

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.08.2020

Pronounced on: 25.08.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

C.M.A.No.235 of 2016

The Branch Manager,
The Oriental Insurance Co. Ltd.,
No.75, Krishnan Street (Near Anna Salai),
Tiruvannamalai, Tiruvannamalai District.

... Appellant/2nd Respondent

/versus/

1. Palani,
S/o.Thandavarayan,
Sollaimedu, Palaya Ekambaranallur Village,
Arani Taluk, Tiruvannamalai District.

2. G.Veerassamy,
S/o.Govindasamy,
No.37, Mariamman Koil Street,
Tiruvannamalai, Tiruvannamalai District.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the judgment and decree in M.C.O.P.No.278 of 2008, dated 08.12.2014 on the file of the Motor Accidents Claims Tribunal, Arani, Tiruvannamalai District.

For Appellant : Mr.N.Vijayaraghavan

For R1 : Mr.Chella Muthu

For R2 : Mr.G.Veerassamy

J U D G M E N T

(The case has been heard through video conference)

The Insurance Company aggrieved by the award passed in M.C.O.P.No.278/2008 by the Motor Accident Claims Tribunal, Arani, Tiruvannamalai District, is before this Court with this Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act.

2.The claimant, who is the victim has laid a claim petition for Rs.1,00,000/- for the injuries sustained by him in an accident occurred on 21.07.2008 when he was hit by Hero Honda CD 100 bearing Registration No.TN 25-B-4795. While he was riding on the road in his TVS 50 motor cycle the claim was against the owner of the Hero Honda motor cycle and the Insurance Company which has insured the vehicle.

3.The Insurance Company contested the claim petition on the ground that, the claim against them is not maintainable. It was contended that, on investigation, they found that the Hero Honda CD 100 vehicle bearing Registration No.TN 25-B-4795 was insured with them only with effect from 23.07.2008 to 22.07.2009 vide Policy No.413506/31/2009/3845. Whereas, the accident occurred on 21.07.2008 before the period of coverage. So, on the date and time of accident, the offending vehicle was not insured under them. That apart, the negligence was attributed on the accident victim/claimant and the rider of the Hero Honda motor cycle who did not have a valid driving licence. The claimant's earning capacity and income mentioned in the claim petition also denied by the Insurance Company for want of proof.

4.The Tribunal rejected the contention of the Insurance Company regarding the coverage of the policy. Relying upon premium receipt in which the payment date as 21.07.2008 and the time at 10.15 a.m mentioned in it, the Tribunal held that the premium for the vehicle was paid on 21.07.2008 at 10.15 am (Receipt Ex.P-4) and the accident occurred on 21.07.2008 at 12.00 noon (FIR Ex.P-1). The insurance policy - Ex.R-4 is dated 21.07.2008. While so, the reason for mentioning a post date, as the period of insurance, coverage from 00.00 hrs on 23.07.2008 to midnight of 22.07.2009 not explained by the Insurance Company through its witnesses. Therefore, the Tribunal presumed that the Insurance Company has post dated the period of insurance coverage to escape from the liability. Having held so, the Tribunal applying the multiplier, awarded Rs.1,25,320/- as compensation with interest at the rate of 7.5% p.a.

5.In the Appeal, the Insurance Company reiterating their stand before the Tribunal and stated that, the Tribunal failed to consider that the date of accident was on 21.07.2008 and the owner of the vehicle took insurance policy with the appellant Insurance Company, only with effect, from 23.07.2008 to 22.07.2008, which is subsequent to the date of accident. Though, the premium was paid on 21.07.2008, the Tribunal failed to appreciate Ex.R-4 and Ex.R-5 and the evidence of R.W-1 as well as the Judgements of the Hon'ble Supreme Court in ***Oriental Insurance Co Ltd., -vs- Sunitha Rathi*** reported in (1998 (1) SCC 365) and ***National Insurance Co Ltd., -vs- Sobina Lakai*** reported in (2007(5) CTC 892) .While fixing the liability on the insurance company for a vehicle not under their coverage at the time of accident.

6. During the course of argument, the judgement rendered by a Division Bench of this Court in **Oriental Insurance Co –vs– Vedathal and others** reported in 2003 (1) TN MAC 103(DB), *the Division Manager, N.I.A -vs- Poovarasam and another*, reported in 2012 (1) TNMAC 541 and *The Branch Manager v. Vijayalakshmi* (C.M.A(MD) No.1947 of 2013 dated 14.11.2016), were circulated by the Learned Counsel for the appellant to reinforce his submission.

7. The Learned Counsel for the first respondent/claimant in his written submission, as a counter statement, has stated that, the appellant Insurance Company without accepting the award of the Tribunal indulging in unwarranted appeal. The contention of the Insurance Company that the vehicle was not insured on the date of accident and not covered under valid policy was rejected by the Tribunal after analysing the oral evidence of R.W-1 and the documents marked as Ex.R-2 to Ex.R-5. Admittedly, the premium was paid before the accident. The reason for issuing policy from 23.07.2008 instead of 21.07.2008 the date on which the premium paid, is not explained by the appellant Insurance Company. Insurance company cannot deprive third party claim quoting violation of policy terms.

8. In support of his submissions, the learned counsel for the first respondent/claimant rely upon the following judgments:-

“(i). *New India Assurance Ltd -vs- Ram Dayal* reported in 1990(2) SCC 680;

(ii). *National Insurance Company Vs. Smt.Jijubhai Nathuji Dabhi and others* reported in 1997 ACJ 351 and

(iii). ***United India Insurance Company Limited Uritheramerur South Arcot -vs- S.Viswanathan reported in 2003 (2) CTC 72.***”

9.Heard the Learned Counsels for the Appellant and the Learned Counsel for the respondents. The documents relied by the respective parties and the judgements cited by the learned counsels on either side perused.

10.The prime contention of the appellant/Insurance Company is that, the insurance coverage of the offending vehicle commenced only from 23.07.2008. The accident occurred on 21.07.2008. It is not the date on which the premium received but only the date on which the insurance coverage commences, as per the policy, is relevant for fastening liability.

11.Relying upon the judgment of the Hon'ble Supreme Court rendered in ***Oriental Insurance Co Ltd., Vs. Sunita Rathi and others reported in (1998 (1) SCC 365)*** which was referred in ***Oriental Insurance Co Ltd Vs. Vedathal and others reported in 2003 (1) TN MAC 103 (DB)***, and in ***The Branch Manager v. Vijayalakshmi (cited supra)***, the learned counsel for the appellant Insurance Company would submit that the liability of the insurer commences only from the date and time mentioned in the policy.

12.Looking at the facts of the cases referred above, in ***Sunita Rathi case (cited supra)***, the cover note was obtained by the insured paid the permium sometime after the accident, but on the same day. The accident occurred at 2.20 p.m on 10.12.1991 whereas, the cover note issued specifically mentioning that the

effective time and date of commencement of insurance is 2.55 p.m. In the said circumstances, the Hon'ble Supreme Court has held as below:-

“3.It follows that the insurer cannot be held liable on the basis of the above policy in the present case and, therefore, the liability has to be of the owner of the vehicle. However, we find that the High Court, without assigning any reason, has simply assumed that the owner of the vehicle was not liable and that the insurer alone was liable in the present case. This conclusion, reached by the High Court, is clearly erroneous. The liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract of insurance. There is, thus, a basic fallacy in the conclusion reached by the High Court on this point.”

13.Following the ***Sunita Rathi case*** (cited supra), a Division Bench of this Court in ***Vedathal case*** (cited supra) has held as follows:-

“4. In this case, the date specified in the policy is the effective date of commencement, which is subsequent to the date of the occurrence of the accident. It was over to the Insurer to specify such a date, as the law does not mandate that the risk should be assumed on the date on which the premium is received. The Insurer's liability, therefore, can only be regarded as having commenced from the date specified in the Policy as the effective date of commencement of the insurance, and not earlier.”

14.The facts of the Vedathal case is that, the policy was obtained at 10.30 am, on the date of the accident i.e., on 20.05.1991 and the accident occurred at 2.00 pm. The date of commencement mentioned in the policy had been there from midnight on 21.05.1991. The Tribunal and the Single Judge of the High Court have held that when the premium was paid and accepted by the insurance company on 20.05.1991, the effective date of commencement of the policy would be 20.05.1991. The Division Bench reversed it with the above stated observation.

15.In **Branch Manager v. Vijayalakshmi** (cited supra), the receipt for the premium was issued at 02.51 p.m. On 27.10.2010, whereas, the accident occurred at 5.00 p.m. on that day. The Tribunal held that, the insurance company is liable to indemnify the owner of the vehicle. the Division Bench, after discussing the case laws in detail, set aside the Tribunal finding for the reasons below:-

'.....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.'

16.Earlier to **Sunita Rathi case** (cited supra), the three Judges Bench of the Hon'ble Supreme Court in **National Insurance Company Vs. Smt.Jikubhai Nathuji Dabhi and others** reported in **1997 ACJ 351**, held that, the insurance coverage shall commence only from the date and time specified in the policy. Only

in the absence of specific time mentioned in that behalf, the contract would be operative from the midnight of the day by operation of provisions of the General Clauses Act.

17.The facts of the case in hand is after receiving the premium and issuing the receipt on 21/07/2008 mentioning the policy number, the coverage is postponed to 23/07/2008. The reason for postdating the coverage period not been explained by the Insurance Company. The Appellant, had appointed his own private investigator who has gone to the spot, investigated and submitted a report. The said report is marked as Ex.R.5. In that report, the Investigator has mentioned that the accident took place on 21.07.2008 at 12.00 noon. In the said accident, the claimant has sustained wound on the left ankle, fracture of lateral malleolus and abrasion on right knee. The date of accident, time of accident and injury sustained are not disputed.

18.The learned counsel appearing for the appellant referring the FIR stated that, the time of accident was 10.30 a.m. On perusal of FIR, it is found to be in correct. In the FIR, the victim has said that, he started from his home at 10.30 a.m on 21.07.2008 to the hospital along with his wife. On returning home, after treatment, at about 12.00 noon, he met with the accident. In the claim petition also, the time of accident is specifically mentioned as 12.00 noon on 21.07.2008. The Insurance Company Investigator also in his report - Ex R -5 had mentioned the time and date of accident as 12.00 noon on 21.07.2008. While so, from Ex.R.4, this Court finds that the premium for the vehicle was paid on 21.07.2008 at 10.15 a.m. The Insurance Company has collected Rs.515/- for basic third party coverage and Personal Accident (PA) coverage for owner and Driver, for which, receipt has

been issued. The two receipts issued by the Tiruvannamalai Branch of Oriental Insurance Company reveals that, the money was received on 21.07.2008 at 10.15 a.m and 10.16 a.m. It also reveals that it is a new policy with Policy No.2009/3845.

19.R.W.1 (Veerasamy), who is the owner of the offending vehicle and one of the respondent before the Tribunal has deposed before the Court that on 21.07.2008 at 10.15 a.m, he remitted Rs.75/- and Rs.515/- towards insurance premium, one for personal injuries and other for the vehicle Third Party (TP) & Personal Accident (PA) coverage. The Officials of the Insurance Company examined his vehicle and issued him two receipts. Thereafter, he gave the vehicle to one Thiru.Manokaran to drop his son at Vellore. While proceeding to Vellore, the accident occurred at about 12.00 noon.

20. From the insured point of view, after paying the premium and issuance of receipts which are marked as Ex.R.1 and Ex.R.2 carrying the policy Nos:2009/1142 and 2009/3845, there is no prudent reason for him to postpone the effect of insurance to future date. Also a legitimate expectation of indemnity accrues to him on payment of the insurance premium.

21.On the contrary, if the postponement of coverage for the future date was done at the request of the insured, then the insurance company should have produced the proposal in support of it. Or if the post dated coverage done unilaterally without the knowledge or consent of the insured, then, it is contrary to Section 146 of the Motor Vehicles Act, which mandates no motor vehicle shall ply without insurance unless exempted under law. So, the insurer conduct is hit by

Section 23 of the Indian Contract Act for it being forbidden under law. The examination of Ex.R.4 would further reveal that the policy is dated 21.07.2008 and the collection number and date of premium is mentioned in the policy as CSH 5047004065 dated 21.07.2008. The recital of this document also indicates that in witness whereof, undersigned been authorised by and on behalf of the company has/have herein to set his/their hands at Tiruvannamalai on 21.07.2008.

(emphasis added)

22. Therefore, the terms of special contract giving post dated effect to the insurance coverage not only lack justification and reasoning but also goes contrary to public policy. 'Will the larger public interest protected by a Statute be taken away by an individual under the garb of special contract ?'

23. The admitted and unconverted facts of this case are:-

- a) Date and time of premium payment : 21/07/2008 10.15 a.m and 10.16 a.m. (proof – receipts marked as Ex R-1 and Ex R-4);
- b) date and time of accident : 21/07/2008 12.00 noon (proof –FIR marked as Ex P-1);
- c) Insurance policy date : 21/07/2008 and
- d) The period of insurance coverage: From 00.00 hrs of 23/07/2008 to midnight of 22/07/2009 (proof – Policy note Ex R-4).

24. The learned counsel appearing for the insurance company pegged his argument on two folds. *First*, no insurer shall assume risk without receipt of premium. *Second*, risk of indemnity need not commence immediately on receiving the premium. The coverage can be postponed to a future date.

25.As far as the first proposition, there can be no second opinion since, Section 64 VB (1) and (2) of the Insurance Act, 1938 is very clear on this point. For reference, the provision is extracted below:-

“64VB. No risk to be assumed unless premium is received in advance.—

(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.

26.Whereas, the second proposition canvassed by the appellant Insurance Company, requires an incised analysis with the aid of the the relevant statute and judicial pronouncements. In the instant case, the insurance company liability to indemnify the loss is based on the determination of time from which the coverage commence.

27.The facts of the case laws referred by the learned counsels on either side are intrinsically intertwined and depend on the complex issues such as:-

a) If anti-dated cheque is tendered towards payment of premium, whether the date of tendering or the date of realization of the cheque amount or the date on which the cheque bear will be the determining factor for the date of commencement of insurance cover?;

b) If the cheque issued towards premium bounce back without realisation, whether the insurance cover become invalid for want of consideration or it is valid till it is cancelled in the manner prescribed ?;

c) If the time of commencement of coverage is not mentioned in the policy, should it be the midnight of the date of payment as per the general clauses act, which will have retrospective effect. In such case if the premium is tendered after the accident, should the insurance company be fasten with the liability?;

d) If the date of tendering the premium and the date of the accident are same, how to reckon the validity of insurance coverage ? and

e) If the date of commencement of insurance period is different from the date of payment of premium, which one will prevail over the other?

28.In the instant case, the last issue is the bone of contention which requires decision in *M/s. United India Insurance Company Limited –vs- S. Viswanathan*

and Another reported in [2003 (2) CTC 72 = 2003 (3) LW 852] relied by the learned counsel for the claimant, a Division Bench of this Court held as below: -

“ 3. The learned counsel for the appellant submitted that the accident took place on 23.2.1992, whereas the insurance policy expired on 20.2.1992; subsequently, the policy was taken only on 2.3.1992. In between 20.2.1992 and 2.3.1992 there was no valid insurance policy for the vehicle, and therefore, the second respondent/appellant is not bound to pay the compensation, inasmuch as the vehicle was not insured on the date of the accident, with the appellant. In support of the argument, the learned counsel referred to the documents, Exs.R.1, R.2 and R.3. Ex.R.1 is the receipt given by the United India Insurance Company Ltd., Cuddalore, dated 2.3.1992, which reads that "received with thanks a sum of Rs.459/- only by cheque No.822406 drawn in Punjab National Bank, Pennadam, dated 20.2.1992. Relying upon this document, the counsel submitted that this proves that the cheque was handed over only on 2.3.1992 to the Cuddalore Branch and immediately after receipt of the cheque, this receipt had been given. Therefore, the counsel submitted that this proves that the cheque was handed over to the respondent only on 2.3.1992, and therefore, the policy was effected only from 12.00 p.m. on 2.3.1992. The counsel further contends that it is clearly proved that the vehicle was not insured with the appellant on the date of the accident.

4.The learned counsel for the respondents submitted that in Ex.R.4, there is a column, which connotes that the amount of Rs.459/-

was collected on 2.3.1992 taking into account the column in which this figure is appeared. Therefore, from this, the counsel submitted that, it is only after the realisation of the cheque amount, this receipt had been given. The policy becomes effective on the date when the premium was paid by the owner to the Insurance Company. Further, he relied upon the evidence of R.W.2, who is the clerk working in the Insurance Company, examined on behalf of the appellant herein; In his chief examination, R.W.2 has admitted that it is a renewal policy; After cross examination of R.W.2 was over, he was further examined in chief after obtaining permission from the Court.

5..... Though from Ex.R.1, it appears that the cheque was presented only on 2.3.1992, the date, as found in Ex.R.1, has been explained by the Officer of the second respondent itself as the date which refers the date subsequent to the realisation of the amount. Ex.R.4 also supports this argument. Therefore, we are of the view that the date mentioned in Ex.R.1 is the date which is subsequent to the realisation of the amount and not the date on which the cheque was presented to the Insurance Company.

6. In the circumstances, even though there are some discrepancies in the evidence of R.W.1, the owner of the motor vehicle, in view of the specific admission by R.W.2 and in view of the decision of the Honourable Supreme Court referred to by the Tribunal itself that when there are some discrepancies with respect to the terms of the insurance policy, the Court has to lean in favour of the insured.

Therefore, we are of the view that the case of the owner of the vehicle is acceptable and from the evidence of the owner of the vehicle it is clear that the cheque has been handed over on 20.2.1992 itself, and therefore on the date of the accident, i.e. On 23.2.1992, there was a valid insurance coverage. We uphold the decision of the Tribunal that the vehicle was validly insured on the date of the accident and there is no reason to interfere or alter this finding. Therefore, we find that there was a valid insurance policy on the date of the accident.”

29.The above judgment was subsequent to the Division Bench judgment in ***Oriental Insurance Co Ltd Vs. Vedathal and others*** (cited *supra*). In the case of ***Sunita Rathi and others*** (cited *supra*) relied by the learned counsel for the appellant, the Hon'ble Supreme Court has held as follows :-

“the accident occurred on 10th December, 1991 at 2.20 PM. It was only thereafter on the same day at 2.55 PM the insurance policy and the cover note were obtained by the insured, owner of the motor vehicle involved in the accident. There is express mention in the cover note that the effective date and time of commencement of the insurance for the purpose of the Act as 10th December, 1991 at 2.55 PM. The applicability of the decision in Ram Dayal's case [1990 (2) SCC 680] has to be considered on these facts. In our opinion the decision in Ram Dayal's case (supra) is distinguishable and has no application to the facts of this case. The facts of that decision show that the time of issuance of the policy was not mentioned therein and the question, therefore, was of presumption when the date alone was mentioned and

not the time at which the insurance was to become effective on that date. In such a situation, it was held in Ram Dayal's case (supra) that in the absence of any specific time being mentioned, the logical inference to draw was that the insurance became effective from the previous midnight and, therefore, for an accident which took place on the date of the policy, the insurer became liable. There is no such difficulty in the present case in view of the clear finding based on undisputed facts that the accident occurred at 2.20 PM and the cover note was obtained only thereafter at 2.55 PM in which it was expressly mentioned that the effective date and time of commencement of the insurance for the purpose of the act was 10.12.1991 at 2.55 PM. The reliance on Ram Dayal's case (supra) by the Tribunal and the High Court was, therefore, misplaced, we find that in a similar situation, the same view which we have taken, was also the view in M/s. National Insurance Co. Ltd. v. Smt. Jikubhai Nathuji Dabhi and others, (1997-2)116 P.L.R. 703 (S.C.), wherein Ram Dayal's case (supra) was distinguished on the same basis."

30.The Hon'ble Supreme Court thus concluded that, the liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract of insurance.

31.At this juncture, this Court is of the opinion that, it is appropriate to refer two more judgements, one by the Division Bench of the Karnataka High Court and other by the single judge of the Kerala High Court. These two judgments have

some relevancy on facts and help us to understand the general conduct of the insurers and insured as well the response of the judiciary to such conduct.

(i) In ***Asma Begum –VS- Nisar Ahmed, Date of Judgment : 08-11-1989 (DB)*** reported in ***1990 AIR(Kar) 353***, the Division Bench of the Karnataka High Court has held as follows:-

“In this case, the Tribunal, on the issue, as to whether the accident occurred on account of the rash and negligent driving of the lorry bearing Registration No. MYM 3403 recorded a finding in the affirmative. Regarding the quantum of compensation the tribunal fixed the total compensation payable at Rs. 67,440/- . On the issue, as to which of the respondents is liable to pay compensation, the Tribunal held that at the time of accident, the vehicle was not covered by an insurance policy and therefore the 3rd respondent - Insurance Company was not liable to pay the compensation. The appellant, the owner of the vehicle has presented this appeal aggrieved both by the quantum of compensation awarded and the finding that the Insurance Company is not liable to pay the compensation. Aggrieved by the said order, the claimants preferred the appeal.

(6)..... *As it had become the experience of the Insurance Companies from some time past that owners of the vehicles who had not taken insurance policies before the accident, rush to the office or agents of the Insurance Companies, immediately after the accident and either by suppression of the information regarding the accident and/or with the connivance of the officials/agents of the insurance Companies, take*

policies so as to cover the risk arising out of an accident which had already taken place, instructions had been issued to note not only the date but also the time with effect from which the policy becomes effective. Accordingly, in the policy in question the time of commencement of policy was noted as 11 A. M. on 17-11-1983. Admittedly the accident had occurred at 10 A. M. in Bangalore on 17-11-1983 and therefore the policy was not in existence at the time of the accident and therefore the Insurance Company was not liable.

..... In the present case, the Insurance company has not committed any such mistake. It has issued the policy to be effective from 11 A. M. on 17-11-1983. Admittedly, the accident occurred earlier. Hence there is no merit in the contention of the appellants that by the policy issued 17-11-1983 at 11 a.m. the risk in respect of the accident which had taken place even before the issue of the policy was covered.

.....

(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 an 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. (III) In the present case the premium was paid at 11 A. M. on 17-11-1983 and the policy was also issued to be effective from 11 A. M. on 17-11-1983 till 16-11-1984 and therefore it did not cover the risk arising out of the accident

which took place at 10 A. M. on 17-11-1983.”

(ii) In **New India Assurance Co. Ltd. vs P. Jayanti And Ors.** (Judgement dated 19/12/2005) ref: I (2007) ACC 228, the learned Single Judge of the Kerala High Court has held as follows:-

“In this case, policy was taken on 10/01/2000 but commencement from the next day, ie 11/01/2000. The vehicle involved in the accident on 10/01/2000 at 3.30 pm. In the said accident on Kaamaladharan died. The Insurance company denied their liability. Tribunal disagreed. Hence the appeal. Since the learned judge has vividly traced the legislative history and the precedents on this point, I am liberally extracting the portions relevant.

' 1. The questions raised for consideration in this appeal are, whether the owner of the vehicle could remit the policy premium on an earlier date and then opt for a future date for the commencement of the insurance policy, when the existing policy had already expired, if so, is it not against the mandatory provision under section 146 the Motor Vehicles Act, in short 'the Act', and in such situation, whether the insurer could allow the insured to have his vehicle plied without a policy in force for that vehicle. If that be so, is not such a contract between the insurer and the insured against the public policy and public interest, and also what is the impact of such insurance policy on the third party.

.....

4. The Apex Court had an occasion to consider *NIA Co. Ltd –vs- Ram Dayal and others*, [1990 (2) SCC 680] and hold that the policy of any date, would cover the liability of the insurer from the mid night preceding the same date. Hence, even where the accident, in point of time, is earlier than the time, when the insurance policy was issued, the Insurance Company would be liable.

5. The correctness of the decision in '*Ram Dayal*', above, was challenged in *NIC Ltd –vs Jiubhai Nathuji Dabhi and others* (1997 ACJ 351), where the Apex Court had taken the view that when there is a special contract mentioned in the policy, stating the time when it was issued, the policy would be operative from that time, and not fictionally from the previous mid-night, as had been held in *Ram Dayal* case.

6. The above principle of law had been followed by a three-Judge Bench of the Apex Court, as could be seen from *NIA Co Ltd –vs- Bhagawathi Devi* 1998 (6) SCC 534 = 1999 ACJ 534 (SC) the Apex Court endorsing the view of the '*Ram Dayal*' and '*Jikubhai*' cases, cited above pointed out that if there is no contract to the contrary, an insurance policy becomes operative from the previous mid night, when bought during the day following. However, in case there is 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. The law on this aspect has been thus put to rest by the Court. There is, therefore, nothing further for us to deliberate upon. Hence, the

Apex Court has differentiated and accepted the principles contained in 'Ram Dayal' and 'Jikubai' cases, through Bhagwati 's case (supra).

7. *NIC Co. Ltd –vs- Chinto Devi (Smt) and ors.[2000(7) SCC 50], the Apex Court had another occasion to consider, wherein, admittedly, the accident occurred at 11.30 a.m. on 23.2.1987. The Insurance Company, the appellant therein, had contended that the policy was taken at 4.45 p.m. on that date, for which reliance was placed on the cover note. However, the respondent-owner therein, had contended that the insurance was taken at 10.00 in the morning and not in the evening. The Apex Court considered the principles laid down in 'Ram Dayal', 'Jikubai' and 'Bhagavati' cases cited above, and accepted the legal principles contained therein. However, the Court did not decide on the actual time of issuance of the policy, as there was no evidence on that question of fact and neither the Tribunal nor the High Court dealt with that fact. As the adjudication on the time of issue of insurance policy became necessary, the Tribunal was directed to allow the parties to lead any further evidence, for deciding the limited question regarding "the time when the insurance policy was issued, and then decide consequential liability, if any, on the Insurance Company."*

8. *In the case at hand, the learned Counsel appearing for the Insurance Company, relying on the records in the possession of the company, which he had placed before this Court during the hearing, emphasised the point that though the premium was paid at 12.14 p.m. on 10.1.2000, in the proposal form, the insured had proposed to make the insurance coverage to commence for a period of 12 months, from 11.1.2000 to*

10.1.2001. It is the contention of the appellant, therefore, that there was no policy coverage at 3.30 p.m., when the accident occurred on 10.1.2000. Thus, there is no liability on the Insurance Company to indemnify the insured, 5th respondent, owner. Hence, the direction of the Tribunal to pay even the interim award is only to be set aside.

9. Section 146 of the Act of 1988, as amended in 1994, makes it imperative, on the owner of the vehicle not to ply a motor vehicle, in a public place, unless there is in force, in relation to the use of the vehicle, a policy of insurance accompanying with the requirements of Chapter XI of the Act. The whole reading of Section 146 of the Act makes it mandatory on the owner of the vehicle to have an insurance coverage of the vehicle in force with regard to the third party risk, arising out of the use of the motor vehicle.

32. In the above cited judgment, the learned Single Judge of the Kerala High Court, after referring to Section 23 of the Indian Contract Act, 1872 and the relying upon the observations of the Hon'ble Supreme Court about the expression "public policy" and few more judgements including ***Vedathal case*** (cited *supra*) relied by the appellant herein, remanded the matter back to the Tribunal to mark the proposal form which was not produced before the Tribunal to ascertain how the insurance coverage was given post dated effect. The operative portion of the said judgment in ***New India Assurance Co. Ltd. vs P. Jayanti And Ors*** (cited *supra*) reads as under:-

“15. There is no evidence before me to accept the proposal form now available with the insurer, the appellant, requesting to commence the insurance coverage from 11.1.2000 to 10.1.2001, for a period of 12 months. It is not in dispute, as the facts now reveal, that the premium was paid by the 5th respondent, the owner, at 12.14 p.m. on 10.1.2000. The vehicle was originally insured with the appellant. Letter of renewal was sent by the insurer to the owner of the vehicle, but he did not renew till 10.1.2000. I have already discussed that in the light of the principles that is contained in section 146 of the Act, no owner of the vehicle is allowed to ply his vehicle, without an insurance coverage for that vehicle. There is a mandate on the part of the insurer also to insure the vehicle for which premium is remitted, and to have the coverage commenced, if there is already a policy in existence, from that date and time of its expiry or from the date and time at which the premium was paid, as per the terms of the contract contained in the policy. In view of the principles contained in Ram Dayal, Jikubai cases, which have been consequently followed in Bhagwati and Chinto Devi cases, it is for the owner as well as for the insurer to adduce evidence to show, in the facts of this case, when the actual liability of the insurer commenced, as the premium was paid on 10.1.2000, I hereby reiterate the mandate contained in section 146 of the Act, that no vehicle be plied without a valid insurance coverage of that vehicle, and in such circumstances, the premium paid by the 5th respondent, owner of the vehicle, shall only be for having an insurance coverage of his vehicle. Therefore, the owner cannot escape from his liability to pay the appropriate premium, and to have an insurance coverage for the vehicle. Hence, he cannot opt for a

date of commencement of the insurance coverage, after paying the premium on a particular date, which would be against the public good and the public interest, and also falling under section 23 of the Contract Act.

16. However, the circumstances under which the owner has proposed to have the insurance policy covered from 11.1.2000, as contended by the Counsel for the appellant-Insurance Company, and denied by the owner of the vehicle, 5th respondent herein, are questions of facts. Therefore, the parties shall adduce evidence on this fact and the Tribunal shall decided the same, basing on the evidence so adduced before it.”

33.In ***Vedathal case*** (cited *supra*) (order dated 12/11/2002) the Division Bench of this Court has observed that:-

“ 3. The assumption of liability by an Insurer in only after the receipt of the premium. Neither the Motor Vehicles Act, nor the Insurance Act require that the Insurer assume liability the moment the premium is tendered. The policy issued provides for specifying “effective date of commencement of insurance for the purpose of the Act fromo’ clock on To midnight of” 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. If no time is mentioned, but a mere date is mentioned, the Insurer would be presumed to have assumed the risk from the commencement of

the day. If, however, besides specifying the date, the time specified. The Insurer's liability would be only from the date and time specified, and not earlier. The Supreme Court in the case of Oriental Insurance Company Limited v. Sunitha Rathi, 1998 (1) SCC 363, has held to that effect.

4. In this case, the date specified in the Policy is the effective date of commencement, which is subsequent to the date of the occurrence of the accident. It was over to the Insurer to specify such a date, as the law does not mandate that the risk should be assumed on the date on which the premium is received. The Insurer's liability, therefore, can only be regarded as having commenced from the date specified in the Policy as the effective date of commencement of the insurance, and not earlier."

34. On facts, ***Sunitha Rathi case*** (cited *supra*) which has been referred and followed by the Division bench in ***Vedathal case*** (cited *supra*), the premium was paid after the accident. To recollect the facts, the accident occurred on 10/12/1991 at 2.20 pm thereafter, the premium was paid at 2.55 pm. Since, the accident preceded the payment of premium, the Hon'ble Supreme Court held that since, at the time of insurance, there was no insurance, the insurance company not liable to pay.

35. In the instant case, the premium payment was prior to the accident. The issue, 'whether, the insurance company have the prerogative to postpone the commencement of insurance cover unilaterally without any reason', was not the issue decided in ***Vedathal case*** (cited *supra*).

36.To be noted that almost a month later, a coordinate Bench of this Court, in *United India Insurance Company Limited -vs- S.Viswanathan reported in 2003 (2) CTC 72*, had expressed a different view which has been extracted in para 28 of this judgment.

37.Again capsulizing the facts of the case under consideration, the insurance company admits that the premium was paid in cash on 21/07/2008 at 10.15 am. Subsequently, the accident occurred at 12.00 noon on 21/07/2008. The policy indicates that it will commence two days later i.e., on 23/07/2008. The insured has mounted the witness box and had deposed that on his payment of premium, receipt was issued and the official of the Insurance company inspected the vehicle and informed him that the vehicle is insured.

38.It is not the case of the insurance company that the insured proposed to have the coverage after two days from the date of payment of premium. The learned counsel for the insurance company when queried about how long the commencement of coverage can be postponed after receipt of the premium, the answer was not convincing. If it is a renewal policy, one can understand that the insured has sought for renewal in advance before expiry of the current policy. In such circumstances, the commencement of insurance coverage has to be postponed to a future date. In this case, the insurance policy is a new policy and not a renewal policy.

39. Therefore, the insured ought not have asked for future date coverage. If the case of the Insurance company is that, with consent and knowledge of the

insured, they issued the policy commencing after two days from the receipt of the premium and evidence produced to that effect, then the Court can hold there is *consensus ad idem* among the contracting parties, so, the terms of the special contract will prevail. Unfortunately none of the above circumstances could be inferred from the material placed before this Court.

40. Any one who pay the premium, unless intimated, will have an legitimate expectation that his vehicle will get insurance coverage soon after payment of the premium. If anything contrary to the said natural intended, then, it must be only by consent. As observed by the Kerala High court in the judgement in ***New India Assurance Co. Ltd. vs P. Jayanti And Ors*** (cited supra), for a new policy, if the insurance company fail to give insurance coverage immediately on receipt of the premium, it is violation of section 146 of the Motor Vehicles Act and will be hit by Section 23 of the Indian Contract Act.

41. The above view of this Court is well fortified by the following judgments of the Hon'ble Supreme Court rendered after the ***Vedathal case*** (cited supra):-

(i) In **Balbir Kaur & Others Versus New India Assurance Company Ltd. & Others** (date 15-04-2009) reported in 2010 (1) SCC(Cr) 1027= CDJ 2009 SC 742, it has been held as follows:-

'11. Chapter XI of the Act provides for insurance of motor vehicles against third party risks. Indisputably, the deceased was a third party. In terms of Section 146 of the Act, an owner of a motor vehicle must take out an insurance in respect of a third party risk. Section 147

of the Act provides that a policy of insurance referred to in Section 146 thereof must be a policy which satisfies the conditions under Clauses (a) and (b) of Sub-section (1) thereof. Sub-section (5) of Section 147 reads as under:

"(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

12. Section 64 VB of the Insurance Act, 1938 merely provides that 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 persons 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.

13. For the purpose of this case, we would assume that an insurance policy, in law, could be issued from a future date. A policy, however, which is issued from a future date must be with the consent of the holder of the policy. The insurance company cannot issue a policy unilaterally from a future date without the consent of the holder of a policy. (emphasis added). Even the said circular letter had not been produced and/ or no material was placed as to why the policy was

issued from a later date. It is, however, not necessary for us to delve deep into the matter in view of the limited notice issued by this Court.”

(ii) In Oriental Insurance Co. Ltd. Versus Dharam Chand & Others (Date of judgement 27/08/2010) Reported in CDJ 2010 SC 739 = 2010 (15) SCC 141, the Hon'ble Supreme court when a similar issue came up for consideration, ordered as under:-

“ 1. This appeal arises from a motor accident claim.

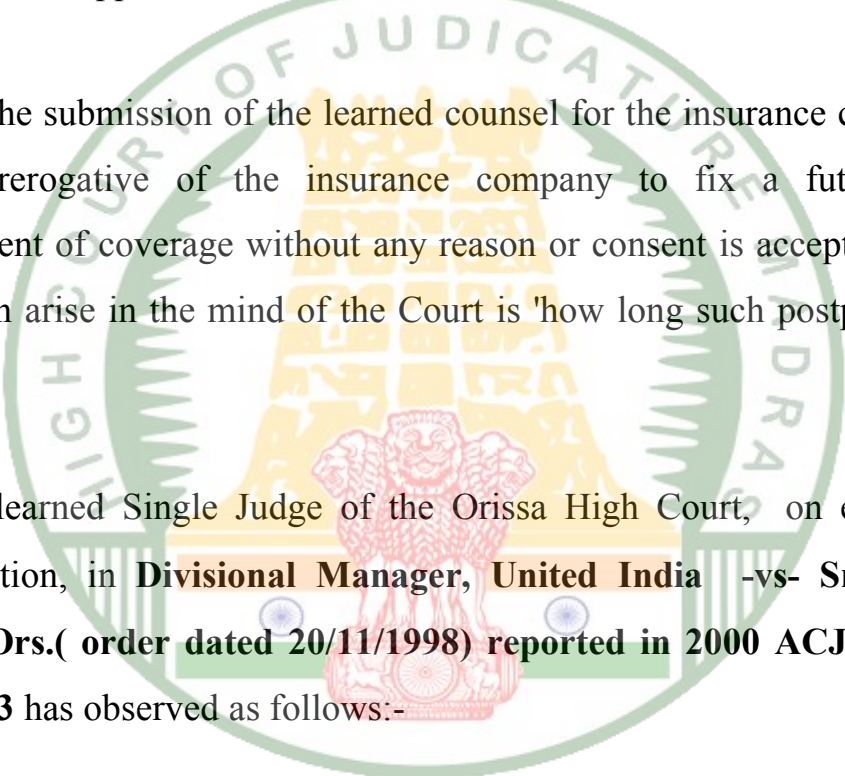
2. In this case, the premium cheque for the insurance policy was received by the appellant, the insurance company, on May 7, 1998 at 4.00 pm and a cover note was issued at the same time. In columns 3 & 4 of the cover note, however, it was stated that the insurance would commence from May 8, 1998 and expire on May 7, 1999.

3. The motor accident in regard to which the claim case was filed took place at 8:30 pm on May 7, 1998. The insurance company sought to disown its liability on the plea that the accident took place before the commencement of the insurance as indicated in the cover note. But, both the Tribunal and the High Court, turned down the plea and held the insurance company liable to pay the compensation amount.

4. When this appeal was taken up, counsel for the insurance company very fairly stated that since the cheque for the premium amount was received by the company at 4:00 pm on May 7, 1998, the

insurance must be deemed to have commenced from that time and four hours later when the vehicle met with the accident, the owner must be deemed to have been covered by the insurance policy. We appreciate the fairness shown by the counsel for the insurance company.

5. The appeal is dismissed but with no order as to costs.”

42.If the submission of the learned counsel for the insurance company that it is the prerogative of the insurance company to fix a future date for commencement of coverage without any reason or consent is accepted. Then, the next question arise in the mind of the Court is 'how long such postponement can be?'.


43.A learned Single Judge of the Orissa High Court, on entertaining a similar question, in **Divisional Manager, United India -vs- Smt. Labanga Sahu And Ors.(order dated 20/11/1998) reported in 2000 ACJ 1259 = AIR 1999 Ori 193** has observed as follows:-

“.....it is clear that there is an injunction on use of a motor vehicle in a public place without an insurance. In this view of the matter, if the contention of the insurer that mere issuance of a cover note without issuance of a policy does not bring about an insurance coverage, is accepted, it would mean that despite collection of premium and issuance of a cover note, no vehicle will be used or plied till such time as a policy is issued which may take a time of days, weeks or months. This is not contemplated by the statute and indeed, as the

"certificate of insurance" includes "a cover note", negatives the contention. The analogy that till a proposal of life insurance is accepted, mere collection of premium by the agent does not bring about an insurance cover cannot, in view of the specific provision contained in section 94 of the 1939 Act and section 146 of the 1988 Act, come to the aid of the insurer in defending a claim under the Motor Vehicles Act on the ground that issuance of a cover note does not bring about a contract of insurance. In other words, vehicles will come to a standstill till a policy is issued notwithstanding issuance of a cover note."

44. I find, ***The Branch Manager v. Vijayalakshmi*** (cited supra) is in line with the view expressed in ***Vedanthal case*** (cited supra). In this case, The Division Bench, after discussing the case laws in detail, has 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.'

45. To the notice of the Division Bench which decided the ***Vijayalakshmi case*** (cited supra), the judgments of the Hon'ble Supreme Court in ***Balbir Kaur v. New India Assurance Co. Ltd.***, (2009 (1) TN MAC 693 (SC)) and ***Oriental***

Insurance Co. Ltd. Versus Dharam Chand (cited supra) were not been brought to the notice.

46.The learned counsel for the appellant would submit that malpractices have been taken note of by the Hon'ble Supreme Court in **Sobina Iakai's** case (cited supra) wherein, it has been held as follows:-

“A very large number of cases have come to our notice where insurance policies are taken immediately after the accidents to get compensation in a clandestine manner.....In order to curb this widespread mischief of getting insurance policies after the accidents, it is absolutely imperative to clearly hold that the effectiveness of the insurance policy would start from the time and date specifically incorporated in the policy and not from an earlier point of time.”

47.The learned counsel for the appellant therefore submitted that, post dated coverage is given to avoid fraud and without getting the Policy, a Owner cannot use the vehicle and plead that he believed the policy would be for a particular period. The vehicle owner cannot plead a contract contrary to the written document. Hence the perverse approach of the Tribunal may be set aside.

48.On reading section 149 (2)(b) of the Motor Vehicles Act, it is clear that, if any policy obtained by non disclosure of material facts (like getting insurance after committing the accident), the insurance company can repudiate their liability. Such an ill can be cured by mentioning the time of payment of premium and not by issuing post dated coverage. Despite mention the time any attempt to cheat the insurance company surfaces, the insurer can resort to Section 149(2) of the Motor Vehicles Act. Hence, the contention of the learned counsel for the insurance

company that the coverage is given post dated to avoid fraud of remitting premium after accident is illusory.

49.Likewise, post dated coverage after receipt of the premium and allowing the vehicle to ply without insurance coverage during the interregnum period, go against the spirit of section 146 of the Motor Vehicles Act. This tantamount to violation of the Act, Insurance company cannot be permitted to be privy for such violation.

50.Having entered into an agreement on a particular day after receiving the premium, it is for the insurance company to explain why a new policy after receipt of the premium was not given effect immediately on the same day but after two days. The reason for post-dated insurance is not explained to the Court either through the pleadings or through the witness. Therefore, this Court finds that in the given facts and circumstances neither the insurance company nor the offending vehicle owner can deny their liability towards a third party, road accident victim . Hence, the award passed by the Tribunal is confirmed.

51.In the result, the ***Civil Miscellaneous Appeal is dismissed.*** No costs.

25.08.2020

bsm/jbm/ari

Index :Yes

Internet :Yes

Speaking order/Non-speaking order.

To,

1. The Motor Accidents Claims Tribunal,
Arani,
Tiruvannamalai District.

2.The Section Officer,
V.R.Section,
High Court,
Madras.



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Dr.G.Jayachandran,J.

jbm



Pre-delivery Judgment in
C.M.A.No.235 of 2016

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25.08.2020