

(2009) 02 J&K CK 0042
In the Jammu And Kashmir High Court

Vivek Sharma and Others

APPELLANT

Vs

Som Dutt and Others

RESPONDENT

Date of Decision : 21-02-2009

Acts Referred:

Citation : AIR 2010 J&K 40 : (2010) 1 JKJ 86

Hon'ble Judges : Nirmal Singh, J; J.P. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Order dated 2nd of June 06, passed by a learned single Judge of this Court whereby the Civil 1st Miscellaneous Appeal (CIMA) No. 198/03,

filed by the appellants has been dismissed, is the subject-matter of challenge in the present Letters Patent Appeal.

2. The facts in brief for the disposal of this appeal are that one Shiv Kumar Sharma, while travelling in a matador which met with an accident on 5th

of Aug' 94, suffered serious injuries. His left foot got completely crushed. A claim petition came to be filed by him before the Motor Accidents

Claims Tribunal Jammu (hereinafter referred to as the Tribunal). The learned Tribunal vide order dated 22nd of Feb '02, passed an award of Rs.

3,23,000/- minus interim relief, along with interest @ 9% per annum in favour of the claimant. The learned Tribunal, however, was of the view that

as the offending vehicle was not insured with the insurance company at the time of accident, the award would be satisfied by the owner and driver

of the offending vehicle.

3. The aforesaid order passed by the learned Tribunal was challenged by the appellants before the learned 1st Appellate Court through the

medium of CIMA 198/03, referred to above. After hearing learned Counsel for the parties and going through the record, the learned 1st Appellate

Court while deciding the appeal vide order impugned was of the view that in the absence of a valid insurance contract, no liability can be fastened

upon the Insurance Company to pay the awarded amount of compensation. It is against the aforementioned order, as indicated above, the present

appeal has been preferred by the appellants who are the legal heirs of claimant-Shiv Kumar Sharma.

4. The only grievance of the appellants in the present appeal is that the learned Tribunal as also the 1st Appellate Court has committed a legal error

in directing the owner and driver of the offending vehicle to satisfy the award and absolving the Insurance Company of the liability. It is stated that

the owner of the vehicle was having a valid policy on the date of accident which had come in operation from previous mid-night. It is stated that as

the accident took place at 7.30 a.m. on 5th of Aug. '94, i.e. the date on which the policy was taken the same would be deemed to be operative

from previous mid night, and therefore, there being a valid contract of insurance in existence, the insurer should be held liable to indemnify the

owner to satisfy the claim.

5. We have given our thoughtful consideration to the submissions made by the counsel for the appellant and perused the record.

6. The only question which is required to be considered in this appeal is as to whether at the time of accident there existed a valid contract between

the insured and the insurer.

7. The accident in the present case, as noticed above, took place at 7.30 a.m. on 5th of Aug '94. It was on this very date, the vehicle was got

insured. A perusal of the Certificate of Insurance placed on record file of the Tribunal by the claimant as also the policy produced by the counsel

for respondent-Insurance Company shows that the policy in question was to become operative from 10 a.m. on the aforementioned date. The date

of expiry of the insurance has been shown as ""midnight of 4-8-95."" Therefore, specific mention of the time as 10 a.m. on the policy would lead to

the only conclusion that the same became operative from 10 a.m. on 5th of Aug. '94. Had there been no mention of the time on the policy in

question, an inference could have easily been drawn that the insurance became

effective from the previous midnight, and therefore, the accident

having taken place on the date of policy, the Insurance Company becomes liable, which as indicated above, is not the position in the present case.

Thus, it can safely be said that: at the time of accident, there was no valid contract of insurance between the insured and the Insurance Company.

Under such circumstances, the Insurance Company cannot be made liable to satisfy the amount of compensation.

8. A three member Bench of the Apex Court in the case of M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others, has held

that when there is a special contract mentioning in the policy the time when it was bought, it would be operative from that time and not fictionally

from the previous midnight. It was observed that under these circumstances, the appellant Insurance Company cannot be made liable. What was

observed in para 3 of the judgment in the above case is being reproduced below:

3. This Court in New India Assurance Co. Ltd. v. Ram Dayal 1990 ACJ 546 (SC), 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 25-10-1983 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.

9. Similar view has been taken in the case reported as Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, wherein the accident had taken

place at 2.20 p.m. on 10th of Dec. '91. The insured in the above case obtained the insurance policy on the same day at 2.55 p.m. i.e. after the

accident had taken place which is case herein also. The Apex Court while dealing with the question as to whether Insurance Company can be

made liable to satisfy the amount of compensation, held that the liability of the insurer arises only when the liability of the insured has been upheld

for the purpose of indemnifying the insured under the contract of insurance and in view of the undisputed fact that the accident occurred at 2.20

p.m. and the cover note was obtained only thereafter at 2.55 p.m. 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 p.m. the Insurance Company cannot be made liable to satisfy the amount of compensation.

10. In *New India Insurance Co. Vs. Bhagwati Devi and Others*, again a three member Bench, of the Apex Court relying upon the judgment passed in *Jikubhai's case (supra)*, held as under:

...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.

11. The aforesaid view was again reiterated in the case of *New India Assurance Co. Ltd Vs. Smt. Sita Bai and Ors*, and *National Insurance Company Ltd. Vs. Mrs. Chinto Devi and Others*, .

12. In the present case also, as noticed above, the accident took place on 5th of Aug. '94 at 7.30 a.m. At the time of accident, the insured was not

having any contract of insurance with the Insurance Company. The contract came into operation only at 10 a.m. on the aforementioned date i.e.

after two and a half hours of the accident, which time, as indicated above, has been specifically mentioned in the Certificate of Insurance,

Therefore, relying upon the principle as laid down by the Apex Court in the aforementioned cases, as indicated above, it can safely be concluded

that the insurance policy in the present case became operative w.e.f. 10 a.m. on 5th of Aug. '94, and cannot relate back to the time of accident

which took place on the same date at 7.30 a.m. Thus, there having been no valid contract between the insured and the insurer at the time of

accident, the Insurance Company cannot be made liable to satisfy the awarded amount.

13. For the reasons mentioned above, the appeal is found to be without merit and is dismissed.