(2008) 04 P&H CK 0066

High Court Of Punjab And Haryana At Chandigarh

Case No: None

The New India Assurance Company Ltd.		APPELLANT
	Vs	
Krishna Devi and Others		RESPONDENT

Date of Decision: April 7, 2008

Citation: (2009) ACJ 54 : (2008) 151 PLR 606 : (2008) 4 RCR(Civil) 652

Hon'ble Judges: Ajay Kumar Mittal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Ajay Kumar Mittal, J.

This order will dispose of three appeals, F.A.O. Nos. 1351, 1352 and 1353 of 1991, filed by the appellant-Insurance Company. These appeals have arisen out of a single award dated 8.6.1991, passed by the Motor Accident Claims Tribunal, Sonepat rendered in three different claim petitions in respect of the same accident.

2. The claimants filed three separate claim petitions wherein different amounts of compensation were sought. The petitions were filed on the strength of the averments that on 29.4.1987, at 3.15 PM three persons, namely, Bhim Singh, Raj Singh and Bajinder Singh were standing on the katcha portion of the approach road leading to village Harsana Kalan from Sonepat-Rohtak road.-Raj Singh and Bajinder Singh were having their respective bicycles. Meanwhile, a truck baring registration No. HRS-264, owned by Krishan Lal and driven by Karambir alias Dharambir came from the side of Harsana Kalan and struck against the said three persons. The truck dragged the trio along with the cycles upto some distance. Raj Singh and Bhim Singh died at the spot whereas Bajinder Singh received injuries. This is why, three petitions came to be filed, two by the dependents of the two deceased and the third by the injured himself. It was further pleaded that the accident was witnessed by Ishwar Singh, Randhir Singh and Partap Singh, residents of village Harsana Kalan who at that time had been coming on their tractor from Sonepat side.

3. F.A.O. No. 1351 of 1991 has arisen out of Claim petition filed by Krishna Devi and others in respect of the death of Bhim Singh whereas F.A.O. No. 1352 of 1991 has arisen out of claim petition filed by Smt. Meshi and others in respect of the death of Raj Singh. The third appeal, F.A.O. No. 1353 of 1991, has been preferred by the Insurance Company in respect of the award passed in the claim petition filed by Bajinder Singh injured.

4. The claim petitions were contested by the owner of the offending truck and the appellant-Insurance Company only. The owner of the truck, i.e. respondent No. 7 herein, while denying the allegations made in the claim petition pleaded that the truck in question was not involved in any accident nor was it being driven rashly and negligently by its driver. The appellant-Insurance Company, however, took a specific stand in the written statement filed to the claim petitions that the truck in question was not insured with it at the time of the accident and as such there was no privity of contract between the appellant-Insurance Company and the owner of the truck. It was further specifically pleaded that the policy of the truck was purchased at 5.30 PM on 29.4.1987 whereas the accident in question had already taken place at 3.15 PM during the same day.

5. Since there are the appeals at the instance of the Insurance Company and the only controversy involved therein is, whether the policy of insurance of the offending truck was purchased after the accident in question, it is not necessary to go into the questions, as to what was the income of the deceased, to what extent was the dependency of the claimants on the deceased or what loss had been caused to the injured due to sufferance of the injuries in the accident. Suffice it to notice, the claimants in the case of each of the two deceased, were awarded compensation to the tune of Rs. 96,000/- and the injured was awarded a sum of Rs. 18,000/- as compensation for the injuries suffered, vide award dated 8.6.1991.

6. I have heard learned Counsel for the parties and have gone through the record with their assistance.

7. The bone of contention between the parties in this appeal as noticed above is, whether no insurance policy in respect of the offending truck was in existence at the time of accident in question. The onus to prove the question was on the appellant-insurance company.

8. The Tribunal on the basis of the evidence on record concluded that the accident in this case had taken place at 3.15 PM on 29.4.1987 whereas the insurance policy in respect of the offending truck was taken at 5.30 PM on the same date. There is no dispute about this aspect in this Court as well. The only clinching factor herein is as to from which time the policy came to be effective.

9. The contention of counsel appearing for the appellant, Mr. L.M. Suri, Senior Advocate, is that the insurance policy was taken after the accident had taken place and it was not at all in existence at the time of the accident in question. The counsel,

in order to support his submission, relied upon a decision of the Supreme Court in National Insurance Co. Ltd. Vs. Smt. Sobina Iakai and Others, .

10. On consideration of the matter, I find that there is no dispute between the parties about the factual position, noticed above, with regard to the time of its commencement mentioned in the insurance policy, Exhibit R-1, which stood proved on record in accordance with law, and also the time when the accident took place. Once that is so, the question, posed above, is rendered purely of law and not the disputed one on facts. The question that calls for appropriate answer in this appeal has drawn the attention of the Apex Court in many matters in the past as well. The one being the case of New India Assurance Co. Ltd. Vs. Ram Dayal and Others, , wherein the Apex Court held that in absence of any specific time mentioned in the policy the contract would be operative from the mid-night of the day by operations of the provisions of the General Clauses Act but in view of the special contract mentioned in the insurance policy, the effectiveness of the policy would start from the time and date indicated in the policy.

11. The aforesaid view was re-iterated thereafter in other enunciations by the Supreme Court, namely, National Insurance Company v. Smt. Jikhubhai Nathuji Dabhi (1997)116 P.L.R. 702 : (1997)2 S.C.C. 66; Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, and Namdi Francis Nwazor Vs. Union of India (UOI) and Another, .

12. Not only this, the Apex Court in J. Kalaivani and Others Vs. K. Sivashankar and Another, , after experiencing piquant situation like the one under consideration, enlightened the courts subordinate to it, on the ardent issue, in the following words:

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.

13. In the case of Smt. Sobina Lakai and Ors. (supra) cited by the learned Counsel appearing for the appellant, the Supreme Court after visualizing the ratio of law laid down in the above judgments, culled out the following proposition of law:

In order to curb this widespread mischief of getting insurance policies after the accidents, it is absolutely imperative to clearly hold that the effectiveness of the insurance policy would start from the time and date specifically incorporated in the policy and not from an earlier point of time.

14. In the wake of the aforesaid clear position, there does not remain any doubt that in the present case also, the insurance policy Exhibit R-1, possessed by the owner of the truck in question would be effective from the time mentioned therein and not from an earlier point of time. As noticed already, and it has also been stated by none else but by an eye witness of the accident, Randhir Singh PW-3, that the accident in the present case had taken place at or about 3.30 or 3.45 PM on 29.4.1987 whereas

the policy in question was undisputedly taken at 5.30 PM i.e. just after two hours of the accident. The effectiveness of the said policy would, therefore, inevitably starts from 5.30 PM on 29.4.1987 and not from an earlier point of time. Once it is so held, the finding returned by the Tribunal on this question is reversed accordingly. As a natural corollary of the above, it has also to be held that there was no insurance policy in existence in respect of the truck in question, at the time of the accident. The appellant-Insurance company, thus, could not have been mulcted with the liability to indemnify the insured.

15. In view of the above, the appeals are allowed to the extent the same affect the appellant and the impugned award dated 8.6.1991 is set aside so far as it fastens the liability to pay the amount of compensation on the appellant-insurance company. The appellant shall be entitled to recover the amount of compensation, if any, already paid against the amount of compensation awarded under the impugned award, from the owner and the driver of the offending truck. There will be no order as to costs.