
(2003) 07 P&H CK 0096
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 457 of 1985

United India Insurance Co. Ltd.

APPELLANT

Vs

Naraini Devi (Died through LRs.)

RESPONDENT

Date of Decision : 04-07-2003

Acts Referred:

Citation : (2004) 1 CurLJ 506 : (2004) 2 LJR 403 : (2004) 2 RCR(Civil) 13

Hon'ble Judges : S.S.Saron, J

Advocate : Mr. Pardeep Bedi, Advocate. Mr. Yogesh Chaudhary, Advocate for Mr. Anil Khetarpal, Advocate., Advocates for appearing Parties

Judgement

S.S. Saron, J. (Oral)

1. This order shall dispose of three F.A.Os. i.e. FAO Nos. 457, 458 and 459 of 1985 filed by the appellantM/s United India Insurance Company Ltd. (hereinafter referred to as the Insurance Company) against the judgment and award dated 12.12.1984 passed by the learned Motor Accident Claims Tribunal, (for short the Tribunal) Faridabad.

2. The facts leading to the case are that Nathu Ram Sharma (deceased) was returning from his office at Faridabad Industries Association on motorcycle bearing registration No. HRC804 on 6.6.1981 at about 12.30 pm.. The said motorcycle was being driven by Ramesh Kumar, AW.3 son of the deceased Nathu Ram, the latter was sitting on the pillion of the vehicle. The motorcycle was coming from the side of Bata Chowk towards Neelam Chowk at Faridabad. When the motorcycle reached near Sunder Service Station, a truck bearing registration No. HRC 4855 driven by Vijender son of Sital (respondent No. 2 in the appeals) came from the rear side and without giving any signal took a turn towards its left hand side. As a result thereof the rear portion of the truck struck the motorcycle which was dragged upto a distance of 1/2 yard. Nathu Ram Sharma died some days thereafter due to the injuries received by him in the aforesaid accident. The occurrence was witnessed by Rajinder and Ram Avatar PWs. On these premises four claim petitions were filed under Section 110A of the Motor Vehicles Act,

1939 (Act for short) before the learned Tribunal at Faridabad which were consolidated vide order dated 11.3.1983 and vide common judgment and award dated 12.12.1984, three claim petitions filed by Suresh Kumar, Kumari Meena son and daughters respectively and Naraini Devi widow of the deceased Nathu Ram were allowed and they were found entitled to compensation amounting to Rs 40,000/ each from the respondents whose liability to pay the amount of compensation was joint and several. However, the claim petition filed by Ramesh Kumar Sharma son of the deceased Nathu Ram was dismissed.

3. The said awards have been assailed by the appellant Insurance Company by way of three appeals as detailed above.

4. I have heard Shri Pardeep Bedi, learned counsel appearing for the appellant and Shri Yogesh Chaudhary, learned counsel appearing for the claimants respondents and with their assistance, gone through the records of the cases.

5. Learned counsel appearing for the appellant has contended that the Insurance Company is in no manner liable to pay the compensation for the accident inasmuch as the insurance policy in terms of the cover note Ex.R.1 was effective from 7.6.1981 from 9.20 P.M. onwards to 6.6.1982. However, the cover note was inadvertently dated 6.6.1981 (9.20 P.M.) and the accident took place on 6.6.1981 at 1.00 P.M. He further contends that even if there is cutting of the date from 6.6.1981 to that of 7.6.1981, the policy in any case would be taken to have been issued at 9.20. P.M. on 6.6.1981 whereas the accident occurred at 1.00 P.M. on 6.6.1981 and therefore, the Insurance Company is in no manner liable for the payment of compensation. In support of this contention, the learned counsel for the appellant has relied upon a judgment of the Honourable Supreme Court in Oriental Insurance Co. Ltd. v. Sunita Rathi and others, (1998) Punjab Law Reporter 195 : 1998(1) RCR(Civil) 429 (SC). It is further contended that in any case, the appellant insurance company is entitled to recover the amount of compensation payable to the claimants from the owner and the driver of the offending vehicle in the light of the observations of the Honourable Supreme Court in New India Assurance Company Ltd. v. Kamla, (2001) PLR 830 : 2001(3) RCR(Civil) 716 (SC) as there is no valid policy between the parties.

6. On the other hand, learned counsel appearing for the claimants respondents contends that the policy is effective from the date it was issued i.e. 6.6.1981 and the case set up by the Insurance Company is absolutely baseless. He further contends that even if the amount is ordered to be recovered from the owner and driver that is a matter between the Insurance Company and the insured and that the claimants are only entitled for their compensation.

7. I have considered the respective contentions urged by the learned counsel for the parties. A perusal of the document Ex.R.1 shows that the cover note of the insurance policy is dated 6.6.1981 and thereafter the date of the policy i.e. 6.6.1981 has been changed to that of 7.6.1981. The effective date of commencement of the insurance policy has been changed from 6.6.1981 to

7.6.1981. The date of expiry of the policy has also been changed from 5.6.1982 to 6.6.1982. These cuttings through initialled are, however, significant in view of the fact that the accident occurred on 6.6.1981, which date has been cut and changed. After perusal of the document exhibit R1 i.e. the cover note of the policy, it is evident that there is cutting of the three dates on the said cover note. The cutting and change of dates on the cover note Ex.R1 are so patent that at two places the dates have been rewritten against the cuttings within brackets. The cover note indicates "Effective date to commencement for the purpose of the Act" and the date is indicated initially as 6.6.1981 and then by overwriting changed to 7.6.1981. After considering the entire matter I am of the view that the effective date of commencement of the policy is 6.6.1981. This is moreso for the reason that the vehicle would not have been insured on 7.6.1981 as the said vehicle met with an accident on 6.6.1981 and being in a damaged condition would not have been insured by the appellant Insurance company in a damaged condition on 7.6.1981. The case of Sunita Rathi (supra), referred to by the learned counsel for the appellant, is inapplicable to the facts of the present case. The accident therein had occurred on 10.12.1991 at 2.20 P.M. and it was thereafter on the same day at 2.55 PM that the insurance policy and the cover note were obtained by the insured, owner of the motor vehicle, involved in the accident. There was an express mention in the cover note 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.

8. In the case in hand though the time of obtaining the policy has been indicated as 9.20 PM, however, this is not indicated to be the effective time from commencement of the insurance policy for the purpose of the Act. In other words the time of commencement of the insurance policy has not been mentioned and, therefore, the policy would be effective from 6.6.1981 i.e. the date it was issued.

9. Once it is held that the policy was effective from 6.6.1981, the cutting thereafter on the cover note of the policy even though initialled would not in any manner help the appellant Insurance Company. In any case, this is a matter between insured and the appellant Insurance Company and the claimants cannot be deprived of their right to claim compensation from the Insurance Company on the basis of documents brought on record. The judgment of the Honourable Supreme Court in the case of New India Insurance Co. Ltd. v. Kamla, (supra) is a case where the driving license was found to be fake, it was held that when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance, the burden is on the insurer to pay the third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

10. In the facts and circumstances of the present case and from the material on record, it is clear that notwithstanding the cuttings of the dates on the cover note

Ex.R1, it is to be taken that the insurance policy on the basis of cover note Ex.R.1 was effective from 6.6.1981. Besides, the same was a legal and valid document and that the Insurance Company was liable to pay the amount of compensation and it would not absolve itself of its liability by mere cuttings of the dates or by stating the time of the insurance of the policy would be the effective time without the same being indicated in the relevant column relating to effective date of commencement of the insurance policy.

11. The other contention of Shri Bedi is with regard to the limit of liability of the Insurance Company to the extent of Rs. 50,000/ only and that the Insurance Company is not liable to pay anything beyond Rs. 50,000/ in terms of the insurance policy is also of no significance insofar as the claimants respondents are concerned. The Honourable Supreme Court in the case of Oriental Insurance Co. Ltd. v. Cheruvakkara Nafeessu and others, JT 2001(1) SC 341 : 2001(1) RCR(Civil) 475 (SC) in similar circumstances held that a conjoint reading of all the terms of the policy of insurance executed in the case indicate that total extent of liability of the insurance policy is Rs. 50,000/ but the company is liable to indemnify the insured against all sums including claimant's costs and expenses which insured becomes liable to pay and nothing in the policy affects the right of any person indemnified by the policy or any other person to recover an amount by virtue of the provisions of Section 96 of the Act. However, the insured is liable to repay to the company all sums paid by the company which the company would not have been liable to pay but for the condition of liability relating to third party.

12. In view of the above observations, the appellant Insurance Company is liable to pay the amount of the award of the claimant respondents although it may recover the amount payable beyond Rs. 50,000/ from the insured, in accordance with law. The observations aforesaid are only in relation to the consideration of the matter inter se between the appellant Insurance Company and the claimants. This would not in any manner affect the rights of the appellant Insurance Company to recover the amount from the insured and in case such a claim is made, the court concerned shall decide the same uninfluenced by any observation made herein.

In the light of the above, the appeals stand dismissed. Fifty per cent of the amount payable to the claimants had been stayed by this Court vide order dated 31.5.1985. The same shall now be paid to the claimants.

Appeals dismissed.