
(2006) 06 J&K CK 0013
In the Jammu And Kashmir High Court
Case No : CIMA No. 198 Of 2003

Vivek Sharma & ors

APPELLANT

Vs

Som Dutt and ors

RESPONDENT

Date of Decision : 02-06-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 173

Citation : (2006) 3 JKJ 58 : (2006) KashLJ 124

Hon'ble Judges : Y.P.Nargotra, J

Bench : Single Bench

Advocate : Vivek Sharma, D.S.Chauhan, Advocates appearing for the Parties

Judgement

Y.P. Nargotra, J.—Motor Accidents Claims Tribunal, Jammu vide its common order dated 22.2.2002 decided four claim petitions including

File No. 212/claims. The appellants, who are the legal heirs of Shiv Kumar Sharma, claimant of claim petition No. 212/claims, are in appeal.

2. The brief facts of the case are that on 5.8.1994 the claimant, Shiv Kumar Sharma, in the above referred claim petition, filed under Section 166

of Motor Vehicle Act, was travelling in a Matador No. JK02/7235 being driven by respondent No. 1. The said matador turned turtle around

7/7:15 AM, which resulted into serious injuries to its passengers. The claimant's left foot was completely crushed. He claimed compensation from

the driver/respondent No. 1, owner/respondent No. 2 and the insurance company/respondent No. 3. The learned Tribunal after holding that the

accident occurred due to the rash and negligent driving of respondent No. 1, found the claimant entitled to claim compensation of Rs. 3.23.000/

minus the interim relief from the driver/respondent No. 1 and owner/respondent No. 2 alone, and absolved the Insurance Company from its

liability to indemnify on the ground that there was no insurance policy in existence at the time of accident.

3. Being aggrieved of the order of learned Tribunal, so far it absolved the Insurance Company of its liability to indemnify the claimant, who died

subsequently, the appellants/legal heirs of claimant have filed this appeal.

4. I have heard learned counsel for appellants and the Insurance Company and have also perused the record.

5. The owner and driver of the offending vehicle are not contesting the appeal. The exhibit DA is the renewed insurance policy in regard to the

insurance of offending vehicle. It states ""effective date of commencement of Insurance for the purposes of the Act from 10 AM O'clock on (Date)

5.8.94; Date of expiry of the Insurance. Midnight of (Date) 4.8.95."" Admittedly the accident took place at 7/7:15 AM on 5.8.94. Therefore, the

question arising for consideration is from which point of time the renewed insurance policy would have effect under law.

6. The contention of learned counsel for appellants is that since the previous policy was renewed, therefore, the present policy would be deemed

to have become operative from the time the previous policy expired and, thus, there shall be no time gap between the two policies. According to

him, the dictionary meaning of renewal is ""the act of renewing or reviving. A revival or rehabilitation of an expiring subject; that which is made a

new or reestablished. The substitution of a new right or obligation for another of the same nature. A change of something old to something new. To

grant or obtain extension of; to continue in force for a fresh period, as commonly used with reference to notes and bonds importing a

postponement of maturity of obligations dealt.

7. Learned counsel for appellants further relies upon ""United India Insurance Company Ltd. vs. Master Bunt, AIR 1995 J&K 72. In that case the

accident took place on 27.12.1990. The vehicle was insured and it was effective upto 20.12.1990. The policy was renewed on 27.12.1990 at 4

PM. The objection before the Tribunal by the Insurance Company was that the accident took place at around 10 AM on 27.12.1990 and the

policy was not effective at that point of time and, as such, the Company was not liable to pay compensation. This Court held that the Insurance

Company was liable on the reasoning that it was Company's duty and job to

ascertain whether the vehicle was involved in any accident from

20.12.1990 to 27.12.1990, for which period the vehicle in question was not insured. Earlier also the vehicle had been insured with the same

Insurance Company and it very well knew that for a period of 6/7 days the vehicle was not insured. Before giving the insurance cover to the owner

of vehicle, it was incumbent upon the Company to first ascertain whether the vehicle was involved in any accident during the intervening period,

particularly on the date when the new insurance policy was taken by the insured. The Company could not take defence that since the matter about

the accident was not disclosed to it by the insured, it was not liable to pay the compensation.

8. The contention of learned counsel for respondent Insurance Company is that since the insurance policy became effective from 10 AM on

5.8.1994 and the accident had taken place around 7/7:15 AM, there was no insurance contract in existence and, therefore, the insurance company

is not liable to pay compensation.

9. In *New India Assurance Co. Ltd. vs. Ram Dayal*, 1990 ACJ 545 (SC), the Supreme Court proceeded on the legal fiction that when a policy is

taken on a particular date, its effectiveness would start from the commencement of that date which is from the previous midnight. Later, in *National*

Insurance Co. Ltd. vs. Jikubhai Nathuji Dabhi, 1997 ACJ 351, on the facts that the contract of renewal of the policy had come into force on

25.10.1983 at 4 PM, the accident had occurred at 11:14 AM, the Supreme Court while considering whether the accident had occurred during the

operation of the insurance policy, held as follows:

This court in *New India Assurance Co. Ltd. vs. Ram Dayal*, 1990 ACJ 545 (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.

10. Again in *New India Assurance Co. Ltd. vs. Sita Bai*, 2000 ACJ 40, on the facts that the accident had taken place at 10:00 AM on 16.4.1987,

the offending vehicle stood insured with the Insurance Company for a period 16.4.1987 to 15.4.1988; the proposal for insuring the vehicle in

question had been made by the owner of the vehicle on 16.4.1987 at 21:00 hours and the cover note was issued by the Insurance Company at

21:00 hours on 16.4.1987. The question arose whether the Insurance Company was liable. It was held as follows:

6. The correctness and applicability of the judgment in Ram Dayal's case, 1990 ACJ 545 (SC), came up for consideration before this court

subsequently in a number of cases. In New India Assurance Co. Ltd. vs. Bhagwati Devi, 1999 ACJ 534 (SC), a threeJudge Bench of this court

relied upon the view taken in National Insurance Co. Ltd. vs. Jikubhai Nathuji Dabhi, 1997 ACJ 351 (SC), wherein it had been held that if there is

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

previous midnight as was the case in Ram Dayal (supra) where no time from which the insurance policy was to become effective had been

mentioned. It was held that should there be no contract to the contrary, an insurance policy becomes operative from the previous midnight, when

bought during the day following, but, in cases where there is a mention of the specific time for the purchase of the policy, then a special contract

comes into being and the policy becomes effective from the time mentioned in the cover note of the policy itself. The judgment in Jikubhat's case

(supra) has been subsequently followed in Oriental Insurance Co. Ltd. vs. SunitaRathi, 1998 ACJ 121 (SC), by a threeJudge Bench of this court

also.

7. In the fact situation of this case since the commencement of the policy at 21:00 hours on 16.4.1987 was after the accident which had occurred

at 10:00 hours on 16.4.1987, the Tribunal as well as the High Court were wrong in burdening the appellant insurance company with any liability

under section 92A of the Motor Vehicles Act by applying the law laid down in Ram Dayal's case, 1990 ACJ 545 (SC), which, on facts, had no

application to this case.

11. In view of the law laid down by the Supreme Court in the above quoted judgments, in the fact situation of present case, it cannot be held that

at the time of accident, which occurred at 7/7:15 AM on 5.8.1994, any contract

of insurance was in existence as the renewal of the policy became effective at 10 AM on 5.8.1994.

12. The next contention of learned counsel for appellants is that the insurance policy has not been duly proved by the Insurance Company in

evidence. In the objections filed to the claim petition, the Insurance Company had admitted the insurance of vehicle. But, in absence of the proof of

insurance policy, special contract cannot be invoked by the Insurance Company for denying its liability to indemnify. Learned counsel for

appellants submits that the original policy was available with the owner, but that had not been summoned. It is only on the basis of available record

with the Insurance Company, the copy of insurance policy was tendered in evidence and proved, which could not be done under law, as the

document can only be proved by primary evidence and, if the same is not available, then by leading secondary evidence with the permission of the

court.

13. In the present case, the respondent Insurance Company had examined RW Tilak Raj Sharma, Assistant Divisional Manager, who had brought

the record of policy, and on the basis of that record stated that the copy of policy is correct. He also stated that the original policy was given to the

insurer, Sh. Ramesh Chander through Sh. Baldev Raj Nikka Ram, resident of Galbadey Chak. On the aforesaid statement of RW Tilak Raj

Sharma, the learned Tribunal exhibited the copy of policy, placed on the record, as exhibit DA. The appellants did not raise any objection to the

exhibiting of the said policy. On being cross examined by the appellants, RW Tilak Raj Sharma stated that in the copy of policy, EX DA, there

was over writing on the date of issue and he cannot read the date. He also admitted that the said copy had been prepared by one Harbans Singh

and not by him. He also admitted that on the copy of policy there was some cutting on the number of vehicle, but in the carbon copy of the same

there was no such cutting. Learned counsel for appellants submits that since RW Tilak Raj had not prepared the copy produced on the record,

therefore, he was not competent to prove the same. It is his further contention that in view of the statement made by RW Tilak Raj, the

genuineness of the copy of policy placed on record appears to be doubtful and, therefore, cannot be relied upon for proving a special contract

between the insurer and the insured.

14. There is no merit in the contention. The insurance policy, which is issued to a party, is based upon the record prepared by the Insurance

Company. The copy of insurance policy, which has been placed on the record, has been duly proved on the basis of its comparison with the

original record of Insurance Company. There is nothing in the cross-examination of the witness for showing that it was not as per the record, which

was produced before the Court by the witness. Therefore, no objection can be urged validly by the appellants towards the proof of the said policy.

This apart, the appellants had allowed the copy of policy placed on record to be exhibited and thereby being introduced in evidence in the case,

therefore, they are not entitled to raise any objection to its proof or its admissibility in evidence. Since the Insurance Policy has been duly proved,

which contains a special contract of making it effective from 10:00 AM, it cannot by any reasoning be held that at the time of accident which

occurred at 7/7:15 AM on 5.8.1994, the contract of insurance was effective. The learned Tribunal in these circumstances appears to be perfectly

justified in absolving the Insurance Company from its liability to pay the compensation.

15. Learned counsel for appellants lastly contends that the provisions of Motor Vehicle Act are beneficial legislation and even if the Insurance

Policy is held to be void, the Insurance Company can be made to pay the compensation to the appellants and recover the same from the

owner/insured. In support of his this contention, he relies upon National Insurance Co. Ltd. vs. Challa Bharathamma, 2004 AIR SCW 5301. The

contention of learned counsel for appellants in this behalf is without any force. The liability of an insurer to pay compensation can arise only if there

is a valid insurance contract. In the absence of such a contract no liability can be fastened upon the Insurance Company to pay the compensation.

Reliance placed by the learned counsel for appellants on Challa's case is misplaced, as in that case the insurance policy was not void, only the

insured had violated the terms of the policy by allowing the insured vehicle to be driven by a person who was not holding a valid licence. It is only

on that fact situation their Lordships of the Supreme Court while considering the beneficial object of the Act held the Insurance Company liable to

pay compensation to the claimant and at the same time making it entitled to recover the same amount from the owner.

16. In view of the above, there is no merit in the appeal, it is as such dismissed.

17. Record of the Tribunal along with the copy of this judgment be sent back.