

A NEW INDIA ASSURANCE CO. LTD.

v

SMT. SITA BAI AND ORS.

SEPTEMBER 10, 1999

B [DR. A.S. ANAND, C.J., M. SRINIVASAN AND R.C. LAHOTI, JJ.]

*Motor Vehicles Act, 1939:*

C S. 92—A—Motor accident claim—Liability of Insurer—Accident took place at 10:00 hours on 16.4.1987 and policy commenced thereafter at 21:00 hours on the same date—Held, Tribunal and High Court were wrong in burdening the Insurance Company with the liability.

*New India Assurance Co. Ltd. v. Ram Dayal and Ors.*, [1990] 2 SCC 680, held not applicable.

D

*National Insurance Co. Ltd. v. Jikubhai Nathuji Dabhai (Smt.) and Ors.*, [1997] 1 SCC 66 and *Oriental Insurance Co. Ltd. v. Sunita Rathi & Ors.*, [1998] 1 SCC 365, relied on.

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5005 of 1999.

From the Judgment and Order dated 11.3.91. of the Madhya Pradesh High Court in M.A. No. 7 of 1991.

F S.K. Paul, (Salil Paul) for M/S. Janendra Lal & Co. P.K. Seth, Ms. Sheetal Sharma, Somnath Chakrabarty, Sudhir Kumar Gupta, Ms. K. Sarada Devi, Pramod Swarup, Ms. Pareena Swarup and Praveen Swarup for the appearing parties.

The following Order of the Court was delivered :

G S.L.P. (C) NO. 12511/91. Leave granted.

Respondents 1 to 4 filed a claim petition before the Motor Accident Claims Tribunal, Khandwa against respondents 5,6 and the appellant herein - New India Assurance Co. Ltd. The claim petition arose out of an accident which took place at 10.00 AM on 16.4.1987. Bus No. CPO-9104, owned by

H

respondent No.5 and driven by respondent No.6 was involved in that accident in which one Smt. Salta Bai suffered fatal injuries. The Motor Accident Claims Tribunal vide order dated 22.9.1990 opined that the bus in question was insured with the appellant-insurance Company for the period 16.4.1987 to 15.4.1988 (both days inclusive) and, thus, the owner (respondent No.5) as well as the Insurance Company (appellant herein) were liable under the provisions of Section 92-A of the Motor Vehicles Act (hereinafter the Act). An amount of Rs. 15,000, was accordingly directed to be paid as ad-interim compensation to respondents 1 to 4 under Section 92- A of the Act. The order of the Motor Accident Claims Tribunal was put in issue and a first appeal was filed in the High Court of M.P. at Jabalpur. On 11th March. 1991, a learned Single Judge of the High Court relying upon the law laid down by this Court in *New India Assurance Co. Ltd. v. Ram Dayal and Ors.*, [1990] 2 SCC 680, held that the appeal had no merits and dismissed the same summarily. Aggrieved, the appellant-insurance Company is before us by special leave.

A brief notice of some of the admitted facts would be advantageous at this stage.

The proposal for insuring the vehicle in question was made by the owner of the vehicle on 16.4.1987 at 21:00 hours. The cover note was issued by the appellant in respect of that vehicle, being No. P/703802 on 16.4.1987 at 21:00 hours. The Insurance Policy (Exh. P/5) was later on issued in which also the date of commencement of the insurance policy was recorded as 16.4.1987 (21:00 hours). The accident, in question, in which Smt. Salta Bai received fatal injuries had admittedly occurred at 10.00 A.M. on 16.4.1987 i.e., much before the commencement of the insurance policy.

The High Court opined that the insurance policy dated 16.4.1987 covered the period of the accident also because the policy would be deemed to have commenced at midnight of 15.4.1987 and 16.4.1987. The High Court in taking this view relied upon the judgment in *Ram Dayal's* case (supra).

The correctness and applicability of the judgment in *Ram Dayal's* case (supra) came up for consideration before this Court subsequently in a number of cases. In *New India Assurance Co. Ltd. v. Bhagwati Devi and Ors.* - Civil Appeal No. 1550 of 1994, decided on 10.2.1998, a three-Judge Bench of this Court relied upon the view taken in *National Insurance Co. Ltd. v. Jikubhai Nathuji Dabhai (Smt) and Ors.*, [1997] 1 SCC 66, wherein it had been held that if there is a special contract, mentioning in the policy the time when it was bought, the insurance policy would be operative from *that time and not*

A *from the previous midnight as was the case in Ram Dayal's case, where no time from which the insurance policy was to become effective had been mentioned. It was held that should there be no contract to the contrary, an insurance policy becomes operative from the previous midnight, when bought during the day following; but, in cases where there is a mention of the specific time for the purchase of the policy, then a special contract comes into being*

B *and the policy becomes effective from the time mentioned in the cover note/ the policy itself. The judgment in Jikubhai's case (supra) has been subsequently followed in Oriental Insurance Co. Ltd. v. Sunita Rathi & Ors., [1998] 1 SCC 365, by a three-Judge Bench of this Court also.*

C *In the fact situation of this case since the commencement of the policy at 21:00 hours on 16.4.1987 was after the accident which had occurred at 10:00 hours on 16.4.1987, the Tribunal as well as the High Court were wrong in burdening the appellant-insurance Company, with any liability- under Section 92-A of the Motor Vehicles Act by applying the law- laid down in Ram Dayal's case which, on facts, had no application to this case. This case is*

D *squarely covered by the judgment in Jikhubhai's case and the other judgments following it as noticed above. The impugned order against the appellant cannot thus be sustained. The same is hereby set aside. The appeal consequently succeeds and is allowed insofar as the appellant is concerned. No costs.*

E R.P.

Appeal allowed.