
(1992) 04 KAR CK 0032
In the Karnataka High Court
Case No : M.F.A. No. 2596 of 1986

United India Insurance Co.

APPELLANT

Vs

Kalavathi

RESPONDENT

Date of Decision : 02-04-1992

Acts Referred:

Motor Vehicles Act, 1939 — Section 64 VB

Citation : (1992) ACJ 888 : (1992) ILR (Kar) 2403 : (1992) 3 KarLJ 121

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

Bench : Division Bench

Advocate : C.K. Kambeyanda, Stdg, for the Appellant; K.T. Gurudeva Prasad, for R-1 to R-4 and B. Aswathaiah, for R-5 and R-6, for the Respondent

Final Decision : Allowed

Judgement

Rama Jois, J

1. 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.

2. The brief facts of the case which are disturbing are these:- The Lorry bearing Registration No. MEZ 4578 belonging to the 5th respondent met with an accident at 6.30 A.M. on 7-5-1984. Respondents 1 to 4 filed a claim petition before the Tribunal on the allegation that the husband of the first claimant and the father of claimants 2 to 4 died in the motor accident. The appellant Insurance Company was made as a respondent in the claim petition and it was alleged that at the time when the vehicle met with the accident it was covered by an insurance Policy, issued by the appellant. Before the Tribunal, on behalf of the Insurance Company, the only evidence adduced was the Policy of Insurance dated 7-5-1984 for the period commencing from 7-5-1984 to 6-5-1985. The Tribunal proceeded on the basis, that as the policy was dated 7-5-1984 the Insurance must be

deemed to have existed at the time of the accident Accordingly, the liability to pay the amount of compensation was fixed on the Insurance Company.

3. This matter was heard on 9th January, 1989. At that time, it was contended by the learned Counsel for the appellant - Insurance Company that the original records in the office of the Insurance Company disclosed that the proposal forms seeking to insure the vehicle in question was given to the 5th respondent only on 9.30 A.M. on 7-5-1984 i.e. after the accident and only after the receipt of the application the cover note was issued. In support of the above he had produced the carbon copy of the cover note. Learned Counsel had submitted that some fraud had been played on the Insurance Company by their agent and the owner of the vehicle appears to be a party to it. On a comparison of the carbon copy of the cover note and the original cover note which had been produced by the owner - the 5th respondent, it was found that while the printed numbers on both the original and carbon only were the same, contents do not tally. The following infirmities were found:

(1) According to the original cover note the proposal form was received at 9 A.M. on 5-5-1984, whereas according to the carbon copy it was received at 9.30 A.M.

(2) Secondly, according to the original the period for which the Insurance cover was sought for and given was from 5-5-1984 to 4-5-1985, whereas according to the carbon copy the period for which Insurance Cover was sought for and given was from 7-4-1984 to 6-4-1985. Though the latter one is purported to be the carbon copy of the original, as they did not tally in many respects, this Court considered that it was necessary to frame additional issues regarding the genuineness of the cover note and the policy to ascertain the truth. This Court made an order under Order 41 Rule 25 of the CPC and called upon the Tribunal to record the evidence and give findings on the following two issues:

"(1) Whether the proposal form signed by the owner of the vehicle was received at the office of the Appellant Insurance Company at 9.30 A.M. on 7-5-84 i.e., after the accident as is discernible from the carbon copy of the cover note or it was received at 9 A.M. on 5-5-84 as is discernible from the original cover note produced by the 5th respondent?

(2) Whether the Insurance Cover Note was issued after 9.30 A.M. on 7-5-84 as it appears from the carbon copy of the cover note or it was issued on 5-5-84 as it appears from the original cover note produced by the 5th respondent?

4. The Tribunal after recording the evidence has recorded a finding as follows:-

"(1) There is no evidence to show that 2nd respondent (R.W.3) has signed the proposal form and the same was submitted to the Insurance Company at 9.30 A.M. on 7-5-1984. There is also no evidence on record to show that the proposal form was received in the office of the Insurance Company on 5-5-1984.

(2) The Insurance Cover Note was issued only on 7-5-1984 at 9.30 A.M. as is discernible from the carbon copy of the cover note and not on 5-5-84 as appears

from the original cover note Ex.R.5."

5. The matter has come up for hearing after the receipt of the findings. We have heard the learned Counsel on both the sides, Before the Tribunal inter alia, the following documents were produced.

- (1) Ex.R-1 Insurance Policy,
- (2) Ex.R-2 Cover note register.
- (3) Ex.R-3 The receipt book.
- (4) Ex.R-5 Original cover note produced by the owner of the vehicle.
- (5) Ex.R-6 Certificate of Insurance, and
- (6) Ex.R-8 Proposal form.

R.W.1 who is an Officer of the Bank has given evidence in respect of these documents.

6. We have gone through these documents. The original cover note produced by the 5th respondent is marked as Ex.R-5. In that Columns 3 and 4 read:-

3. Effective date and time of commencement of Insurance for the purpose of the Act.

Bangalore-79 9-00 A.M.

5-5-84 4-5-85

4. Date of expiry of previous insurance policy if any on the vehicle.

4-5-85

It is clear to bear eye regarding figures 85 at Column-4, There is over-writing. It is difficult to make out as to whether it is "84" or "85", but the figure "85" is prominent. At the bottom 5-5-84 is shown as the date of issue.

7. The entire Cover Note Register, which is the most important document for the purpose of this case is Ex.R-2. The cover note in original produced by the owners bears the printed No. 064439. The corresponding carbon copy in Ex.R-2 is R-2(b). Strangely, in this, which is purported to be a carbon copy of Ex. R-5, Columns 3 and 4 reads:-

3. Effective date and time of commencement of Insurance Policy for purpose of the act.

9.30A.M.

7-5-84 6-5-85

4. Date of expiry of previous insurance policy if any on the vehicle.

6-5-85

Thus, according to carbon copy, it is crystal clear that Insurance Cover commenced only from 9-30 A.M. on 7-5-1984 i.e. after the accident which has taken place at 6.30 A.M. In the proposal form which is marked Ex.R-8 no date is entered, but it relates to the vehicle in question bearing Registration No. MEZ 4578. At the place where the proposer has to affix his signature it is written in English as N.Nagaraj. According to the learned Counsel for Respondent-5 it is not the signature of Respondent-5. It makes no difference. It is quite possible that the person who approached the insurance agent must have written the name of respondent-5, Whatever that may be, the fact remains that cover note Exhibit R-5 was secured pursuant to the proposal. The cover note register disclosed that immediately previous cover notes bearing Nos. 64430 to 64438 in all nine cover notes were issued on 5-5-1984 and all of them related to two wheelers. Total amount of premium collected in respect of the nine cover notes was Rs. 605/- u/s 64-VB of the Act, under which the concerned Insurance Agent is required to remit the amount within 24 hours. The said amount was remitted on 7-4-1984. The amount of Rs. 1,050/- being the premium amounts in respect of the vehicle belonging to the 5th respondent was remitted to the Insurance Company on 8-4-1984. This unimpeachable documentary evidence clearly establishes that the concerned agent actually issued the cover note only on 7-4-1984 at 9.30 A.M. but in the original cover note he antedated it as 5-5-1984. Further, it is also clear the entry at Column-4 regarding the expiry of the previous Insurance policy was also inaccurate, for, it is not the case of the 5th respondent that he held any Insurance Policy with the appellant - Insurance Company, prior to the date of the accident.

8. In the circumstances, after giving careful and anxious consideration and the submission made by the learned Counsel, We hold that irrespective of the finding regarding the presentation of proposal form, the finding recorded by the Tribunal on the additional issue to the effect that the cover note was actually issued only on 7-4-1984 at 9.30 A.M. is correct

9. The learned Counsel for the 5th respondent as well as the learned Counsel for the claimants strenuously contended that even assuming that the cover note was issued on 7-5-1984 as the accident took place on 7-5-1984 itself, the Insurance Company was liable to pay the compensation. In support of this submission, the learned Counsel relied on a Judgment of the Supreme Court in *New India Assurance Co. Ltd. Vs. Ram Dayal and Others*, Relying on the above Decision, learned Counsel submitted that when an insurance policy is issued on a particular day the Policy must be deemed to have commenced with effect from the commencement of the date namely 12 'o clock and one minute and therefore, the risk in respect of any accident which had taken place on the same date though earlier to the issue of policy stands covered. This very question has been the subject matter of consideration before this Court in *National Insurance Co. Ltd. Vs. Indirabai*, In the said Judgment this Court considered the effect of Section 64-VB of the Insurance Act and also the earlier Judgment of this Court in *Smt. Asma Begum and others Vs. Nisar Ahmed and others*, and held that in a

case where only date is mentioned and no time is mentioned in the cover note or insurance policy, the Insurance Company would be liable to pay compensation even if the policy was taken actually after the accident, in view of the ratio of the Judgment of the Supreme Court cited above, but in the cases in which not only the date but also the time of commencement of policy is mentioned in any one of the relevant documents such as cover note or policy or certificate of insurance, the Insurance Company would not be liable to pay compensation in respect of accident which had taken place earlier to the time with effect from which the cover note or the policy was issued.

10. In the present case, as pointed out earlier, 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 A.M. -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 A.M. on 7-5-1984. There is no dispute that the accident which gave rise to the claim petition had taken place at 6.30 A.M. on 7-5-1984. Therefore, the ratio of the Decision of this Court in the case of Indira Bai applies on all fours to this case and therefore, it should be held that the appellant Insurance Company is not liable to pay compensation as the vehicle in question was not covered by the Insurance Policy at the time of the incident.

11. It is unfortunate, the situation which has arisen in this case has been created on account of inadvertence of the Branch Manager and deliberate Act of mischief by the agent of the appellant-insurance Company. The learned Counsel for the appellant submitted that having full confidence in the Insurance Agents Branch Managers used to sign the blank cover notes and hand over the same to the agents and the agent in collusion with the 5th respondent has antedated the original cover note making him to believe that risk was covered from 5-5-1984, but at the same time in the carbon copy correct impression was given to the Insurance Company to the effect that cover note commenced only on 7-5-1984 at 9.30 A.M. The learned Counsel for the appellant submitted that as far as the Officer, who had handed over the blank signed cover note to the agent, disciplinary proceedings were instituted against him and as far as the agent is concerned, his whereabouts were not known. Whatever that may be, the documentary evidence clearly establish that the fifth respondent took the insurance cover only at 9.30 A.M. on 7-5-1984 after the accident on the said date at 6.30 A.M.

12. In the result, We make the following order: -

(i) The Appeal is allowed:

- (ii) The Award in so far it fixes the liability on the appellant -Insurance Company is set aside;
- (iii) In all other respects it remains undisturbed.