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

1. F.A.O No. 4816 of 2010 (O&M)

United India Insurance Co Ltd. ...Appellant

Versus

Pooja and others ...Respondents

2. F.A.O No. 4817 of 2010 (O&M)

United India Insurance Co Ltd. ...Appellant

Versus

Meena Devi and others ...Respondents

Date of decision:- 26.07.2019

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Sanjiv Pabbi, Advocate, for the appellant
in both the appeals

Mr. P.R.. Yadav, Advocate
for respondent No. 1

Mr. S.K. Chauhan, Advocate
for respondent No. 2 in FAO No. 4816-2010 and
for respondent No. 3 in FAO No. 4817-2010

RITU BAHRI J. (Oral)

1. The above mentioned two appeals, are being disposed of by this common judgment, having arisen out of the impugned award dated 23.04.2010 passed by the learned Motor Accident Claims Tribunal, Rewari.

Facts not in dispute

2. The facts which are not in dispute are that on 10.11.2006, Priti (since deceased) along with her sister namely Pooja was coming back to their home after closing of the school on the bicycle. The deceased was sitting on the back seat of the bicycle. When they reached just ahead of Police Station Sadar, Rewari on Konsiwas road, meanwhile, a vehicle

bearing registration No. HR-47A-2428 which was being driven by respondent No. 1 in a rash and negligent manner came from konsiwas side and hit the bicycle of the deceased directly. Due to the impact of the accident, the deceased and her sister Pooja fell down from the bicycle and sustained serious injuries. The injured were taken to Birendra hospital Rewari where Priti died on 12.11.2006. F.I.R No. 261 dated 12.11.2006 under Sections 279/338/304-A IPC was registered in the police station Model Town Rewari against respondent No. 1.

3. As per the claimants, the ***deceased-Priti*** was 13 years old at the time of her death and studying in 7^{th} class. Whereas, injured-Pooja was admitted to hospital where she was plastered for her fracture.

4. While assessing the compensation in ***Priti's case***, the Tribunal took her income at Rs.15000/- per annum and applied the multiplier of 10 The total compensation awarded to the claimants was Rs.1,57,510/-.

5. While assessing the compensation in ***Pooja's case***, the Tribunal awarded the compensation of Rs.25,000/-.

6. Learned counsel for the appellant contends that the offending vehicle was not insured with the appellant-Company on the date of accident as per insurance policy. The vehicle was insured w.e.f 11.11.2006 to 10.11.2007 whereas the accident was caused on 10.11.2006. As per cover note (Ex R2) and insurance policy, effective date and commencement of insurance have been shown w.e.f 11.11.2006 from 00:00 HOURS TO 10.11.2007 midnight. As per insurance proposal (Ex R6) the effective date and time of insurance from 11.11.2006 to 10.11.2007. Thus, the appellant-company is not liable to pay the compensation.

7. Learned counsel for the appellant has relied upon judgment of

this Court in a case of ***United India Insurance Company Ltd vs. Kanta Bansal and others, 2010 (4) PLR 435*** wherein commencement of proposal form was submitted to the insurance company on 30.12.2002 at 11:11 A.M and the insurance company issued a cover note mentioning that risk was undertaken from the following day i.e 31.12.2002. The accident occurred on 30.12.2002 at 8:30 A.M. The appeal of the Insurance company was allowed and the liability was foisted upon owner-insured keeping in view judgment of Hon'ble the Supreme Court in a case of ***Oriental Insurance Co. Ltd vs. Porselvi 2009 (3) PLR 65.*** It was held that in view of specific time for the commencement of the policy, a special contract came into being and policy would be effective only from the time mentioned in the cover note.

8. On the other hand, learned counsel for respondent Nos. 2 and 3 submits that the effective date and time of commencement of insurance starts from 10.11.2006 at 4:55 PM. The accident took place at 6 PM on 10.11.2006 and thus, the Insurance Company was rightly held liable to pay the compensation.

9. Learned counsel for respondent Nos. 2 and 3 has further argued that ***Porselvi's case (supra)*** is not applicable to the facts of the present case as in that case the cover note had been issued on the date of the accident i.e 28.05.1996 stating therein that the risk was covered w.e.f 29.05.1996 to 28.05.1997. The Supreme Court in that case held that when there was mention of specific time for commencement of the policy, then a special contract came into being and policy would be effective only from the time mentioned in the cover note.

10. I have heard learned counsel for the parties and perused the record.

11. In the present case, the Insurance Company has produced cover note (R-2) there is specific date and time regarding operation of the insurance policy. The cover note was issued on 10.11.2006 at 4:55 PM and cash premium was paid. Then effective date and time of commencement of insurance starts from 10.11.2006 at 4:55 P.M and accident took place on 10.11.2006 at 6 P.M.

12. Reference at this stage can be made to judgment of Hon'ble the Supreme Court of India in cases of ***National Insurance Co. Ltd vs. Abhatsubg Pratapsing Waghela, 2008 (6) Law Herald (SC) 3955*** and ***Oriental Insurance Co. Ltd vs. Dharam Chand and others, 2010 ACJ 2659*** wherein it has been specifically held that the insurance starts from the date when the amount is being paid. If a cover note is issued, it remains valid till it is cancelled.

13. In the present case as per Annexure R-2, the cover note had been issued on 10.11.2006 after accepting the premium in cash and this cover note has been duly signed by authorized agent of the appellant. Further the proposal produced by R.W.2 does not bear the signatures of Sudesh Singh.

14. In ***Abhatsubg Pratapsing Waghela's case (supra), in para 16, Hon'ble the Supreme Court has observed as under:-***

> *"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 noticed hereinbefore 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 clause (b) of sub-Section 1 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.

15. Applying the ratio of above mentioned judgments to the facts of the present case, this Court is of the view that once the Insurance Company has accepted the premium on 10.11.2006 at 4:55 P.M, then the vehicle was fully insured with the company from that very date. The Insurance Company was rightly held liable to make the compensation.

16. In view of the above discussion, FAO No. 4816 and 4817 of 2010 stands dismissed.

X Objection 124-CII-2018 in FAO No. 4816-2010 and
X Objection 127-CII-2018 in FAO No. 4817-2010

Adjourned to 05.09.2019

26.07.2019 **(RITU BAHRI)**
G Arora ***JUDGE***

Whether speaking/reasoned ***Yes***
Whether reportable ***No***