

THE HIGH COURT OF TRIPURA
AGARTALA

IN MAC APP. NO.64 OF 2011:

Claimant-Appellants:

- 1. Sri Rabindra Debnath**
S/o Late Brajendra Debnath
Resident of Village Vivekanandanagar,
P.S. Ambassa,
District: Dhalai, Tripura
- 2. Smt. Dipali Debnath**
W/o Sri Rabindra Debnath
Resident of Village Vivekanandanagar,
P.S. Ambassa,
District: Dhalai, Tripura.

ADVOCATES :

Mr. S.C. Majumder, Advocate,
Mr. T.K. Choudhury, Advocate.

- V e r s u s -

Respondents :

- 1. Smt. Ratna Bose(Saha),**
W/o Sri Anup Bose
Resident of village: Netaji Choumuni,
Gangail Road,
Police Station: West Agartala,
District : West Tripura.
(Original Owner of the Vehicle No. TRL – 3445-Truck)
- 2. Sri Sefal Das,**
S/o Late Dinesh Das,
Resident of Village: Chhotasurma,
Police Station: Kamalpur,
District: Dhalai, Tripura.
(Subsequent Owner of the Vehicle No. TRL -3445-Truck)
- 3. Sri Tapan Chakraborty,**
S/o Late Nagendra Chakraborty,
Resident of village: Vivekanandanagar,
Police Station : Ambassa,
District : Dhalai , Tripura
(Driver of the Vehicle No. TRL-3445-Truck)
- 4. The New India Assurance Company Ltd.**
Hariganga Basak Road, Agartala,
Police Station: West Agartala, District: West Tripura.

(Insurer of the Vehicle No. TRL – 3445 - Truck)

ADVOCATE :

Mr. A. Gon Choudhury, Advocate.

IN MAC APP. NO.96 OF 2011:

Appellant O.P. :

New India Assurance Company Ltd.

Agartala Branch, represented by its Branch Manager

ADVOCATE :

Mr. A. Gon Choudhury, Advocate.

- V e r s u s -

Claimant Respondents :

- 1. Sri Rabindra Debnath**
S/o Late Brajendra Debnath
- 2. Smt. Dipali Debnath**
W/o Sri Rabindra Debnath,
Both are of Village- Vivekanandanagar,
P.O.- Vivekanandanagar,
P.S.- Ambassa,
District- Dhalai, Tripura.

Owner Respondents :

- 3. Smt. Ratna Bose (Saha)**
W/o Sri Anup Bose
Of Village – Netaji Choumuhuni, Gangail Road,
P.O.- Agartala,
P.S.- West Agartala,
West Tripura (Original Owner of the
Vehicle No. TRL-3445, Truck)
- 4. Sri Sefal Das,**
S/o Late Dinesh Das
Of Chhotasurma,
P.O.- Kamalpur,
P.S.- Kamalpur,
District- Dhalai, Tripura,
(Subsequent Owner of the
Vehicle No. TRL-3445, Truck)

Driver Respondent:

- 5. Sri Tapan Chakraborty**

S/o Late Nagendra Chakraborty
 Of Village & P.O.- Vivekanandanagar,
 P.S.- Ambassa,
 District- Dhalai, Tripura
 (Driver of the Vehicle No. TRL-3445, Truck)

ADVOCATES :

Mr. S.C. Majumder, Advocate,
 Mr. T.K. Choudhury, Advocate.

BEFORE HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing : 29.6.2015.

Date of judgment : 10.7.2015.

Whether fit for reporting : **YES**

JUDGMENT & ORDER

These two appeals being MAC APP. 64 of 2011 and MAC APP. 96 of 2011 are being disposed of by a common judgment since they arise out of the same accident and award.

2. Briefly stated the facts of the case are that on 9.12.2009 at about 7.00 p.m. the offending truck which has Registration No. TRL-3445 allegedly hit Biswajit Debnath, the 19 year old son of the petitioners. The parents filed a claim petition claiming compensation. In the claim petition it was alleged that the vehicle was owned by Smt. Ratna Bose. Later on, the name of the owner was changed to Sri Sefal Das. The driver of the vehicle was Shri Tapan Chakraborty. All these 3 (three) persons filed a joint written statement.

3. Sri Sefal Das who is stated to be the owner of the vehicle at the time of accident denied that any such accident had

taken place and according to him, a false case was lodged by the claimants. Originally, the truck was owned by Smt. Ratna Bose. On 15.07.2009 Smt. Ratna Bose sold the vehicle to Sri Sefal Das. The vehicle insured on 09.12.2009 at 12:11:43 hours and, therefore, it was contended that the vehicle at the time of the accident was duly insured.

4. The stand of the Insurance Company is that the policy of insurance was effective only from 11.12.2009 to 10.12.2010 and, therefore, on the date of accident i.e. 09.12.2009 the vehicle was not insured. The other defence raised by the Insurance Company is that there was no valid policy existing on the date of accident.

5. The learned Tribunal held that the deceased had died as a result of injuries sustained in the accident. He awarded compensation of Rs.1,82,000/- to the claimants and held the Insurance Company liable to pay the amount. The learned Tribunal held that though the policy was effective from 11.12.2009 since the policy document had been generated on 09.12.2009 before the accident took place the Insurance Company was liable to pay the compensation.

6. The claimants have filed MAC APP. 64 of 2011 claiming enhancement of compensation and the Insurance Company has filed MAC APP. 96 of 2011 in which it is urged that the Insurance Company was wrongly held liable to pay the awarded amount.

7. I first take up the issue of compensation. According to the claimants, the deceased who was 23 years old was running a business and earning Rs. 10,000/- per month. They also relied upon

one certificate issued by the SDM, Ambassa in this behalf. The learned Tribunal rightly did not rely upon the certificate issued by the SDM and assessed the income at Rs.3000/- per month and accordingly, awarded compensation.

8. This Court follows two methods while assessing compensation. In those cases where the claimants are parents and the deceased was unmarried, 50% is deducted for the personal expenses of the deceased and in such eventuality, the multiplier is applied by taking into consideration the age of the deceased. In case, the multiplier is to be applied by taking into consideration the age of the claimants, then only 1/3rd should be deducted for the personal expenses of the deceased.

9. As far as the income of the deceased is concerned, I am clearly of the view that the income certificate issued by the SDM is not worth the paper it has been written on. The SDM has no statutory authority to issue such certificate and this Court has recently held in ***Shri Tarun Kumar Reang vs. Sri Rakesh Debnath & others, [MAC APP. 02 of 2010]*** decided on 17th June, 2015 that such a certificate has no evidentiary value.

10. Having held so, the finding given by the learned Tribunal with regard to the income is reasonable. 50% has to be added to this income in view of the future prospects which the young deceased person would have had. Therefore, the income comes to Rs.4,500/- per month . 50% is deducted for the personal expenses of the deceased leaving a balance dependency of Rs.2,250/- per month or Rs.27,000/- per annum. Since the

deceased was only 23 years of age, multiplier of 18 is applied and the compensation works out to Rs.4,86,000/-. The claimants are also held entitled to Rs.14,000/- as funeral expenses and Rs. 50,000/- for loss of their son and therefore, the total compensation works out to Rs.(4,86,000 + 14,000 + 50,000)=**Rs.5,50,000/-** (rupees five lakhs fifty thousand).

11. Now comes the question with regard to the liability of Insurance Company. I have perused the policy of insurance. Against the column “period of cover”, it is clearly mentioned 11/12/2009 12:00:01 AM to 10/12/2010 11:59:59 PM. Therefore, as per the terms of the policy, the policy was valid from 11.12.2009 midnight to 10.12.2010 at 12.00 pm. A perusal of the policy also shows that the policy was generated on 09.12.2009 at 12:11:43 hours. I have also seen policy for the previous year. This was valid from 20.07.2008 to 19.07.2009. After 19.07.2009 there was no policy of insurance till the fresh policy was taken out. On behalf of the claimants and the owner it is urged that once the premium was taken on 09.12.2009 at 12:11:43 hours the policy came into force and the Insurance Company could not give the date of 11.12.2009 as the date of commencement of the policy.

12. On the other hand, on behalf of the Insurance Company it is urged that the earlier policy had expired on 19.07.2009 and there was no policy after that date. No doubt, the premium was paid and the policy generated on 09.12.2009 but this is a contract between the parties and as per the terms of the contract the “period of cover” was agreed between the parties to be 11.12.2009 to 10.12.2010. It has been urged by learned counsel for the

Insurance Company that when there is renewal of the policy and the same is renewed before the earlier policy has expired, the policy commences from the date of expiry of the previous policy. However, in this case there was a gap of almost 5(five) months and the policy of the Insurance Company is that the date of coverage is normally given as two days after the date of receipt of premium and in this case, this was specifically mentioned in the cover note as well as the terms of the policy. My attention has also been drawn to the proposal form. The proposal form is in the name of Smt. Ratna Bose who admittedly had ceased to be the owner of the vehicle on 15.07.2009. In this proposal form also the insured has proposed that the policy will come into effect from 11.12.2009.

13. The main question is from which date is the policy affected. Reference may be made to Section 64VB of the Insurance Act which reads as follows:-

***“64VB.** (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 collections 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."

14. A bare perusal of the section shows that an insurer cannot assume any risk in respect of any insurance business unless the premium has been paid to it in advance. Nothing prohibits the Insurance Company from insuring the vehicle from a date subsequent to the date of receipt of the premium. In the present case, I find that the proposal form on the basis of which this policy was issued itself showed that the period of insurance would be 11.12.2009 to 10.12.2010. As pointed out above, the name of the proposer is shown to be Smt. Ratna Bose. In fact, Smt. Ratna Bose had no insurable interest in the vehicle on that date since she had

already sold the vehicle. Be that as it may, it does not lie in the mouth of the insured who has filled in the proposal form to now claim that the policy should be enforced from a date prior to 11.12.2009.

15. Reliance has been placed by the counsel for the owner and the claimants on the judgment of a learned Single Judge of the Madras High Court in ***National Insurance Co. Ltd., Attur v. Deivanai & ors. [AIR 2009 Madras 124]***, wherein the learned Single Judge held that the policy will be effective from the date when the premium is paid in view of the explanation appended to sub-section (2) of Section 64VB of the Insurance Act.

16. I may make reference to a Division Bench judgment of the Madras High Court in ***National Insurance Co. Ltd. v. Geetha & others : 2004 (1) TN MAC 174 (DB)***, wherein the Division Bench held as follows:-

"11. The Indian Contract Act, 1872 covers the relationship between the parties to an insurance contract generally except in regard to some of its special features. So, unless the Insurance Company accepts and issues policy, the person who paid the premium cannot come forward with the plea that the Insurance Company is having an obligation to pay the compensation, especially when the premium was paid to get a new policy. In the present case, it is not in dispute that in the policy issued on the basis of the premium paid by the owner of the vehicle, it is specifically mentioned that the insurance policy covers for the period from 15.06.1998 10.00 a.m. But the accident took place about 5.30 a.m. on the said date.

15. *In view of the above settled principles of law, the appellant-Insurance Company is correct in challenging the award of the Tribunal on the ground that they are not liable as the insurance policy was issued with the specific mention of the time and date of commencement of the insurance and the accident took place before the said time mentioned in the policy. There is, thus, a basic fallacy in the conclusion reached by the Tribunal on this point."*

17. The Madras High Court held that an Insurance contract is a contract governed by the Indian Contract Act except in regard to some special features which may be covered under the Insurance Act. The Court held that when a specific time and date is mentioned for the commencement of the policy, the policy will commence from that day. In my view, the learned Single Judge of the Madras High Court could not have taken a different view. I am in agreement with the view of the Division Bench of the Madras High Court that if a specific date or time is given in a policy of insurance that is the contract entered into between the parties and is binding on them.

18. Further, as already pointed out above, in the proposal form also the insured has proposed that the policy should be effective from 11.12.2009 and now it does not lie in the mouth of the insured to claim that the policy should be effective from an earlier date.

19. There is force in the argument of learned counsel for the Insurance Company that when the policy was being renewed after a gap of 5(five) months the Insurance Company was well

within its rights to lay down a condition that the policy would be effective after one or two days. The premium has been paid for one year, i.e. from 11.12.2009 to 10.12.2010. If the contention of the owner is accepted then he has paid premium from 09.12.2009 but it is effected till the midnight of 10.12.2010 which would be one year and two days. It is clear that the intention of the parties was to charge and pay premium for only one year effective from 11.12.2009, and, therefore, the Insurance Company is not liable to cover an accident which had taken place on 09.12.2009.

20. In view of the above discussion both the appeals are disposed of by holding that the claimants are entitled to compensation of Rs.5,50,000/- along with interest @ 9% per annum from the date of filing of the claim petition till payment of the entire awarded amount.

The amount of compensation is apportioned as follows:

Sri Rabindra Debnath (father)-Rs.1,00,000/-;

Smt. Dipali Debnath (mother)-Rs. 4,50,000/-.

21. The liability to pay the compensation shall be only of the owner Sri Sefal Das since he has admitted that he was the owner of the vehicle and the Insurance Company is not liable to pay the compensation.

22. Both the appeals are disposed of in the aforesaid terms. No order as to costs.

23. Send down the lower court records forthwith.

CHIEF JUSTICE

Amrita