Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others*, , by a three-Judge Bench of this court also."

(v) In *National Insurance Co. Ltd. Vs. Geetha and Others*, , the accident occurred on 15.6.1998, about 5.30 a.m. The policy was issued on the basis of the premium paid on 12.6.1998, but effective only from 15.6.1998 at 10 a.m. to midnight of 14.6.1999. Having regard to the receipt of premium on 12.6.1998, the Tribunal fastened liability on the insurance company. On appeal, though the learned counsel for the claimant therein relied on a Division Bench judgment of this court in *United India Insurance Company Limited Vs. S. Viswanathan and P. Kuppuraj*, , distinguishing the said case and after considering the binding nature of the contract, as per the insurance under the Contract Act and following the decisions in *Oriental Insurance Co. Ltd. v. Vedathal*, L.P.A. No. 190 of 1999; decided on 12.11.2002 (Madras), *M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others*, , *Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others*, and *New India Assurance Co. Ltd. Vs. Rula and Others*, , this court in *National Insurance Co. Ltd. Vs. Geetha and Others*, , held as follows:

"(15) In view of the above settled principles of law, the appellant insurance company is correct in challenging the award of the Tribunal on the ground that they are not liable as the insurance policy was issued with the specific mention of the time and date of commencement of the insurance and the accident took place before the said time mentioned in the policy. There is, thus, a basic fallacy in the conclusion reached by the Tribunal on this point."

(vi) In *Balbir Kaur and Others Vs. New India Assurance Company Ltd. and Others*, , the accident took place on 18.3.1996. The insurance company received

the premium on 15.3.1996 and issued a cover note w.e.f. 19.3.1996. The Tribunal allowed compensation against the insurance company. The High Court held that insurance company was not liable and directed the claimant to refund the compensation withdrawn by him to the insurance company. Owner of the vehicle did not file any appeal against the order of the High Court. On appeal filed by the claimant, the Apex Court, at paras 13 to 15, held as follows:

"(13) For the purpose of this case, we would assume that an insurance policy, in law, could be issued from a future date. A policy, however, which is issued from a future date must be with the consent of the holder of the policy. The insurance company cannot issue a policy unilaterally from a future date without the consent of the holder of a policy. Even the said circular letter had not been produced and/or no material was placed as to why the policy was issued from a later date. It is, however, not necessary for us to delve deep into the matter in view of the limited notice issued by this court.

(14) However, respondent No. 3, owner of the vehicle, has not questioned that part of the order passed by the High Court. He, therefore, accepted the judgment of the High Court. Accordingly, liability to pay the awarded amount by him is not in question.

(15) Keeping in view the peculiar facts and circumstances of the case and in particular having regard to the fact that the appellants have already withdrawn the amount, the interest of justice would be sub-served if this court in exercise of its discretionary jurisdiction under Article 142 of the Constitution of India direct the insurance company not to recover the amount from the appellants herein, subject of course to its right of recovery from the owner and the driver of the vehicle."

(vii) In *New India Insurance Co. Vs. Bhagwati Devi and Others*, , the accident occurred at 11 a.m. on 17.2.1989. The policy was issued at 4 p.m. on the same date. The Claims Tribunal awarded compensation to be paid by the insurance company, following two decisions of the Apex Court in *New India Assurance Co. Ltd. Vs. Ram Dayal and Others*, and *M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others*, . Testing the above said decisions, the Supreme Court, following larger Bench decisions, which held that when there is a special contract mentioning the time in the policy and it would be operative from that time and not fictionally, from the previous midnight and having regard to the facts of the case, held that:

"(2)...the policy had been bought at about 4 p.m. on the day of the accident and, thus, was not allowed to be operative from midnight; the accident having occurred at around 11 a.m. on that date. The principle deduced is thus clear that should there be no contract to the contrary, an insurance policy becomes operative from the previous midnight, when bought 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."

4. In the light of the decision stated supra, even assuming that a premium has been received, the effectiveness of the policy commences only from the specified date and time mentioned in the policy. Hence, there is no illegality in the impugned judgment. The civil miscellaneous appeal is dismissed. No costs. Consequently, the connected miscellaneous application is closed. Consequent to the dismissal of the appeal, the respondent No. 1 is directed to deposit the entire award amount, with accrued interest and costs, less the statutory deposit, to the credit of M.C.O.P. No. 155 of 2000 on the file of Motor Accidents Claims Tribunal (Principal Sub-Court), Mayiladuthurai, if not deposited earlier, within a period of 4 weeks from the date of receipt of a copy of this order. On such deposit, the appellant-claimant is permitted to withdraw the entire award amount with accrued interest and costs, by making necessary application.