
(2005) 03 SHI CK 0014
In the High Court Of Himachal Pradesh

United India Insurance Co. Ltd.

APPELLANT

Vs

Prem Chand Gupta and Others

RESPONDENT

Date of Decision : 28-03-2005

Acts Referred:

Citation : (2005) 3 ACC 697

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—One Bus No. DL-IP-0632 met with an accident on 9th December, 1995 near Timber Trail Resort, Parwanoo on the National Highway at 4.15 p.m. The said bus hit the deceased Surinder Kumar Gupta, who was a mechanic. He unfortunately expired in the said accident. The claimants being parents of the deceased filed a claim petition before the Motor Accident Claims Tribunal, Solan. The Motor Accident Claims Tribunal, Solan vide its award dated 6th September, 1996 in MAC Case No. 20-S/2 of 1996 awarded compensation of Rs. 1,95,000/- in favour of the claimants. The Tribunal held the appellant-Insurance Company liable to pay the said amount.

2. The accident was not disputed by the respondents. The Insurance Company took up a plea that the vehicle was not insured at the time of the accident and it was in fact got insured by the owner of the vehicle after coming to know about the accident at 9 p.m. on 9.12.1995. The case set up by the Insurance Company was that the number of the bus was got painted on some other bus and the same was shown to the official(s) of the Insurance Company at the time of taking out the insurance policy. It was also contended that the cover note of the policy clearly reflected that the insurance policy would come into effect only from 10.12.1995 and the vehicle was not covered by any valid policy of insurance on 9th December, 1995.

3. The Insurance Company in the present case has challenged the findings of the learned Tribunal fastening the liability on it. Mr. Lalit Sharma, learned Counsel for the Insurance Company-appellant has contended that the finding of the Tribunal

that there is interpolation in the cover note by adding the words "no risk before 10.12.1995 (9 p.m) covered" later on is totally incorrect and if the entire cover note is read then it is clear that the policy was required to cover the risk only w.e.f. 10.12.1995.

4. The main question to be decided is whether the vehicle in question was insured at the time of the accident and covered under a valid policy of the insurance.

5. This cover note has been produced by the claimants. It was exhibited as Ext. R2. None of the parties has disputed this cover note before the learned Tribunal. The owner did not dispute the cover note nor did he produce the original cover note which should have been in his possession. The case set up by the Insurance Company is that the cover note was got prepared by the owner only after he came to know about the accident. The finding of the Tribunal that the words "no risk before 10.12.1995 covered" is an interpolation does not appear to be correct. The cover note is in the shape of a form. All the blank columns have been filled-in by hand. They are in the same handwriting and the same ink. The owner has not challenged the correctness of this cover note. Therefore, there was no material before the Tribunal to hold that there was interpolation in the cover note. This finding of the Tribunal is, therefore, incorrect and set aside. Even otherwise, if the cover note is read as a whole, it is clear that the risk was covered from 10.12.1995 only.

6. Column 4 of the cover note reads as follows:

Date of expiry of insurance

Against this column, the following entries have been made in hand:

10.12.1995 to 9.12.1996.

There is another line inscribed in hand across the cover note which reads as follows:

No risk before 10.12.1995 (9 p.m.) covered.

7. At the bottom of the cover note there is a column, i.e., date of issue. Against this column the handwritten entry is 9.12.1995 (9 p.m.)

8. The case of the Insurance Company is that the insured after coming to know about the accident got the insured policy of the vehicle, which was not insured prior thereto. The official of the Insurance Company clearly specified that the policy is valid only from 10.12.1995 and no risk prior to that date is covered.

9. The learned Tribunal has relied upon a judgment of the Apex Court in New India Assurance Co. Ltd. Vs. Ram Dayal and Others, to come to the conclusion that the Insurance Company was liable. In my opinion this judgment is not applicable to the present case. In this judgment it was held by the Apex Court that if in the policy no time is mentioned then under the provisions of the

General Clauses Act, the insurance policy will start from mid-night of the date from which risk is covered. This judgment came up for consideration in M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others, A three-Member Bench of the Apex Court held as follows:

But in view of the special contract mentioned in the insurance policy, namely, it would be operative from 4.00 p.m. on 25.10.1993 and the accident had occurred earlier thereto, the insurance coverage would not enable the claimant to seek recovery of the amount from the appellant.

10. Another three-Member Bench of the Supreme Court in New India Insurance Co. Vs. Bhagwati Devi and Others, held as follows:

.... 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, this, nothing further for us to deliberate upon.

11. This matter was again considered by the Apex Court in /. J. Kalaivani and Others Vs. K. Sivashankar and Another, wherein the Supreme Court has held as follows:

(6) Therefore, the position has become now well neigh 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 mid-night of 7.2.1996 by specific terms incorporated in the policy. The next policy has clearly indicated that it had commenced only at 10.00 a.m. on 8.2.1996. The interregnum created the void in respect of the vehicle vis-a-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.

12. In view of the clear-cut position of law laid down by the Apex Court, it is clear that the insurance policy will start only in terms of the cover note of the insurance. In this case, the cover note clearly indicates that no risk will be covered before 10.12.1995. In view of the settled law, there can be no dispute about the proposition that the Insurance Company would be liable for risk only from 10.12.1995 onwards. The accident occurred in present case on 9.12.1995 at 4.15 p.m. At that time the vehicle was not covered even under the cover note relied upon by the claimants and the insured. Therefore, the Insurance Company could not have been held liable to pay the amount of compensation to the claimant.

13. In view of the above discussion, it is not necessary to go into the question of fraud as alleged by the Insurance Company. Prima facie, it does appear that the owner of the bus, after coming to know about the accident got the vehicle insured. Probably this was done by showing some other bus to the officials of the Insurance Company. There are two sets of photographs exhibited in this case i.e., Ex. R1 to Ex. R4 and Ex. P.W. 6/A. One set is of the photographs alleged to have been taken at the time of issuance of cover note. In these photographs the number of the bus is shown on the left hand side rear portion of the bus. It is apparent that it has been freshly painted. On the record there are also photographs taken on the site ">f the accident which are exhibited as P.W. 6/A. In this the number of the bus is shown on the right side rear portion of the bus. It does appear, therefore, that the number of the bus which met with an accident was painted on some other bus and then efforts were made to get it insured.

14. However, this cover note cannot normally have been issued without some assistance to the owner from some officials of the Insurance Company. Even from these photographs, it is quite apparent that the number has been painted freshly. Why and in what circumstances, three officials of the Insurance Company went to the premises of the owner at 9 p.m. is not clear. According to the officials of the Insurance Company and the Surveyor who have appeared in the witness box as P.W. 3, P.W. 4, P.W. 5 and P.W. 7, the papers of the bus were not made available by the owner. If it is so, then they should have not issued the cover note itself. It is for the Insurance Company to hold proper inquiry into the matter, if it is so advised. Even though I have held that the Insurance Company is not liable to pay the amount since the policy was to be effective from 10.12.1995. I feel that equity and justice demand that the claimants should not suffer and should not be asked to refund the amount already received by them from the Insurance Company. The amount already paid to the claimants should not be recovered from them but the Insurance Company shall be at liberty to recover the amount paid to the claimants from the owner of the bus by filing execution proceedings before the Tribunal. The amount lying in deposit shall be refunded to the Insurance Company.

15. Needless to say that the claimants shall be entitled to recover the balance amount of compensation from the owner and driver of the vehicle respondent Nos. 3 and 4.

16. The appeal is disposed of in the aforesaid terms, with no order as to costs.