(1999) 03 CAL CK 0028

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction F.M.A. No. 185 of 1998

United India Insurance Co. Ltd. APPELLANT

Vs

Lakshi Pramanick and Others RESPONDENT

Date of Decision : 03-03-1999

Acts Referred:
Motor Vehicles Act, 1988 — Section 140

Citation : (1999) 1 ACC 673 : (2000) ACJ 414 : (1999) 1 CALLT 359

Hon'ble Judges : Vinod Kumar Gupta, J;Prodyot Kumar Sen, J

Bench : Division Bench

Advocate : Mr. K.K. Das and Mr. P.K. Pahari, for the Appellant; Mr. S.P. Chakraborti, for the Respondent

Judgement

1. By consent of parties the appeal, application for stay and the application for Interim relief filed by the respondents--claimants all are taken up today for final disposal treating them as on day''s list.

2. The short point Involved In this appeal filed by the insurance Company is about the liability of the appellant to satisfy the interim Award of Rs. 25,000/- passed u/s 140 of the Motor Vehicles Act, 1988.

3. The husband of the respondent No. 1 Lakshl Pramanlck died In a motor accident which took place on February 1, 1993. The death occurred at 8.30 a.m. on that day. The offending vehicle admittedly was not covered by any insurance policy as at the time of the accident. The insurance policy was taken out by the owner of the offending vehicle on the date of the accident. The policy clearly mentions that the period of insurance would commence from 10, a.m. on February 1, 1993 and would expire on the midnight of January 31, 1994. The learned tribunal, however, rejected the contention of the appellant about It not being liable on the aforesaid ground; hence the present appeal.

4. The learned Tribunal while fasting the liability u/s 140 of the Act upon the appellant--insurance Company relied upon a judgment of the Supreme Court in

the case of New India Assurance Co. Ltd. Vs. Ram Dayal and Others, In this judgment Their Lordships took a view that the insurance policy obtained on the date of accident became operative from the commencement of the date of insurance, that is, from the previous midnight and since the accident took place on the date of the policy, the insurer became liable. In two subsequent judgments, however, the Supreme Court clarified the Judgment in Ram Dayal''s case (supra) by holding that the aforesaid proposition of law would be applicable if the insurance policy did not specify the time of the commencement of the policy.

5. In the case of M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others, while referring to the judgment in Ram Dayal''s case (supra) Their Lordships clearly held that the provisions of General Clauses Act cannot be applicable in the case in view of the special contract mentioned in the insurance policy, namely, that it would be operative from a particular time. Paragraph of the said Judgment reads as follows:

"This court in New India Assurance Co. Ltd. v. Ram Dayal had held that in the absence of any specific time mentioned in that behalf, the contract would be operative from the midnight of the day by operation of provisions of the General Clauses Act, 1897. But in view of the special contract mentioned in the insurance policy, namely, it would be operative from 4.00 p.m. on 25.10.83 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 ..."

6. In the case of Oriental insurance Co. Ltd. v. Sunita Rathi, reported in AIR 1998 SC 257 once again the Supreme Court, while dealing with the question of liability of the insurance Company in the case like the present one. and while noticing Ram Gopal''s Judgment and critically analysing it in details clearly held that if the policy of insurance mentions the time of commencement of insurance, the ratio of the Ram Dayal''s case (supra) being wholly distinguishable, cannot be applicable. While distinguishing Ram Dayal''s case (supra) Their Lordships clearly held that'' the facts of that decision showed that the time of issurance 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. The following observations in Sunita Rathi''s case (supra) are quoted hereunder for advantage :

"In such a situation, it was held in Rom 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 midnight and, therefore, for an accident which took place on the date of the policy, the insurer became liable. There is no such difficulty in the present case in view of the clear finding based on undisputed facts that the accident occurred at 2.20 pm and the cover note was obtained only thereafter at 2.55 pm 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 pm. The reliance on Ram Dayal''s case (supra) by the Trial and the High Court was, therefore, misplaced, we find that in a similar situation, the same view which we have taken, was also the view in M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others, wherein Ram Dayal''s case (supra) was distinguished on the same basis."

7. In the light of the law clearly laid down in the aforesaid two judgments of the apex court, I have no hesitation in holding that where the insurance policy mentions the time and date from when it has to become effective, the cover of insurance becomes effective only from that particular time and not from any earlier time on that date and if an accident occurs on the date when the insurance policy has become effective but at a time prior to the commencement of the insurances policy, the time being with reference to the time of such commencement being mentioned in the policy document, the vehicle will be considered to be not insured. In such an eventuality the insurance Co, cannot be held to be liable at all since the contract of insurance would not be deemed to have come into force at the time of the accident. There is a clear logic behind this sound policy. Cases are not inconceivable where a vehicle might have met with an accident when ft was not covered by an insurance policy and, on the same date the insurance policy is taken out but naturally after the accident had taken place. It is to cover such eventualities that the insurance policy records the time along with the date when it would be effective and should commence to cover the risk of the insured.

8. Viewed in the aforesaid legal background therefore. In the present case admittedly the policy was to become effective from 10 a.m. on February 1, 1993. The accident having occurred at 8.30 a.m. on that date, the insurance company cannot be held liable to indemnify the Award since the vehicle in question was not covered by any risk under the aforesaid policy as at the time of the accident.

9. The appeal is accordingly allowed.

10. The Award of the learned Tribunal is set aside.

11. The Judgment, however, shall not be any expression of opinion by us with regard to merits of the Award qua the owner of the vehicle in question. The amount deposited by the appellant may be refunded to it by the learned Registrar, Appellate Side.

12. Appeal allowed

