(2010) 08 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : F.A.F.O. No''s. 4934 to 4937 of 2007

United India Insurance Co. Ltd. APPELLANT

Vs

Kanta Bansal and Others RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Citation : (2012) ACJ 131 : (2012) 2 TAC 556

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—All these four cases address the same issue relating to liability of the insurance company for an accident that took place on 30.12.2002 in the evening at 8.30 p.m. and the insurer, responding to the claimants, contended that the policy took effect only from 31.12.2002 and there was no policy of insurance at the relevant time to make the insurer liable. It was brought out through evidence that car had been previously insured with National Insurance Co. Ltd. for the period from 16.12.2001 to 15.12.2002 and for a brief period, the owner had not taken a policy of insurance. Subsequently, a proposal had been made on 31.12.2002. The proposal form had been filled up on 30.12.2002 and submitted to the appellant insurer at 11.11 a.m. when a cover note had been issued. The same cover note also evidenced the fact that the risk was undertaken from the following day, i.e., 31.12.2002. The insurance company contended that where there was a gap in insurance cover and the policy with another insurance company had expired, a new policy could be undertaken only after inspection and the risk shall commence only from the next day. Although the cover note as well as the policy which was issued showed that the policy commenced only from 31.12.2002, the Tribunal still found the insurer liable on the ground that the cover note had been issued on the previous day itself at 11.11 a.m. and the accident having taken place subsequent to the payment of premium, the insurance company shall be liable.

2. The contract of insurance secured through a policy is an extension of law of contract. The rights and liabilities of parties will be governed by the contractual terms and if a policy was stated to commence from a particular period, the undertaking of risk itself would commence only from the commencement of the policy. If there was a dichotomy between the date of issue of cover note and the time when the risk was undertaken and there was a justification, which was explained by the insurer with reference to the two circumstances narrated above, namely, the expiry of the previous policy and the existence of circular requiring the cover note for the risk to be undertaken only from the following day. In a judgment of the Hon''ble Supreme Court in Oriental Insurance Co. Ltd. v. Porselvi, (2009-3) 155 PLR 65 (SC), the issue was with reference to when the policy commenced. In that case the cover note had been issued on 28.5.1996 but the policy stated that the risk was covered for the period from 29.5.1996 to 28.5.1997. The accident took place subsequent to the issuance of cover note on 28.5.1996. The Hon''ble Supreme Court held that when there was a mention of specific time for the commencement of the policy, then a special contract comes into being and the policy would become effective only from the time mentioned in the cover note. The point of law laid down by the Hon''ble Supreme Court squarely governs the case and the liability fastened on the insurance company is erroneous. The award of the Tribunal is set aside and the appeals are allowed. The liability shall be only for the owner-insured to satisfy the claims of the claimants.

