IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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CIVIL MISCELLANEOUS APPEAL No.4560 of 2003

Between:
The Oriental Insurance Company Limited,
Rep.by Branch Manager, City Branch Officer No.4,
Patamata, Vijayawada.

....Appellant

and

Guguloth Bitcha and others.

....Respondent

JUDGMENT PRONOUNCED ON : 02.11.2015

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes

2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : No

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : No

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL MISCELLANEOUS APPEAL No.4560 of 2003

JUDGMENT:

The appellant is the third respondent in O.P.No.597 of 1998 on the file of the learned Motor Accidents Claims Tribunal – cum – District Judge at Khammam. The said petition was filed by respondent Nos.1 and 2 herein claiming an amount of Rs.1,00,000/- for the death of one Guguloth Peempli, who died in a motor accident that occurred on 17.09.1997 at about 9:30 am. The Tribunal awarded an amount of Rs.80,000/- with interest @ 9% per annum by its order dated 23.01.2003. This appeal is filed by the Insurance Company on the ground that the policy of insurance was issued at 11:30 am on 17.09.1997 specifically mentioning the time of issuance of the policy on the policy document and hence it cannot have any retrospective effect. The Tribunal held that though the policy was issued at 11:30 am on 17.09.1997, the coverage of the policy would come into effect from the midnight of 16.09.1997 and, accordingly, it passed an order for payment of compensation.

Learned Counsel for the appellant relied on the decisions of the Supreme Court in **New India Insurance Co. v. Bhagwati Devi**[1], **Oriental Insurance Co. Ltd. v. Sunita Rathi**[2] and the decision of the Karnataka High Court in **Krishna Subbarao Naik v. Palani Swamy**[3] which categorically state that when time and date of the policy were mentioned, there would not be any scope for retrospective operation of the policy.

In view of the authoritative pronouncements of the Supreme Court, the appeal is liable to be allowed, and the same is, accordingly, allowed.

However, learned Counsel for the appellant submits that, pursuant to the interim order passed by this Court in the present appeal, the appellant deposited 50% of the awarded amount along with proportionate costs and interest. The claimants were held to be entitled to withdraw the said amount by order dated 27.09.2005 passed by this Court and they withdrew the said amount. However, the order of the Tribunal would be effective as against the owner of the vehicle, but not against the appellant herein.

In the circumstances, it is open to the appellant to recover the amount either from respondent Nos.1 and 2 or from the fourth respondent, who is the owner of the vehicle.

The appeal is, accordingly, allowed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

02.11.2015
vs

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[1] (1998) 6 SCC 534

[2] AIR 1998 SC 257

[3] AIR 1998 Karnataka 214