



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

227

**FAO-1909-1999 (O&M)
Date of decision : 02.04.2026**

The Bhuna Co-op. Sugar Mills and another Appellants

versus

**The Commissioner under the Workmen's Compensation Act
and others Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Lovinder, Advocate
for the appellants.

Mr. Shubham Verma, Advocate for
Mr. Sunny K. Singla, Advocate
for respondent No.2.

Mr. Suvir Dewan, Advocate
for respondent No.3.

PANKAJ JAIN, J. (Oral)

1. Employer is in appeal aggrieved of the order dated 27.01.1999 passed by Commissioner under the Workmen's Compensation Act, 1923 absolving insurer of its liability to indemnify the insured-employer.
2. The claim relates to injury suffered by employee in an accident while working with the appellant. The injured employee suffered 25% permanent disability. The Commissioner awarded compensation of Rs. 61,155/- along with statutory interest.
3. The dispute in appeal is between insurer and the insured.



4. The Commissioner while absolving the insurer of liability to pay observed as under:-

“xx xx xx

20. As far as the question to which respondents should pay the compensation, for that I have carefully perused the documents filed in the case and the case-law referred above and found that the accident occurred on 8.12.1993 at 9.15 a.m. whereas the cover note of Insurance was prepared and issued on 8.12.1993 at 2.20 p.m. In my opinion, the respondents Nos. 1 and 2 cleverly appeared before the Manager, New India Assurance Company on 8.12.1993 after the occurrence of the accident and collected the Insurance Policy on the very day. The Honourable Supreme Court decided in case law - 1992 (1) SC-66 is reproduced as under :-

"Insurance-Policy when became operative-in view of special contract mentioned in the policy viz it would be operative from 4.00 p.m. on the date of payment the premium, general provision under General Clauses Act that contract would be operative from mid-night not be applicable-Accident in this case having occurred around 11.00 a.m. on the date of payment of premium, held, Insurance Coverage would not enable the claimant to seek recovery of the amount from the appellant Company."

Accordingly, I hereby hold that the respondent No.3 is not liable to pay the compensation to the applicant. In view of the above, I hereby fix the liability of the respondents Nos. 1 and 2 to pay the above said amount to the applicant, jointly or severally. Hence, issue No.3 too is hereby decided against the respondents 1 and 2 and in favour of the applicant."

5. Counsel for the appellant submits that even though the insurance temporary cover note was issued on 08.12.1993 at 2:20 pm, but the policy issued was applicable from 08.12.1993 till 07.12.1994 (both days included). Accordingly, the accident that occurred on 08.12.1993 at 09:15 a.m. would be covered by the contract of insurance



and the insurer cannot be absolved of its liability. Reliance is being placed upon *Oriental Insurance Company Limited vs. Porselvi and another* (2009) 15 Supreme Court Cases 116, *General Assurance Society Ltd. vs. Chandmull Jain and another* 1966 SCC OnLine SC 208, *The Oriental Insurance Company Limited vs. Sashi Chopara and others* 2016 SCC OnLine P&H 2594, *United India Insurance Company vs. Sashiprava Swain and another*.

6. *Per contra*, counsel for the respondent-insurance company submits that the cover note has been issued on 08.12.1993 at 2:20 pm. The policy cannot be held operational retrospectively to include an accident that occurred prior in time to the issuance of policy. He contends that the insurance policy was obtained without disclosing the factum of accident. Insurance company cannot be held liable to indemnify the employer qua the liability of the employer arising out of an incident that occurred prior to payment of premium.

7. I have heard counsel for the parties and have carefully gone through the records of the case.

8. Facts are not much in dispute. It stands proved on record that accident in question occurred on 08.12.1993 at 09:15 a.m. Cover note was issued on 08.12.1993 at 2:20 p.m. Insurance cover note is on record as Ex.R5. Policy issued by the insurance company is on record as Ex.R6. As per the policy, the contract of insurance shall remain valid for 12 months commencing from 08.12.1993 till 07.12.1994. The policy specifically provides that both days, i.e. 08.12.1993 as well as 07.12.1994 are included.



9. The question arises :
- (i) whether the insurance policy shall commence from the time it was issued or with the commencement of the date of its issuance, i.e. from the previous midnight?
10. Learned counsel for the appellant has relied upon ***General Assurance Society Ltd. vs. Chandmull Jain and another*** reported as ***1966 SCC OnLine SC 208*** to submit that cover note need not be considered as the same stands superseded by the policy as per which day of 08.12.1993 is included and covered under the contract of insurance. Supreme Court in ***Chandmull Jain's case (supra)***, observed as under:-

“xxx XXX XXX

A contract of insurance is a species of commercial transactions had there is a well-established commercial-practice to send cover notes even prior to the completion of a proper proposal or while the proposal is being considered or a policy is in preparation for delivery. A cover note is a temporary and limited agreement. It may be self-contained or it may incorporate by reference the terms and conditions of the future policy. When the cover note incorporates the policy in this manner, it does not have to recite the term and conditions, but merely to refer to a particular standard policy. If the proposal is for a standard policy and the cover note refers to it, the assured is taken to have accepted the terms of that policy. The reference to the policy and its terms and conditions may be expressed in the proposal or the cover note or even in the letter of acceptance including the cover note. The incorporation of the terms and conditions of the policy may also arise from a combination of references, in two or more documents passing between the parties. Documents like the proposal, cover note and the policy are commercial documents and to interpret them commercial habits and practice cannot altogether be ignored. During the time the cover note operates, the relations of the parties are governed



by its terms and conditions, if any. but more usually by the terms and conditions of the policy bargained for and to be issued. When this happens the terms of the policy are incipient but after the period of temporary cover, the relations are governed only by the terms and conditions of the policy unless insurance is declined in the meantime. Delay in issuing the policy makes no difference. The relations even then are governed by the future policy if the cover notes give sufficient indication that it would be so. In other respects there is no difference between a contract of insurance and any other contract except that in a contract of insurance there is a requirement of uberrima fides i.e., good faith on the part of the assured and the contract is likely to be construed contra proferentem that is against the company in case of ambiguity or doubt. A contract is formed when there is an unqualified acceptance of the proposal. Acceptance may be expressed in writing or it may even be implied if the insurer accepts the premium and retains it. In the case of the assured, a positive act on his part by which he recognises or seeks to enforce the policy amounts to an affirmation of it. This position was clearly recognised by the assured himself, because he wrote, close upon the expiry of the time of the cover notes, that either a policy should be issued to him before that period had expired or the cover note extended in time. In interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves. Looking at the proposal, the letter of acceptance and the cover notes, it is clear that a contract, of insurance under the standard policy for fire and extended to cover flood, cyclone, etc., had come into being.”

11. There cannot be any quarrel with the proposition of law that a cover note is a temporary and limited agreement and the policy being agreement of insurance governs the relationship between the parties. Thus, 08.12.1993 as per the policy is included and is covered



under the contract of insurance. However, the question still remains whether the policy shall commence at 00.00 hours on the midnight between 07.12.1993 and 08.12.1993, i.e. when day of 08.12.1993 commenced or whether the policy shall commence at 02.20 p.m. on 08.12.1993, i.e. when the cover note was issued accepting the premium. In ***Chandmull Jain's*** case also, 05 Judges Bench observed that a contract is formed when there is an unqualified acceptance of the proposal. Acceptance may be expressed in writing or it may be implied. It stands proved on record that the premium was accepted at 02.20 p.m. by the insurer through a positive act of issuance of cover note. Thus, 08.12.1993 is covered by the policy, but the cover shall commence at 02.20 p.m. on 08.12.1993 and not prior thereto.

12. Supreme Court in ***New India Assurance Co. Ltd. vs. Ram Dayal (1990) 2 SCC 680*** observed as under:-

“xx xx xx

2. The insurer repudiated its liability by maintaining that the policy had been taken after the accident and, therefore, it had no liability to meet the award of compensation against the owner. The Tribunal accepted this stand and rejected the claim against the insurer. In appeal, the High Court took the view relying upon certain decisions that the insurance policy obtained on the date of the accident became operative from the commencement of the date of insurance-i.e. from the previous midnight and since the accident took place on the date of the policy the insurer became liable.

3. Apart from the judgment under appeal, we find that this view is supported by two judgments of the Madras High Court and an earlier decision of the Punjab and Haryana High Court. Two Division Benches of the Madras High Court have taken the view after discussing the law at length that the policy taken during any part of the day becomes operative from the



commencement of that day. Besides these judgments a Division Bench decision of the Allahabad High Court in *Jaddoo Singh v. Malti Devi* [AIR 1983 All 87] supports this view on principle.

4. There is evidence in this case that the vehicle was insured earlier up to August 31, 1984 and the same was available to be renewed but instead of obtaining renewal, a fresh insurance was taken from September 28, 1984, which is the date of the accident. We are inclined to agree with the view indicated in these decisions that when a policy is taken on a particular date, its effectiveness is from the commencement of the date and, therefore, the High Court, in our opinion, was right in holding that the insurer was liable in terms of the Act to meet the liability of the owner under the award.

5. As pointed out in Stroud's *Judicial Dictionary* "Date" means day, so that where a cover note providing for temporary insurance of a motor car expires 15 days after date of commencement, it runs for the full 15 days after the day on which it was to commence.

6. Similarly it has been stated in Stroud that "a bill of exchange, or note, is of the date expressed on its face, not the time when it is actually issued".

7. To the same effect is the decision in *In re F.B. Warren* [(1938) 1 Ch 725; (1938) 2 All ER 331], where it has been held that a judicial act will be referred to the first moment of the day on which it is done. A payment made by a bankrupt in the morning of a day is, therefore, not made, within Section 45 of the Bankruptcy Act, 1914 before the date of a receiving order made later in the same day."

13. Drawing distinction qua cases wherein time of acceptance of premium has been mentioned, Supreme Court in *National Insurance Co. Ltd. v. Jikubhai Nathuji Dabhi*, (1997) 1 SCC 66, departed from the ratio of law laid down in *Ram Dayal's case (supra)* to observe as under:-

"1. This appeal by special leave is confined to the question as to whether the accident had occurred during the operation of



the insurance policy in controversy. The admitted position is that the renewal of the insurance was effected as under:

"Address: Jal Apartment, ... Rd. Vile Parle (N), Bombay 5

It is hereby understood and agreed that the renewal premium of Rs 1307 only under this Policy having been paid on 25-10-1983 and not within the renewal date viz. 14-10-1983 the Insurance by this Policy is suspended from 14-10-1983 (4 p.m.) to 24-10-1983.

Further, it is declared and agreed that the cover under this Policy is reinstated and renewed for a further period of twelve months from 25-10-1983 to 24-10-1984 at a premium of Rs 1307."

2. The tribunal also had recorded, as a fact, that on 25-10-1983 at 4.00 p.m., the contract of renewal had come into force and it would be operative up to 24-10-1984. The tribunal also recorded, as a fact, that the accident had occurred on 25-10-1983 at 11.14 a.m., that is, before the renewal of the contract. Under these circumstances, it would be clear that the accident had occurred when the renewal had not taken effect.

3. This Court in *New India Assurance Co. Ltd. v. Ram Dayal* [(1990) 2 SCC 680: 1990 SCC (Cri) 432: (1990) 2 SCR 570] had held that in the absence of any 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, 1897. But in view of the special contract mentioned in the insurance policy, namely, it would be operative from 4.00 p.m. on 25-10-1983 and the accident had occurred earlier thereto, the insurance coverage would not enable the claimant to seek recovery of the amount from the appellant-Company."

14. Correctness of the ratio of *Ram Dayal's case (supra)* was tested by 03 Judges Bench in *New India Assurance Co. v. Bhagwati Devi, (1998) 6 SCC 534* to observe as under:-

"1. In this appeal, the correctness of the decision of a two-member Bench of this Court reported in *New India Assurance Co. Ltd. v. Ram Dayal* [(1990) 2 SCC 680:1990 SCC (Cri) 432) requires to be tested.



2. The facts giving rise to the appeal are minimal. The appellant-insurance company sold a policy at about 4 p.m. on 17-2-1989. Undeniably, it had been bought at a time when an accident pertaining to the vehicle insured had already taken place at about 9 a.m. the same day. The fatal accident occurring thereby gave rise to a claim for damages before the Motor Accident Claims Tribunal. The same was allowed on the strength of the decision of this Court aforementioned, correctness of which has been challenged. The said decision proceeded on the legal fiction that when a policy is taken on a particular date, its effectiveness would start from the commencement of that date which is from the previous midnight. The accident taking place at any time during the day would be covered by the policy. Later a three-member Bench of this Court in *National Insurance Co. Ltd. v. Jikubhai Nathuji Dabhi* [(1997) 1 SCC 66] has taken the view 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. In the said case, the policy had been bought at about 4 p.m. on the day of the accident and, thus, was not allowed to be operative from midnight; the accident having occurred around 11 a.m. on that date. The principle deduced is thus clear that should there be no contract to the contrary, an insurance policy becomes operative from the previous midnight, 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 put to rest by this Court. There is, thus, nothing further for us to deliberate upon.”

15. In view of above, this Court finds that the issue is covered against the appellant by ratio of 03 Judges Bench in ***Bhagwati Devi's*** case. The contract of insurance came into existence in the present case on 08.12.1993 at 2:20 p.m. Accordingly, the accident that occurred on 08.12.1993 prior to 2:20 p.m., cannot be held to be covered by the



contract of insurance between the insured and the insurer. The Commissioner thus rightly held insurer not liable to indemnify the insured.

15. The question of law culled out hereinabove is accordingly answered against the appellant.

16. The appeal is accordingly dismissed.

17. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

02.04.2026
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No