
(1997) 02 MP CK 0034
In the Madhya Pradesh High Court
Case No : C. Revision No. 67 of 1997

United India Insurance Co. Ltd.

APPELLANT

Vs

Tulsi Bai and Others

RESPONDENT

Date of Decision : 19-02-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151
Insurance Act, 1938 — Section 64VB
Motor Vehicles Act, 1988 — Section 140, 145, 147, 149

Citation : (1998) ACJ 799 : (1997) JLJ 17

Hon'ble Judges : D.P.S. Chauhan, J

Bench : Single Bench

Advocate : Ruprah, for the Appellant;

Final Decision : Dismissed

Judgement

D.P.S. Chauhan, J.—The present revision-application is directed against the order dated 18.10.1996 passed in Claim Case No. 82 of 1995, by the 7th Additional Motor Accidents Claims Tribunal, Raipur.

2. Heard the learned Counsel for the applicant.

3. The revision involves the question of law and is being accordingly disposed of finally at the motion stage with the consent of the learned Counsel for the applicant.

4. The question for consideration as formulated by the learned Counsel is as:

Whether the policy or the certificate of insurance to be operative with effect from the time when the insurance of the vehicle was obtained and whether the order in question suffers from any illegality?

Detailed facts for determination of this question are not necessary except the facts which may have peripheral relevance.

One Dhannumal met with an accident with Hero Honda No. MP-23-F/4634 as a

result whereof he died on the spot. According to the applicant, the accident took place on 9.9.1993 at 12.30 p.m. and the premium for insurance was paid the same date subsequently at 3.50 p.m.

5. The Tribunal under no fault liability clause gave an award u/s 140 of the Motor Vehicles Act, 1988, (for brevity hereinafter referred to as "the Act") on 23.1.1996 for a sum of Rs. 25,000/-. Subsequent to the passing of the award an application u/s 149(2)(b) and (6) of the Act read with Section 151 of the CPC (for brevity hereinafter referred to as "the Code") as well as a separate application u/s 151 of the Code was also made by the applicant. In this connection, learned Counsel relied on the provisions of Section 64VB of the Insurance Act, 1938, which is extracted as below:

64-VB. No risk to be assumed unless premium is received in advance.- (1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation.-Where the premium is tendered by postal money-order or cheque sent by post, the risk may be assumed on the date on which the money-order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money-order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or despatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of Sub-section (1) in respect of particular categories in insurance policies.

Learned counsel submitted that no risk could be covered by the insurer anterior to the time when the premium payable is received by the insurer. He placed reliance on the words used in Sub-section (1) of Section 64VB, "...assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received

by him". According to him, these words go to indicate that it is the time of insurance, i.e., the time when the payment is made is relevant, as the same is the time when the premium of insurance is paid and the risk is assumed by the insurance company. The submission is sans substance. In Sub-section (2) of Section 64VB it is stated that "the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer". The assumption of the risk could be by tender of the premium whether by cash or cheque or postal money-order. In the case of the postal money-order or cheque sent by post, it is the date on which the money-order is booked or the cheque is posted. The word "date" as used in Sub-section (2) of Section 64VB is relevant. The words "date" and "time" have got different connotation. The date means the "day" and the "date" commences just after midnight, i.e., 12 O'clock and one minute and, therefore, the risk in respect of the accident which had taken place on the same date though earlier to the issue of policy, stands covered. Learned counsel placed reliance on the case of United India Insurance Co. Vs. Kalavathi, . That case is not applicable in the present case. In that case time of the commencement of the policy was mentioned apart from date.

6. The question involved here is no more res integra in view of the decision of Supreme Court in New India Assurance Co. Ltd. Vs. Ram Dayal and Others, , wherein the Court placed reliance on the decision in the case of Jaddoo Singh v. Malti Devi 1983 ACJ 747 (Allahabad), and upheld that the policy taken during any part of the day becomes operative from the commencement of that day. As per Stroud's Judicial Dictionary "date" means day, so that where a cover note providing for temporary insurance of a motor car expires 15 days after date of commencement, it runs for the full 15 days after the day on which it was to commence.

7. Certificate of insurance is defined u/s 145 Clause (b), which is as extracted below:

(b) "certificate of insurance" means a certificate issued by an authorised insurer in pursuance of Sub-section (3) of Section 147 and includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be;

So the definition of "certificate of insurance" is comprehensive enough. In Section 145 Clause (d) "policy of insurance" is defined, which is as extracted below:

(d) "policy of insurance" includes "certificate of insurance".

The defence u/s 149 of the Act is available to the insurance company on the grounds mentioned in Sub-section (2) thereof in the proceedings for claim while making the award. It is not the case where award is made in the case. It is a case where awarding of compensation is under no fault liability provision u/s 140 of the Act.

8. In the circumstances, I find no error in the impugned order so to warrant interference by this Court u/s 115 of the Code of Civil Procedure. The revision-application is accordingly rejected.