

FAO-1466-2020 (O&M)

Date of decision: February 27, 2023

Oriental Insurance Company Limited

....Appellant

versus

Shakuntla and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Satpal Dhamija, Advocate for
Mr. Ashwani Talwar, Advocate for appellant-Insurance Company.

Mr. Saurabh Arora, Advocate
for respondents No.1 to 5-claimants.

Mr. Rahul Bansal, Advocate for respondent No.7.

ARUN MONGA, J. (ORAL)

Aggrieved by Award dated 20.09.2019 rendered by learned Motor Accidents Claims Tribunal, Chandigarh (for brevity, Tribunal), appellant-Insurance Company is before this Court by way of an appeal.

2. Succinct facts, as noted by learned Tribunal, are as below:

“.....on 12.09.2017 at about 8.37 PM, deceased Harmesh Lal was going on his bicycle from his official residence Sector 39, Chandigarh to Sector 16 i.e. the place of his job. When he reached near Bus Stop Sectors 37/38 dividing road on Sector 38 side, offending vehicle bearing registration No.CH-01-AC-8860 driven by respondent No.1 in a rash and negligent manner came there and hit the cycle of deceased from backside. Due to the accident, he sustained multiple and grievous injuries. Surinder Kumar s/o Ram Kishore was also coming after doing his duty who witnessed the accident. He took the injured to PGI, Chandigarh with the help of passersby but Harmesh Lal died in PGI on 14.09.2017. Due to the accident, case FIR No. 391 dated 13.09.2017 u/s 279, 337 IPC & 185, 181 of Motor Vehicles Act, 1988 came to be registered on the statement of Surinder Kumar s/o Ram Kishore. It is claimed that deceased on the date of accident and death was 49 years of age. He was an employee of Punjab Armed Police and posted as Constable at DGP-IVC, Sector 16, Chandigarh and drawing 1 lac per month as salary. Hence, a claim for compensation to the tune of ₹1 crore along with interest @ 18% per annum from the date of accident till actual realization has been put up.”

2.1. Upon notice, respondents No.6&7 (driver and owner of the alleged offending car) filed their written statement denying factum of accident and also refuting other allegations leveled in the claim petition.

2.2 Appellant-Insurance Company filed separate written statement stating that driver of vehicle bearing registration No.CH-01-AC-8860 was not holding a valid and effective driving license at the time of accident and there was wilful violation of terms and conditions of the insurance policy. Further it was averred that insurance company was not liable to pay any compensation and prayed for dismissal of the claim petition.

3. Learned Tribunal framed the following issues:

- “1. *Whether accident dated 12.09.2017 at about 8.37 PM resulting into death of Harmesh Lal occurred on account of rash and negligent driving of vehicle No.CH-01-AC-8860 by respondent No.1? OPP*
2. *Whether the claimants are entitled to compensation for death of Harmesh Lal, if so, to what extent and from whom? OPP*
3. *Whether the driver of offending vehicle was not holding a valid & effective driving license on the date of accident and the vehicle was being driven in violation of terms and conditions of the insurance policy? OPR-3*
4. *Relief.”*

4. On appraisal of record/ evidence, learned Tribunal decided issues No.1 & 2 in favour of claimants. Issue No.3 was decided against respondent No.3- Insurance Company. Consequently, a compensation of Rs.53,25,954/- was awarded to the claimants along with interest at the rate of 9% per annum from the date of petition till actual realization.

5. Vide order dated 05.08.2021, this Court *prima facie* observed that appellant-Insurance Company should be granted recovery rights. Feeling aggrieved, appellant-Insurance Company preferred Civil Appeal No.44 of 2022 before the Supreme Court. Vide an interim order dated 17.11.2021, the Supreme Court while issuing notice of motion, stayed execution of judgment/ award passed by learned Tribunal subject to appellant's depositing entire amount, as awarded by

learned Tribunal within a period of four weeks. However, claimants were not permitted to withdraw the same unless permission is granted by the Supreme Court. Thereafter, aforesaid Civil Appeal was finally disposed of vide order dated 03.01.2022 by the Supreme Court directing aforesaid interim order to continue till final disposal of appeal pending before this Court. The Supreme Court also requested this Court to finally decide and dispose of the appeal herein within a period of three months from the date of receipt of said order.

6. I have heard rival contentions of learned counsel for the parties and perused the record.

7. Having heard rival contentions of learned counsels representing respective parties and for reasons being stated herein below, appeal is bereft of any merits and accordingly, deserves to be dismissed.

8. First and foremost, issue with regard to effective date and time of the policy coming into operation was summed up on previous date of hearing, vide my order dated 14.02.2023, which is reproduced herein below:

“Short question involved herein is, whether the Insurance policy in question, admittedly purchased prior to the accident containing a clause that the same would become operational on the day next to that (after midnight) of day of purchase, exempts the Insurer from its liability if the vehicle insured meets with accident after its purchase. Both the learned counsel appearing for the owner of the offending vehicle and the claimants seek time to cite relevant case law that once the policy had been purchased, it becomes effective with immediate effect.

Adjourned to 21.02.2023.”

9. Even though, above question has been aptly dealt with and answered by learned Tribunal recording cogent reasons as well as dealing with rival contentions of the parties in proceedings before the Tribunal, learned counsel for appellant-Insurance Company was given further opportunity by this Court as well for rendering assistance in case he had any further material to establish that learned Tribunal fell in grave error so as to warrant interference of this Court. On resumed

hearing, learned counsel for the appellant-Insurance Company relies on Annexure A-1, which is Insurance Policy as well as Annexure A-2, which is a declaration form. Both these documents were exhibited before learned Tribunal and have been dealt with while rendering findings against the appellant-Insurance Company. Its discussion being apposite, is reproduced herein below:

“26. Insurance Company itself has produced on record, Standard Proposal Form for Policy Ex.RX to which Motor Car Inspection Report of the offending vehicle is attached which mentions date and time as 12.09.2017 at 11.50 AM at Mohali. This goes to show that respondent No.2 had approached the Insurance Company for the purpose of insurance of the offending vehicle in the morning hours of 12.09.2017 and vehicle was inspected by official of the insurance company at about 11.50 AM. Insurance Company has also produced a receipt Ex.RY which was issued in favour of respondent No.2 Gursharan Kaur acknowledging the fact of receipt of premium of Rs.7,846/- for insurance of the vehicle. Said receipt is also dated 12.09.2017 and in the column of collection date, time of collection of premium is mentioned as 16.50 hours. Thus, by the own documents of respondent No.3 Insurance Company, it stands proved on the record that premium for insurance of the vehicle was received by the insurance company on 12.09.2017 at about 4.50 PM whereas accident took place on the same day at about 8.37 PM. However, admittedly, as per insurance policy Ex.RZ, the period of policy is w.e.f. 00:00 on 13.09.2017 to midnight of 12.09.2018. Thus, argument being raised on behalf of insurance company is that since offending car was not under insurance on the date of accident, the insurance company cannot be fastened with liability. On this point, judgment of Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Smt. Sobina Lakai & Ors., Appeal (Civil) 1393 of 2001 decided on 09.07.2007** was pressed into service.

27. Thus, point for determination arising before this Tribunal is whether the payment of premium on 12.09.2017 at 4.50 PM and receipt of the same by the insurance company had culminated into a binding contract of insurance between the parties and in these circumstances, whether the offending vehicle shall be deemed to have been insured on 12.09.2017 well before the accident and, therefore, whether Insurance Company is liable to indemnify the insured or not?

28. Answer to this question has been provided in **Shri Laxman Vithu Majik** (supra). In that, premium was collected by Insurance Company on 14.06.2006 i.e. prior to the accident but policy of insurance was effective from 15.06.2006 to 14.06.2007. In said case, insurer had not obtained the consent of insured that policy would take effect from future date. In the written statement filed by insurance company, no plea was taken that it had obtained consent from the insured that policy would be effective from 15.06.2006 and, therefore, it was held that in the absence of procurement of consent, policy would start when contract was concluded i.e., on effecting the payment. Hon'ble Bombay High Court had also adverted to Section

64VB of the Insurance Act, 1938 and observed that a reading of Section makes it apparent that payment of premium is also contemplated by cheque and policy would begin to run no sooner such document is received.”

10. I find nothing wrong with the findings rendered by learned Tribunal, as reproduced hereinabove, so as to warrant any indulgence either on facts or in law. That apart, I am unable to persuade myself as to how once the Insurance Company having received the entire premium, it could thereafter convey unilaterally that the policy would come into operation from the next following date by sending it through Post, and to turn around and say that insured had agreed and consented to the same coming in operation w.e.f. the next day of having paid premium. Once amount was accepted by Insurance Company from insured, thereafter it was merely a formality of conveying terms and conditions of policy in the event of vehicle meeting with an accident. Further, learned counsel for respondents No.1 to 5-claimants relies on case law in support of what has already been held by learned Tribunal in his favour, to viz., **New India Assurance Co. versus Bhagwati Devi**, reported in **1998 (6) SCC 534**, **M/s National Insurance Company Ltd. versus Smt. Jijubhai Nathuji Dabhi**, reported in **1997 AIR (SC) 2147**, **The New India Assurance Co. Ltd. versus Ram Dayal and others**, reported in **1990 (2) PLR144**, **New India Assurance Company Ltd., Allahabad versus Poonam Tripathi and others**, reported in **2015 (65) RCR (Civil) 86**, **Oriental Insurance Co. Ltd. versus Venkataraman and others**, reported in **2012 (28) RCR (Civil) 694**, **Oriental Insurance Co. Ltd. versus Vedathal and another**, reported in **2001 ACJ 2022** and **T. Dinakar versus P.J. Jagadish and others**, reported in **1999 (1) ACC 288**.

11. In the premise, no grounds for interference are made out.

12. Dismissed.

13. In the parting, I may hasten to add here that even though vide order dated 05.08.2021, when notice of motion was issued, this Court had made certain observations that since contract of Insurance Company came into being only w.e.f. 13.09.2017 and *prima facie*, there being no valid contract on the date of accident, appellant-Insurance Company should have recovery rights, subject to outcome of the appeal.

13.1 Since for reasons recorded hereinabove, I have already held that as on the date and time of the accident, there was a concluded and valid contract between Insurer and Insured, therefore, aforesaid tentative observations are of no consequence.

14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 27, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No