



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.10.2016

Delivered on : 14.11.2016

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

AND

HON'BLE TMT. JUSTICE J.NISHABANU

C.M.A (MD) No.1947 of 2013

and M.P. (MD) .No.3 of 2013

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The Branch Manager
The National Insurance Co. Ltd.,
5-A, Sub Collector Office Road,
Opp. Court Buildings,
Dindigul.

.. Appellant/2nd respondent
Vs.

1.Vijayalakshmi
2.Maha Rajkumar
3.Uma Devi
4.Chithrakala

.. Respondents/Petitioners

5.Velmurugan

.. 5th Respondent/1st Respondent

6.Soundararajan

.. 6th Respondent/3rd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decretal order dated 14.8.2012 made in M.C.O.P.No.52 of 2011 on the file of Motor Accidents Claims Tribunal (Additional District & Sessions Court), Dindigul.

For Petitioner : Mr.S.Srinivasa Raghavan

For Respondents : Mr.R.Thangapandian for R1 to R4
No Appearance for R5

J U D G M E N T

M.SATHYANARAYANAN, J.

The second respondent in M.C.O.P.No.52 of 2011 on the file of the Motor Accidents Claims Tribunal/Additional District & Sessions Judge, Dindigul, filed by the respondents 1 to 4 herein/claimants, is the appellant. The appellant, questioning the liability to indemnify the fifth respondent herein in respect of the accident which took place on 27.10.2010 at about 5.00 p.m. in which the



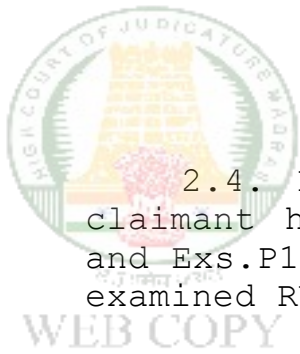
husband of the first respondent died, had filed this appeal.

2. Facts leading to the filing of this appeal briefly narrated are as follows:

2.1. First respondent is wife of the deceased, namely Thiru Balakrishnan and respondents 2 to 4 are son and daughters of the deceased. As per the claim petition, Thiru.Balakrishnan/deceased was employed as Junior Bailiff in the District Court at Dindigul and he was riding his TVS 50 two wheeler from South to North direction in Dindigul to Eriyur Road and when he was nearing Nandavanampatti Oil Mill Bus Stop, a van bearing Reg.No.TN 31 C 7993 owned by the fifth respondent, driven in a rash and negligent manner, dashed against Balakrishnan on the rear side and he sustained grievous injuries and was taken to Government Hospital at Dindigul and not responding to the treatment, he died on 28.10.2010. The jurisdictional Police, namely the Inspector of Police, Thaadikombu Police Station has registered a case in Crime No.504/2010 against the driver of the offending vehicle, namely the sixth respondent herein for the offence under Section 304A IPC. The respondents 1 to 4/claimants would contend that the deceased was aged about 52 years at the time of accident and was employed as Junior Bailiff at Dindigul Court and was earning a salary of Rs.16,567/- and his two daughters, namely Umadevi and Chitrakala/respondents 3 and 4 are yet to be married and his son Maha Rajkumar/second respondent is also not settled in life and would further state that the third respondent/third claimant has also lost her vision in one eye and therefore, claimed a compensation of Rs.20,00,000/-

2.2. The appellant/insurance company, who is arrayed as the second respondent in the claim petition, filed a counter statement denying the averments and took a stand that the coverage period of the policy was from 28.10.2010 to 27.10.2011, but the accident took place at 27.10.2010 and at that time, there was no insurance coverage and as such, it is not liable to indemnify the fifth respondent/owner of the vehicle and therefore, it cannot be mulcted with the liability to pay compensation to the claimants.

2.3. The appellant/second respondent has also filed an additional counter and took a stand that in respect of the offending vehicle, originally one A.Sundarajan has taken insurance policy for the period from 28.10.2010 to 27.10.2011 and subsequently, it was transferred in the name of the fifth respondent on 28.10.2010 and on the date of accident, the said A.Sundarajan was not the owner of the vehicle and despite the fact, he has taken the policy suppressing the fact of transfer of ownership to the fifth respondent and on that ground also, he is liable to pay compensation.



2.4. During the course of trial, the first respondent/first claimant had examined herself as PW1 and one Saravanavel as PW2 and Exs.P1 to P5 were marked. The appellant/insurance company had examined RWs.1 and 2 and marked Exs.R1 to R3.

2.5. The Tribunal, on consideration of the materials placed before it, has found that as per Ex.P5, the receipt was issued at 02.51 p.m. on 27.10.2010 for the receipt of premium and whereas the accident occurred at 5.00 p.m. on that day and as such, the insurance company is liable to indemnify the owner of the vehicle, namely the fifth respondent and thereby, to compensate the claimant. The Tribunal, with regard to quantum, had found that as per Ex.P2/Postmortem Certificate, deceased was aged 53 years and therefore, adopting the Multiplier of 11 and by placing reliance upon **Smt. Sarla Verma and Other v. Delhi Transport Corporation [2009 (2) TNMAC 1 (SC)]** deducted 1/4th amount and also as per the judgment in **The Branch Manager, IFFCO TOKIO General Insurance Co, Ltd., Chennai v. Durga and Others [2011 (1) TNMAC 321 (DB)]** deducted 10% towards Income Tax and for Future Prospects, following the judgment in **The Managing Director, State Express Transport Corporation, Pallavan House, Pallavan Salai, Chennai v. R.Solai and Others [2011 (1) TNMAC 112 (DB)]** increased the monthly salary by 50% and deducted 20% towards Income Tax and found that 1/3rd should have been spent by the deceased for his family and arrived at the Loss of Income of Rs.14,910/- and by adopting multiplier, has arrived at a sum of Rs.19,68,120/-. The Tribunal has also awarded a sum of Rs.10,000/- each towards Loss of Love and Affection totalling Rs.30,000, Rs.5,000/- towards cremation expenses, Rs.5,000/- towards Loss of Estate and arrived at an amount of Rs.20,18,120/- and having found that the claim was for a sum of Rs.20,00,000/-, awarded the said amount as compensation with interest @ 7.5% from the date of petition till the date of final settlement and also apportioned the compensation to the claimants, vide fair and decreetal order dated 14.08.2012. Challenging the legality of the same, the present appeal is filed by the second respondent/insurance company.

2.6. Pending disposal of the appeal, the appellant/insurance company has deposited the entire compensation amount in E.P.No.243 of 2012 in M.C.O.P.No.52 of 2011 on the file of the Motor Accidents Claims Tribunal/Additional District and Sessions Judge, Dindigul and no permission was granted to the claimants to withdraw the said compensation amount.

3. The learned counsel appearing for the appellant/insurance company would vehemently contend that the receipt/cover note was



issued at about 02.51 p.m. on 27.10.2010 and further that the accident took place at 05.00 p.m. on 27.10.2010, and, however, the policy covers the period from 28.10.2010 to 27.10.2011 and admittedly, on the date of accident, there is no coverage by way of insurance and as such, the Tribunal ought to have exonerated the insurance company to indemnify the fifth respondent/owner of the vehicle by paying compensation. It is the further submission of the learned counsel appearing for the appellant that since specific time has been mentioned in the insurance policy, coverage starts only at that time and not from the midnight of the date of issuance of the insurance policy and since it is a Special Contract, time of commencement of the policy assumes importance and the said legal position has been completely overlooked by the Tribunal, despite settled decisions of the Hon'ble Supreme Court on the said issue. The learned counsel appearing for the appellant would further contend that in any event, the quantum of compensation is very much on the higher side and therefore, prays for setting aside the award and decree and allowing of this appeal. The learned counsel appearing for the appellant, in support of his submissions, placed reliance upon the following decisions:

(i) Oriental Insurance Co. Ltd. v. Sunita Rathi and Others [1998 ACJ 121 (SC - Three Judges)]

(ii) New India Assurance Co. Ltd. v. Bhagwati Devi and Others [1999 ACJ 534 (SC- Three Judges)]

(iii) New India Assurance Co. Ltd. v. Sita Bai and Others [2000 ACJ 40 (SC-Three Judges)]

(iv) National Insurance Co. Ltd., Motor Third Party Claims v. N.Ponnaiyan @ Kolappan & Others [2004 (1) TNMAC 63 (DB)]

(v) National Insurance Co. Ltd., Dharmapuri Vattam v. Geetha and Others [2004 (1) TN MAC 174 (DB)]

(vi) National Insurance Co. Ltd. v. Sobina Iakai and Others [2007 ACJ 2043 (SC)]

(vii) Oriental Insurance Co. Ltd., v. Porselvi & Anr. [2009 (2) TNMAC 161 (SC)]



(viii) The Divisional Manager, New India Assurance Co. Ltd., Pondicherry v. Poovarasan and Others [2012 (1) TNMAC 571]

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(ix) Oriental Insurance Co. Ltd. v. Vedathal [2013 (1) TN MAC 103 (DB)]

4. *Per contra*, Mr.R.Thangapandian, learned counsel appearing for the respondents 1 to 4/claimants would contend that admittedly, premium towards policy was paid much prior to the occurrence of the accident and the said fact was also not in dispute and as such, the Tribunal was right in arriving at the conclusion that the appellant/insurance company is liable to pay compensation by indemnifying the owner of the vehicle. It is the further submission of the learned counsel appearing for the respondents 1 to 4/ claimants that at the time of accident, two daughters of the deceased remained unmarried and one of them suffered visual disability and the only son is not settled in life and on account of the death of the deceased, the family has been left in lurch and the Tribunal, on a proper appreciation of the entire materials, has rightly held that the insurance company is liable to pay compensation and in the absence of any infirmity, it cannot be set aside and prays for dismissal of this appeal with exemplary costs. The learned counsel appearing for the respondents 1 to 4/claimants, in support of his submissions, placed reliance upon the following decisions:

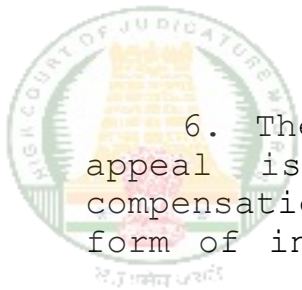
(i) National Insurance Co. Ltd. v. Abhaysing Pratapsing Waghela & Others [2008 (2) TNMAC 448 (SC)]

(ii) Oriental Insurance Co. Ltd. v. Rajesh and Others [2009 ACJ 1254]

(iii) New India Assurance Company Limited v. Amaravel and another [2011 (2) TNMAC 573]

(iv) Oriental Insurance Co. Ltd., v. Venkataraman [2013 (1) TNMAC 460]

5. This Court paid it's anxious consideration and best attention to the rival submissions and also perused the materials placed before it including the original records.



6. The moot question that arises for consideration in this appeal is whether the insurance company is liable to pay compensation, as according to them, there was no coverage in the form of insurance policy on the date and time of the accident?

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7. PW1 is the wife of the deceased Balakrishnan and she deposed that the accident took place on 27.10.2010 and she was not aware of the fact that the offending vehicle was insured on the next day on 28.10.2010 and denied the suggestion that there was no insurance coverage of the vehicle. PW2 is an eyewitness to the accident. Ex.P5 is the crucial document and it is the receipt/cover note and a perusal of the same would disclose that premium was collected in respect of the offending vehicle and cover note was issued on 27.10.2010 at 14.51 p.m. RW2 is the Administrative Officer of the appellant/second respondent/insurance company and he denied the suggestion that since the premium was collected prior to the accident on 27.10.2010, which came into force from that time and as such, they are liable to pay compensation. Ex.R2 is the policy issued in the name of the fifth respondent, namely Thiru.G.Velmurugan and it came into force on 28.10.2010 and it was in force from 12.00 midnight of 28.10.2010 till the midnight of 27.10.2011. Ex.R3 is the insurance policy in the name of Thiru.R.Sundarajan/sixth respondent and it came into force from the midnight of 28.10.2010 till the midnight of 27.10.2011 and thus, in the light of Ex.R3 policy, it is the case of the appellant/insurance company that since the policy came into force only on the midnight of 28.10.2010 and whereas the accident took place at about 17.00 hours on 27.10.2010, they cannot be mulcted with the liability to pay compensation.

8. Let this Court consider the decisions relied on by the learned counsel appearing for the appellant/insurance company.

8.1. In ***Oriental Insurance Co. Ltd., v. Sunitha Rathi and Others [1998 ACJ 121 (SC)]***, the issue arose for consideration, is as to liability under the policy of insurance issued subsequent to the accident, though it was issued some time later on the same day. The facts of the case would disclose that the accident occurred at 2.20 p.m. on 10.12.1991 and at about 2.55 p.m., the insurance policy and cover note were obtained by the insured, owner of the motor vehicle involved in the accident. The Hon'ble Supreme Court of India by placing reliance upon the decision in ***National Insurance Co. Ltd. v. Jikubhai Nathuji Dabhi [1997 ACJ 351 (SC)]*** found that the insurance company cannot be held liable



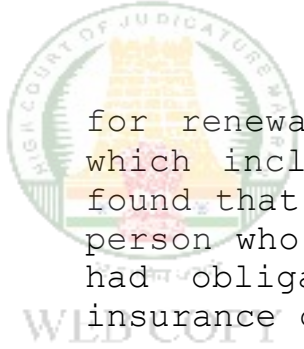
and having taken note of the fact that the compensation amount has already been paid by the insurance company, held that it need not be recovered from the claimants by the insurance company.

8.2. In **New India Assurance Co. Ltd. v. Bhagwati Devi and Others [1999 ACJ 534]**, the facts of the case would disclose that the policy was taken at 4.00 p.m. on 17.02.1989 and accident took place at 9.00 a.m. on the same day. The Hon'ble Supreme Court has placed reliance upon the decision in **National Insurance Co. Ltd. v. Jikubhai Nathuji Dabhi [1997 ACJ 351 (SC)]**, wherein it has been 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. Therefore, it has been held that since there is a 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.

8.3. In **New India Assurance Co. Ltd. v. Sita Bai and Others [2000 ACJ 40]** the facts of the case would disclose that the accident took place at 10.00 a.m. on 16.04.1987 and the proposal for insuring the vehicle in question was made by the owner of the vehicle on 16.04.1987 at 21.00 hours. However, in the facts of the case, the Hon'ble Supreme Court found that the policy was taken subsequent to the said incident and therefore, exonerated the insurance company.

8.4. In **National Insurance Co. Ltd. Motor Third Party Claims, Chennai-2 v. N.Ponnaiyan @ Kolappan & Others [2004 (1) TN MAC 63 (DB)]**, similar issue arises for consideration and a Division Bench of this Court by placing reliance upon the judgment in **Jikubhai Nathuji Dabhi case (cited supra)**, factually found that the accident took place at 3.00 p.m. on 12.07.1991 and in Ex.R2/policy, it came into force with effect from 7.15 p.m. on 12.07.1991 and therefore, held that policy coverage would be operative from the time mentioned in the policy and therefore, the insurance company cannot be mulcted with liability to pay compensation.

8.5. In **National Insurance Co. Ltd., Branch Office, Dharmapuri Vattam v. Geetha & Others [2004 (1) TN MAC 174 (DB)]**, the accident took place at 05.30 a.m. on 15.06.1998 and the terms of the Insurance Policy covers only the period from 15.06.1998, 10.00 a.m. A plea was put forward stating that since it is a ~~new policy~~ policy, it should relate back to the expiry of the time of the previous policy. However, it was found that there was no material available to come to the conclusion that it is a policy



for renewal and taking into consideration the earlier decisions which include **Jikubhai Nathuji Dhabhi case (cited supra)**, it was found that unless the insurance company accepts and issues policy, person who paid premium cannot come forward with plea that insurer had obligation to pay compensation and therefore, held that insurance company is not liable to pay compensation.

8.6. In **National Insurance Co. Ltd. v. Sobina Iakai and Others [2007 ACJ 2043]**, similar issue arises for consideration and the facts of the said case would disclose that the insurance policy was issued on 22.06.1992 at 12.45 p.m. and the policy expired on 21.06.1993 and came to be renewed 9 days thereafter and subsequently got expired and subsequently renewed 21 days thereafter. The Hon'ble Supreme Court of India found that at the time of accident, there was no insurance coverage and by placing reliance on **Jikubhai Nathuji Dabhi case** (cited supra) and **Oriental Insurance Co. Ltd. v. Sunitha Rathi [1998 ACJ 121 (SC)]**, it has been held that once a specific time and date is mentioned, then the Insurance policy becomes effective from that point of time and therefore, allowed the appeal filed by the Insurance Company and exonerated it by paying compensation.

8.7. In **Oriental Insurance Co. Ltd. v. Porselvi and Another [2009 (2) TNMAC 161 (SC)]** similar view was taken.

8.8. In **The Divisional Manager, New India Assurance Co. Ltd., v. Poovarasam and another [2012(1) TN MAC 571]**, the facts of the case would disclose that the coverage of the policy commenced from the midnight of 18.01.2002 whereas the accident took place at 6.00 p.m. on 17.01.2002. A plea was taken that the receipt of the amount towards the policy is only for renewal and not for a fresh policy and as such, the insurance company is liable to pay compensation. A Single Bench of this Court, on a detailed analysis of the earlier decisions which include **Jikubhai Nathuji Dhabhi case** (cited supra), has held that even assuming that premium had been received, effectiveness of the policy commences from the specific time and date mentioned in the policy of insurance and therefore, allowed the appeal filed by the insurance company.

8.9. In **Oriental Insurance Co. Ltd., Salem-1 v. Vedathal and 3 others [2013 (1) TN MAC 103 (DB)]**, it has been held that the date of issue of the policy, therefore, is not decisive as to the date of the commencement and the date and time with effect from which the insurer assumes the risk and therefore, the appeal was decided in favour of the Insurance company.



9. In ***Oriental Insurance Company Ltd. Nagercoil, Kanyakumari District. v. S.Mariyal and 2 others [1999-1-L.W.578]***, the Insurance Company put forward a plea that on the relevant date and time of the accident, the vehicle was not covered by the policy issued by the appellant insurance company. A Single Bench of this Court by placing reliance upon a Full Bench decision of the Karnataka High Court in ***Asma Begum and Others v. Nisar Ahmed and Others [1990 ACJ 832 (FB)]*** wherein renewal of the policy came up for consideration and it is relevant to extract para 11 of the said judgment:

"11....As regards the principle of renewal of a permit of licence taking effect from an earlier date, it appears to us that it would be applicable to a case where under the scheme a permit or licence issued is permanent and requires periodical renewal on payment of prescribed fee and satisfying the prescribed terms and conditions subject to which it had been issued. Examples of such licences are the permanent driving licence, a permanent cinema licence or a permanent stage carriage permit. As far as motor vehicle insurance is concerned, there is nothing like issuing of permanent policy, subject to periodical renewal. It is an insurance only for the period specified in the policy. There is no question of renewal of that policy. It is true that if during any particular period for which the vehicle insurance policy was taken there had been no claim in respect of the vehicle concerned, some reduction is given in the amount of premium in the form of 'no claim bonus'. That is only an incentive given to the customers to take the insurance policy for the succeeding years from the same company, but the allowing of no claim bonus is no ground to hold that the policy, whenever it is issued, had continued from the date of expiry of the previous policy. There is no continuation in the case of motor vehicle insurance. Each policy is separate and independent and holds good only for the period mentioned in the policy. The words 'renewal policy' used both in *Tipanna's* case 1982 ACJ (Supp.) 102 (Karnataka) and in this case on the receipt, as submitted by the learned counsel for the 3rd respondent, were only to indicate that the vehicle was insured earlier with the same company and for the purpose of giving rebate in the amount of premium and that by itself would not have the effect of the policy being effective from the date of expiry of the previous policy and of filling up the gap and foisting the liability arising out of an accident which had taken place at a



time when the policy was not in existence, on the insurance company. In *Tippanna's* case, 1982 ACJ (Supp.) 192 (Karnataka) because the insurance company, for whatever be the reason, had issued a policy to be effective from 10.2.1978, a date earlier to the accident, this Court held that risk arising out of an accident which had taken place on 11.2.1978 was covered. But in this case it is clear that the period commencing from 4.11.1983 till 17.11.1983 is not covered by the policy. The premium was paid only on 17.11.1983 for a period of one year and on the payment of premium the policy was issued. Therefore, there can be no doubt that it covers the risk arising after the date and time specified on the policy.....

10. To sum up, our conclusions are:

(i) A Motor vehicle insurance policy is effective only for the period specified in the policy and not from the date of expiry of the earlier policy if any, in respect of the same vehicle, issued by the same insurer.

(ii) In view of Section 64-V(b) of the Insurance Act the risk on the part of the insurer commences only on the payment of the premium by the insured."

10. In ***Manager Oriental Insurance Company Ltd. Namakkal v. Latha and 5 others*** [2000-1-L.W. 739], Single Bench of this Court held that insurance policy is a special contract and it becomes operative only from the time specifically mentioned in the policy and reliance was also placed upon the judgment in ***Oriental Insurance Company Ltd. Nagercoil, Kanyakumari District. v. S.Mariyal and 2 others*** [1999-1-L.W.578] (cited supra).

11. In ***New India Assurance Co. Ltd. v. Ram Ratan and Others*** [2003 ACJ 323 (Madhya Pradesh -DB)], facts of the case would disclose that the accident took place at about 8.00 a.m. on 24.12.1992 and the contract of insurance commenced at 2.00 p.m. on 24.12.1992 as per the cover note issued by the insurance company and the effectiveness of the cover note came up for consideration in the above cited decision and it is relevant to extract para 8 of the said judgment:

"8. Another aspect of the same question is status of cover note. The practice followed by the insurance company is to issue cover note by its competent office/agent immediately on payment of the insurance premium and covers the risk, in case some accident takes place. It is followed by formal execution of policy of insurance within a reasonable time. [See *United India Insurance Co. Ltd. v. Surendran Nair*, 1990



ACJ 581 (Kerala)]. Therefore, it is held that New India Assurance Co. Ltd. is not liable for payment of compensation in this case."

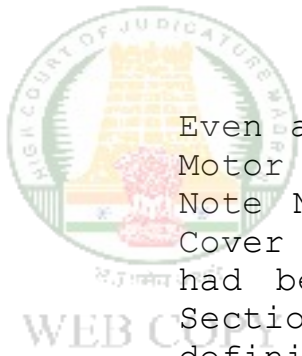
A Division Bench of Madhya Pradesh in the above cited decision held that liability of the insurance company for payment of compensation arising out of motor accident, starts after the time mentioned in policy and not before it.

12. In ***Bijeram v. Mangudas and Others [2004 ACJ 153 (MP)]***, the facts of the case would disclose that the accident occurred at about 4.00 p.m. on 02.12.1992 and prior to that, proposal along with amount of the premium to the agent of the insurance company at 11.00 a.m on 02.12.1992 and as such, plea was taken that the policy commences from the time of handing over the proposal form and premium to the agent of the insurance company, in view of the provision of Section 64-VB of the provisions of Insurance Act. A Single Bench of the Madhya Pradesh High Court, on going through Ex.D4- policy and on perusal of the same found that the effective date and time of the insurance is mentioned as 5.30 p.m. on 02.12.1992 to 01.12.1993 and in view of the decision of the Apex Court in ***New India Assurance Co. Ltd. v. Bhagwati Devi [1999 ACJ 534 (SC)]***, when the time of commencement is mentioned in the insurance policy it shall become effective for the liability of payment of compensation from the time onwards, as mentioned in the policy and therefore, the Insurance Company is exonerated from compensating the claimants.

13. This Court has also considered the decisions relied on by the learned counsel appearing for the respondents 1 to 4/claimants.

14. In ***National Insurance Co. Ltd. v. Abhaysing Pratapsing Waghela & Ors. [2008 (2) TN MAC 448 (SC)]***, the question arises as to the effect of dishonour of cheque and subsequently the amount of premium was accepted in cash by the insurance company. The facts of the case would disclose that the cheque was tendered towards premium on 23.01.1995 and the accident took place on 27.01.1995 and the cheque was dishonoured on 30.01.1995. The premium amount was paid in cash and received. In para 16 of the said judgment, the Hon'ble Supreme Court of India has considered the fact of cover note and held as follows:

16. Indisputably, the first respondent is a Third Party in relation to the contract of insurance which had been entered into by and between the appellant and the owner of the vehicle in question. We have notice herein before that a document was produced before the Tribunal.



Even according to the appellant, although it was only a Motor Input Advice cum Receipt, it contained the Cover Note No.279106. We, therefore, have to suppose that a Cover Note had, in fact, been issued. If a Cover Note had been issued which in terms of sub-section (b) of Section 145 of the Act would come within the purview of definition of Certificate of Insurance; it also would come within the purview of the definition of a insurance policy. If a Cover Note is issued, it remains valid till it is cancelled. Indisputably, the insurance policy was cancelled only after the accident took place. A finding of fact, therefore, has been arrived at that prior to the deposit of the premium of insurance in cash by the owner of the vehicle, the Cover Note was not cancelled."

In para 17, the Hon'ble Apex Court held that in a limited sense, a contract of insurance entered into for the purpose of covering a Third Party risk would not be purely contractual and that an ordinary contract of insurance does not have a statutory flavour and therefore, liability of the insurance company which comes under the purview of Sections 146 and 147, the same subserves a constitutional goal, namely, social justice and in the light of the same, a contract of insurance covering the Third Party risk must, therefore, be viewed differently viz-a-viz a contract of insurance qua contract. However, in the considered opinion of the Court, in the above decision, the judgments rendered by the Hon'ble Supreme Court of India in **Oriental Insurance Co. Ltd. v. Sunita Rathi and Others [1998 ACJ 121 (SC)]**, **New India Assurance Co. Ltd. v. Bhagwati Devi and Others [1999 ACJ 534 (SC)]** and **New India Assurance Co. Ltd. v. Sita Bai and Others [2000 ACJ 40 (SC-Three Judges)]** have not been referred to and since the above cited decisions came to be rendered on the point in issue arose before the Court in the appeal, this Court, with utmost respect, is of the view that the said decision is not applicable to the facts of this case.

15. In **Oriental Insurance Co. Ltd. v. Rajesh and Others [2009 ACJ 1254 (MP)]**, the facts of the case would disclose that the accident took place at about 1.30 p.m. on 02.11.1999 and whereas the petitioner got insured at 4.15 p.m. after the accident. A Single Bench of Madhya Pradesh High Court found that the premium amount was paid by the third respondent prior to the accident and that the policies are issued after physical verification of vehicle for which the insurance is made and also placed reliance upon the decision in **National Insurance Co. Ltd. v. Jagarnath [2002 ACJ 1748 (MP)]**. On facts of the case, the Madhya Pradesh High Court held that receipt of premium was issued by agent on proposal form signed by the insured was given on 07.08.1984 but it was received by the company on 13.08.1984 while in between the vehicle met with an accident on 08.08.1984 and as such, the insurance company is liable to pay compensation.



16. In the light of the ratio laid down in majority of the decisions of the Hon'ble Supreme Court of India cited above, this Court is not in a position to concur with the view taken in the above cited decision.

17. In ***New India Assurance Company Limited v. Amaravel [2011 (2) TN MAC 573]***, accident took place at 12.20 hours on 21.08.2004 and the period of coverage in respect of the vehicle was in between 19.06.2003 to 18.06.2004 and there was no insurance for the period 19.06.2004 to 23.08.2004. A Single Bench of this Court, by placing reliance upon various decisions held that the duty of the Insurance Company was to ask the owner to mention the period in the proposal form and having taken note of the admitted fact that once a premium is paid, it is expected that the policy will be functional from the time of payment, dismissed the appeal filed by the insurance company. However, this Court is of the view that the said decision is not in consonance with the ratio laid down by the Hon'ble Supreme Court in the above cited judgments.

18. In ***Oriental Insurance Co. Ltd. v. Venkataraman and Others [2013 (1) TN MAC 460]***, accident took place at 1.00 p.m. on 27.10.1999. The plea put forward by the appellant insurance company was that the accident took place at 1.00 p.m. on 27.10.1999 and whereas the policy took effect only from 28.10.1999 and as such, they are not liable to pay compensation. A Single Bench of this Court, on appraisal of the facts, found that Ex.P5 receipt was issued by the Insurance Company on 27.10.1999 and whereas Ex.R1- Insurance Policy states that the policy period commences by 12 midnight on 28.10.1999 on account of collection of premium on that date and therefore held that the Insurance Company having accepted the premium and having issued the policy on that date, cannot say that the period of coverage was only from the midnight on 28.10.1999. The learned Judge, in order to come to such conclusion, placed reliance upon Section 64-VB of the insurance company. This Court, with respect, is unable to agree to the reasons assigned in the said decision, as various decisions rendered by the Hon'ble Apex Court held otherwise and in favour of the insurance company.

19. Therefore, it is to be held that coverage commences from the time and date mentioned in the Insurance policy as it is being a Special Contract and admittedly, in the case on hand, the policy came to be issued after the accident and so also the coverage and as such, the appellant/insurance company cannot be mulcted with the liability to pay compensation by indemnifying the owner of the vehicle.



20. In the result, this Civil Miscellaneous Appeal is allowed and the award and decree dated 14.08.2012 made in M.C.O.P.No.52 of 2011 on the file of the Motor Accidents Claims Tribunal/Additional District & Sessions Judge, Dindigul is set aside insofar as directing the appellant/insurance company to pay compensation and the respondents 1 & 3 in M.C.O.P.No.52 of 2011/respondents 5 and 6 in this appeal are jointly and severally liable to pay compensation. The appellant/insurance company is permitted to withdraw the compensation amount deposited to the credit of E.P.No.243 of 2012 on the file of the Motor Accidents Claims Tribunal/Additional District & Sessions Judge, Dindigul. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(writs)

/True copy/

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal/
Additional District & Sessions Judge,
Dindigul.

Copy To:The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court, Madurai.

+1 cc to M/s.S.Srinivasa Raghavan, Advocate in SR. No.69568

+1 cc to M/s.R.Thangapandian, Advocate in SR. No.69437

Order
in CMA. (MD) .No.1947 of 2013
14.11.2016

jvm

CSL/SKS-RR/04.01.2017 : 14P/5C