

(1997) 01 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 128 of 1991

United India Insurance Company

APPELLANT

Vs

Pema Ram and Others

RESPONDENT

Date of Decision : 31-01-1997

Acts Referred:

Insurance Act, 1938 — Section 64

Motor Vehicles Act, 1988 — Section 149

Citation : (1997) 1 RLW 539 : (1997) 2 WLC 647 : (1997) 1 WLN 418

Hon'ble Judges : P.C. Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.C. Jain, J.—This appeal, u/s 110-D of the Motor Vehicles Act, 1939, is directed against the Award dated 4.2.1991 passed by the learned Motor Accidents Claims Tribunal, Balotra whereby the learned Tribunal awarded a sum of Rs. 30,000/- as compensation to. the claimant-respondent No.1 Pemaram on account of the death of his wife.

2. The relevant facts necessary for the disposal of this appeal may briefly be stated as follows: On 28.3.1988, at about 9.00AM, Mst. Manthari was proceeding towards SDOT Road and when she reached near the shop of Makaram Mali, she was fatally hit from behind by Tractor No. RNJ 7154 which was being, driven rashly and negligently by the driver Shaft Mohd, who was working under the employment of respondent No. 2 Pokarram. She was taken to the Hospital in a precarious condition and there she succumbed to her injuries.

3. Claimant Pemaram, who is the son of Mst. Manthari, filed a Claim Petition u/s 410-A of the Act and claimed compensation to the tune of Rs. 1,16,000/-. The claim petition was contested by appellant Insurance Company and respondent No. 2 Pokarram, the owner of the Tractor. The respondent No. 2 Pokarram admitted that he was the owner of the vehicle and respondents No. 3 Shafi Mohd. was the driver of the Tractor and he was in his employment at the relevant

time. However, he denied that the driver drove the above vehicle rashly and negligently. It was alleged by him that Mst. Manthari was mentally derailed on account of her illness and she herself was involved in the accident which could not have been avoided by the Driver even by using the best of his skill. The appellant Insurance Company also denied the accident and the death of Mst. Manthari for want of knowledge. The claim was specifically resisted on the ground that at the time of the accident, the above vehicle was not insured with the appellant and no valid and legal insurance policy was issued to the owner of the vehicle before the accident took place.

4. On the basis of the pleadings of the parties, the learned Tribunal framed the following Issues, which when translated into English, read as under:

1. Whether non-claimant No. 2 hit Mst. Manthari who was going near the shop of Makaram Mali on 28.3.1988 at 9.00 AM from her behind by driving the Tractor No. RNJ 7154 rashly and negligently, as a result of which, Mst. Manthari sustained head injuries to which she succumbed on the same day?

2. Whether the claimant is entitled to get compensation and if so, to what extent?

3. Whether the above vehicle which was insured with non-claimant No. 3 on 28.3.1988 at 2.15 P.M. was not duly insured at the time of the accident, which occurred on 28.3.1988 at 9.00 AM?

4. Whether non-claimant No. 1 was the real owner of the vehicle and whether non-claimant No. 2 possessed a valid driving licence at the relevant time?

5. Whether deceased Manthari herself hit the vehicle rashly and negligently, as a result of her mental imbalance and what would be its effect on the claim petition?

6. Relief.

5. The claimant examined P.W.I Dr. U.R. Salechha, P.W. 2 Mukanaram and P.W. 3 Hansraj. The non-claimants did not produce any rebuttal evidence. However, after hearing the counsel appearing for the parties and after appreciating the facts and circumstances of the Case as also the evidence on record, the learned Tribunal held that respondent No. 2 Shafi. Mohd was responsible for causing the death of Mst. Manthari by hitting the tractor from her behind, which he drove rashly and negligently. The learned Tribunal awarded a sum of Rs. 30,000/- as compensation to the claimant Pemaram. The above Award was passed against the owner of the Vehicle as well as the Insurance Company jointly and severally.

6. Aggrieved by the above Award passed by the learned Tribunal, the appellant Insurance Company has preferred this appeal.

7. I have heard the learned Counsel appearing for the parties and have carefully gone through the record of the case.

8. The learned Counsel appearing for the appellant has assailed the impugned Award of the learned Tribunal on the ground that admittedly, the accident took

place on 28.3.1988 at about 9.00 AM but the owner of the vehicle without disclosing the material fact regarding this accident obtained the insurance policy by depositing a sum of Rs. 256/- on 28.3.1988 at 2.15 PM. In this respect, he has submitted that the cover note of the policy finds mention of the date and the time of commencement of the policy. Thus, it is clear that at the time of the accident, the owner had not taken any policy as on the cover note as well as the Insurance Policy, it has been specifically mentioned that the policy would commence from 2.15 P.M. of 28.3.1988.

9. The learned Counsel has further contended that while taking policy of the vehicle, the owner did not disclose the material fact about accident and this non-disclosure of the material fact about the accident amounts to a fraud on the Insurance Company and, therefore, the appellant Insurance Company is not liable to pay the amount of compensation to the claimant.

10. The learned Counsel also submitted that on account of the non-disclosure of the material fact regarding this accident, the insurance policy obtained by the owner of the vehicle was void.

11. It was submitted by the learned Counsel appearing for the appellant that as per Section 64-V(b) of the Insurance Act, the risk of the Insurance Company commences only after the payment of the premium either in cash or by cheque. In the instant case, the premium was admitted paid by the owner of the vehicle after the accident, which occurred on 28.3.1988 at 9.15 AM and hence, the appellant is not liable to pay the compensation.

12. In support of his arguments, the learned Counsel appearing for the appellant has cited *Asma Begum and Ors. v. Nisar Ahmed and Ors.* 1990 A.C.C. (ii) 123; *United India Insurance Company Ltd. v. Gopinathan* 1990 ACC (II) 383; *United India Insurance Company v. Kalavathi and Ors.* 1992 (2) TAC-152; *Gandham Nagesh v. Pokala Nageshwara Rao and Ors.* 1990 (1) TAC-554 and *Oriental Insurance Company Limited v. Srinivasan Setty and Anr.* 1995 (1) TAC-36.

13. On the other hand, the learned Counsel appearing for the respondents has supported the impugned Award of the learned Tribunal. He has contended that the policy was taken out on 28.3.1988 and although the above policy contained a clause that the risk would commence with effect from 2.15 P.M. on 28.3.1988 but it shall be deemed to have been commenced from the mid night intervening 27.3.1988 and 28.3.1988 and hence the policy was valid and legal and it covers the risk as a result of the above accident. According to him, it was not proper or warranted by law for the appellant to have mentioned time in the cover note or the policy. The clause with regard to the commencement of the contract of policy that required to be inserted in the certificate of Insurance was "the effective date of commencement of insurance for the purpose of the Act." It was thus, not material or relevant to have mentioned the time of commencement of the policy because there is no column in the policy providing for the insertion of time of commencement of the policy. Only a date is to be specified in the policy and it is

a settled law that the date as specified in the policy would commence from the midnight. Hence, the above policy covered the risk and the learned Tribunal was right in construing the policy to have commenced from the mid night intervening 27.3.1988 and 28.3.1988.

14. The learned Counsel has strongly relied on the observations made in Oriental Insurance Company Ltd., Cochin Vs. Sivan and Others, He submitted that the basic law was laid down by their lordships of the Supreme Court in New India Assurance Co. Ltd. v. Ram Dayal and Ors. 1990 Cr. L.R. (SC)-559, where in it has been held that when a policy is taken on a particular date, its effectiveness is from the commencement of the date and, therefore, the High Court, in our opinion, was right in holding that the insurer was liable in terms of the Act to meet the liability of the owner under the award.

15. Reference was also made to Radhey Shyam v. Nasir Hussain 1991 (2) T.A.C.-188 and National Insurance Company v. Smt. Dakhi 1989 (1) RLW-224; United India Insurance Company v. Soharab Khan 1989 (1) RLW-654; United India Insurance Company Ltd. v. B.M. Shukla and Anr. 1988 (2) ACJ-1052 and United India Insurance Company Ltd. v. Tarachand 1995 (1) RLR-364.

16. The learned Counsel submitted that notwithstanding the fact that the appellant mentioned particular time in the policy, the policy shall be presumed to have commenced from the previous mid night. It was thus operative and enforceable when the accident occurred. Regarding the non-disclosure of the material fact that the accident occurred before taking out the policy, the learned Counsel has submitted that it was within the knowledge of the owner and, therefore, the owner of the vehicle committed no fraud or misrepresentation in obtaining the said policy. In this respect, he has placed reliance on Tarachand v. Chokali 1989 ACJ-802.

17. I have very carefully considered the rival contentions raised at the bar. I have also carefully gone through the principles laid down in the cases cited by both the parties.

18. First, I may refer to the relevant columns of the Risk Note and the Policy issued in the case. The cover note was issued on. 28.3.1988 at 2.15PM. Columns No. 3 and 4 of the Cover Note are as follows:

3. Effective date of commencement of Insurance for the purpose of the Act.

4. Date of Expiry of Insurance.

19. The certificate of Insurance contains the following relevant columns:

1. Name and Address of the Insured"

2. Effective Date of Commencement

3. Date of Expiry of Insurance.

20. It is, thus, clear that the cover note was issued only on 28.3.1988 at 2.15

P.M. and according to the cover note, time and date of commencement of the insurance policy is 2.15 P.M. on 28.3.1988.

21. Now, the most important question that arises for consideration is whether the policy was effective from the previous mid night or from 2.15 P.M. on 28.3.1988.

22. The cases cited by both the parties fall in two categories. First category comprises of the cases in which only date of commencement has been given but no specific time has been stated with regard to the commencement of the policy. In second category of cases, time as well as date of commencement of the insurance policy has been specified. The latest case on the point is *New India Assurance Co. v. Ram dayal* (supra). In that case, the facts were that the vehicle was insured earlier upto 31.8.1984 and the same was available to be renewed but instead of obtaining renewal, a fresh insurance was taken from 28.9.1984, which is the date of the accident. It was held that when a policy is taken on a particular date its effectiveness is from the commencement of the date stated in the policy. It may be stated here that no time was mentioned in the policy.

23. Similarly in *Radheyshyam's* case (supra), the policy issued was effective from 27.1.1986 with no reference of time. Relying on *New India Assurance Co. v. Ram dayal's* case (supra), the Madhya Pradesh High Court held that the Insurance Company cannot escape from its liability on the ground that the policy has been obtained after the accident.

24. In *National Insurance Co. v. Smt. Dakhi's* case (supra), this Court referred to the cover note and the Insurance policy both and in both the documents, the effective date of commencement of insurance for the purpose of the Act was stated "25.9.75" and the date of expiry "24.9.1976". In those facts, it was observed that the Insurance Company was liable to pay compensation as the Insurance policy was effective from Zero hours notwithstanding the fact that the policy was obtained on the date of the accident occurred.

25. A somewhat similar view has also been taken in *United India Insurance Co. v. Sorabkhan* (supra) and *United Insurance Co. v. B.M. Shukla* (supra). All these cases fall under the first category and in these cases, the relevant insurance policy contained only the date of commencement and no reference has been made with regard to the commencement of the time.

26. Now, I would like to refer to the second category of cases. In *Oriental Insurance Company Ltd., Cochin Vs. Sivan and Others*, while interpreting the provisions of Rr. 94, and 95(4) of the Motor Vehicles (Third party Insurance) Rules, 1946, a Division Bench of the Kerala High Court considered the question as to the effectiveness of the policy in a case where the date as well as time is mentioned. The Kerala High Court made reference to certain entries of the Insurance Policy and observed that the above certificate does not contain any provision for mentioning the time of commencement of the policy and hence policy containing a clause that risk under it, would commence with effect from a

specified time on a date, cannot be validly issued. It was further observed as under:

No clause that risk under the policy would commence with effect from a specified time on a date can be inserted in the certificate of Insurance, the insurer is obliged to issue under the Motor Vehicles Act read with the Third Party Insurance Rules. The clause, in regard to the commencement of the contract of Insurance that required to be inserted in the certificate of insurance, shall be this, "Effective date of commencement of insurance for the purpose of the Act." That means the insurer's liability for the purpose of the Motor Vehicles Act would commence from the date of commencement of insurance. A clause in the certificate of insurance inconsistent with the above requirement therefore will be of no consequence. Therefore, no insurance policy, within the meaning of the Motor Vehicles Act, containing a clause that the risk under the policy would commence with effect from a specified time on a date can validly be issued. Such a policy would thus become effective from the date of commencement of the policy. The words "date of commencement" are synonymous with "day of commencement. In this connection one should take note of the definition of the word "day" recognised by courts namely "The whole or any part of period of 24 hours from midnight to midnight

27. In a latest case, *United India Insurance Company v. Tarachand* (supra), this Court had occasion to consider this point. It was contended by the learned Counsel for the appellant that the vehicle was not insured at the time of the actual accident. The cover note showed that the period was commencing from 1.00 P.M. of 31.3.92 and actual accident took place at about 12.30 P.M. on that day. It was held that this point was not argued before the learned Tribunal. The learned Counsel then tried to rely on the copy of the cover note but since the original was not produced before the Tribunal, this Court declined to look into the copy for appreciating or adjudicating the above point. It was also observed that the copy of the cover note showed that the period was commencing from 1.00 P.M. of 31.3.1992, and was to end on 30.3.1993 at mid night hours. It was, therefore, held that the policy was taken for the year and the Insurance Company cannot plead that the insurance policy starts from 1.00 P.M. of 31.3.1992.

28. In *Asma Begum v. Nisar Ahmed* (supra), the Kerala High Court took the view that since the insurance policy clearly stated that it was effective from 11.00 P.M. of 17.11.84 and the accident took place on the same day at 10.05 AM. The Insurance Company was not liable. In this case, the provisions of Section 64V(b) of the Insurance Act were also considered and it was held that according to the above provision, the risk of insurance company commences only on the payment of the premium either in cash or by cheque.

29. In *United India Insurance Co v. Gopnahan* (supra), Kerala High Court considered this point. In that case, it was urged that since the insurance policy was issued on 26.12.83 at 12.30 PM, the liability of the Insurance Company can

only be held to be commenced from the above stated time. Another argument raised was about the alleged non-disclosure of the material fact of the accident at the time of taking the policy. Learned Counsel, for the appellant further pleaded reconsideration of the earlier case decided by Kerala High Court in *Oriental Insurance Co Ltd. v. Sivan* on the ground that the above fact which only prescribes the date of commencement was only illustrative and much stress on the liberal meaning of the word "day" need not be given which only goes contrary to the very concept of contractual obligations. However, the point of commencement from specified time was not decided because it was held that the owner before taking the above policy was guilty of non-disclosure of the accident, which consisted a material fact and hence the insurance policy vitiated.

30. In another case, i.e. *United India Insurance Company v. Kalawathi*, Kerala High Court held that when the policy was issued on 7.4.84 at 9.30 AM, the Insurance Company was not liable as the accident occurred at 6.30 AM. in *Gangdham's case (supra)*, it was held that the non-disclosure of the material fact of accident amounts to fraud on the Insurance Company. It was, therefore, held that the Insurance Company was not liable to pay the compensation amount.

31. When a policy is issued to the owner of the vehicle, there is a contractual obligations between the two parties, it is true that the cover note does not contain any column regarding the time of commencement of the insurance policy. However, If the Insurance Company mentions the time of issuing the cover note of the policy, I am of considered opinion that it is not in violation of any provision of the Motor Vehicles Act or the Insurance Act because it is a matter of contract and contracting parties can agree for the commencement of the policy from a specified time of a particular date. It is a matter of common knowledge that unscrupulous vehicle owners, in order to ward off their liability arising out of the accident try to obtain the insurance policy after the occurrence of the accident and If the policy only states the date, the liability of the insurer commences from previous mid night and thereby such unscrupulous owners of the vehicles cheat the Insurance Company by obtaining insurance policy even after the accident and will succeed in repudiating the liability on the basis of such a policy. The Insurance Company faced with this situation, took precautions to issue the policies by specifying the time and date when the policy is issued on a particular date in order to frustrate the owners of the vehicles who rushed for insurance soon after the accident is occurred and takes policies so as to cover the risk arising out of the, accident which had taken place earlier. Thus, the insertion of time of commencement of the policy on a particular date is perfectly in accordance with law and it does not contravene any provisions either of the Motor Vehicles Act or the Insurance Act.

32. Thus, with due respect, I find myself unable to subscribe to the view taken by the Kerala High Court in *Oriental Insurance Company v. Sivan (supra)*. It may be stated here that while deciding a later case i.e. *Union of India v. Gopinathan (supra)*, the Kerala High Court was inclined to consider the argument advanced

by the learned Counsel for the appellant for reconsideration of the view expressed in "Oriental Insurance Company v. Sivan (Supra) but since the appeal was disposed of on another point, no occasion arose for reconsideration of Oriental Insurance Company v. Sivan case (supra).

33. It may be stated that the Hon''ble Supreme Court in Nation Insurance Co. v. Ram dayal's case (supra) had no occasion to consider the validity of the clause which mentioned the time of commencement in the Insurance Policy. In that case, the Insurance Policy did not contain the time of commencement of the policy. I have referred to the cases in which no time was specified and there is absolutely no doubt, that in such cases where only date of commencement has been given, It was interpreted that the policy will commence from previous mid night. The difficulty only arises when the time is specified. The cases cited by the learned Counsel appearing for the appellant support the view that if the time is specified in a policy, the policy shall be deemed to be commenced from the time specified in the policy and this clause is not contrary to the law and must be enforced.

34. This Court in National Insurance Company v. Smt. Dakhi's case (supra) and United Insurance Company v. Sorabnkhani (supra) had no occasion to consider this point because in those cases the policy did not contain the time of commencement of the policy. In United India Insurance v. Tarachand's Case (supra), The point regarding commencement of the policy from a specified time was not argued before the tribunal and the copy of the cover note was also not looked into because the original cover note was not filed.

35. I am, therefore, disposed to hold that where the insurer specifies the time alongwith the date of commencement of the policy, the insertion of the particular time as regards the commencement of the policy can be enforced being an agreement between the parties and no much stress on the literal meaning of the word "day" need be given because the form of insurance policy as prescribed in mere illustrative. I, therefore, hold that in the instant case, the insurance policy was to commence from 28.3.1988 at 2.15 PM.

36. Now, I would consider the argument regarding non-disclosure of the material fact. There is no dispute that the above policy was taken by the bus owner after the accident and it is further not in dispute that at the time of obtaining the insurance policy, the owner did not disclose the fact that the vehicle was not involved in any accident. This point was also considered by this Court in Tarachand's case (supra), wherein it was held that the accident occurred at 5.00 PM. The Insurance Agent who was examined in the Court to prove the fact that the cover note was issued by him at 5.00 P.M. was not believed by the Court and as such, it was held that there was no material on record to infer that the owner knew at the time of taking the policy that the accident of the vehicle had already been taken place. In the instant case, the owner did not produce any evidence that he did not know about the accident when he obtained the insurance policy. Thus, it is clear that at the time of taking insurance policy, the owner did not

disclose the material fact of the accident involving the vehicle in question. Section 149 of the Motor Vehicles Act deals with liability of the insurer vis a vis a person injured in respect of third party risks. SubS.(2) of Section 149 of the Act enables the insurer to defend the action on any of the ground specified in this subsection. One of the ground mentioned in Sub-section (2) of Section 149 of the Act is "that the policy is void on the ground that it was obtained by non-disclosure of material fact or by a representation of fact which was false in some material particulars." Thus, the respondent is guilty of suppressing the material fact at the time of obtaining the insurance policy and by virtue of Section 149(2) of the Act, the insurance company is entitled to defend its action on this ground.

37. Lastly it was argued that the risk of the insurance company commences only on the payment of premium either in case or by cheque In the Instant case, premium was paid on 28.3.1988 at 2.15 PM. Thus, as per the provisions of Section 64(V)(b) of the Motor Vehicle Act, since the premium was paid on 28.3.1988 at 2.15 PM, the liability of the insurance company commenced from 2.15 P.M. on 28.3.1988.

38. For the above reasons, I allow this appeal, set aside the impugned Award of the learned Tribunal dated 4.2.1991.

39. The parties are left to bear their own costs.