

346.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.660 of 2001 (O&M)

Date of decision:07.01.2016

The Oriental Insurance Company Limited ... Appellant

versus

Sashi Chopara and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sanjiv Pabbi, Advocate,
 for the appellant.

None for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. Although the respondents have not been served, I have heard the appellant to satisfy myself if there was a point of law which could be examined even in the absence of the respondents. I have allowed the counsel to argue the case on merits and I proceed to dispose of the case as under.

2. Admittedly, the accident took place on 30.03.1998 at 7.30 PM and the insured wanted to contend that the cover note was issued on 11.10 AM which originally did not contain any time of

issue. In the cover note produced which was disputed by the Insurance Company, the time has been specified at 11.10 AM. Assuming for the arguments' sake that the entry of time in the cover note was not true and the cover note that was issued did not bear the time of issue, the risk must be said to commence only from midnight of the previous day when the note was issued. This is the law laid down by the Supreme Court in **New India Assurance Company Limited Versus Ram Dayal-1990 ACJ 545**. The circumstances could be different if the cover note or the policy stipulated a time in which case the risk will commence from the time when the policy was issued and when premium was paid. Admittedly, the premium had also been received by the Insurance Company. If the defendant were to contend that its own Development Officer had issued the cover note for the vehicle subsequent to the accident, then the plea of fraud must be clearly brought out. In this case, the attempt was to examine an investigator Mr. Chopra who brought out in evidence the register containing the cover note issued on the same day, some of which bore respective time of issue and some that did not contain the time of issue. In particular reference to cover note purported to have been issued in favour of insured, the original register did not contain the time. Since the insured was relying on a cover note that contained the time of issue as 11.10 AM, the insurer wanted to contend that a fraud must have been committed by incorporating the

time when there was no time specified. This cannot improve the situation for the insurer only because if as per their own condition, the insurer did not stipulate the time, then the risk will commence only from midnight of the previous day. This is in the light of law laid down in **Ram Dayal** (supra) and though it was with reference to the case coming under the 1939 Act. The said judgment has been followed subsequently in **National Insurance Company Limited Versus Sobina Iakai-2007 (7) SCC 786**. I do not want any error in the judgment for an interference . It will be open for an insurer to take action against its own Development Officer if there is any attribution of fraud as having been committed by their officer that has resulted in the liability being fastened on the insurer. On the evidence disclosed, I find nothing that can deny to the insurer a right of indemnity. The award passed is confirmed and the appeal is dismissed.

(K.KANNAN)
JUDGE

07.01.2016
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