ORIENTAL INSURANCE CO. LTD. A

v.

PORSELVI & ANR.

(Civil Appeal. 2170 of 2009.)

APRIL 2, 2009 B

[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ.]

MOTOR VEHICLES ACT, 1988:

Claim for compensation – Liability of insurer – Insurance cover specifying the date from which it would be operative – High Court holding insurer liable as accident took place on the date on which cover was issued – Held: High Court having not considered the factual position, matter remitted to it for consideration afresh in accordance with law. C D

In the instant appeal filed by the insurer challenging the judgment of the High Court, it was contended for the appellant that the High Court erred in holding it liable on the ground that the accident took place on the date on which the cover itself was issued i.e. 28.5.1996. It was submitted that the cover note clearly indicated that the policy was valid from 29-5-1996 to 28-5-1997. E

Allowing the appeal and remitting the matter to the High Court, the Court F

HELD: Since the effect of the factual position has not been considered by the High Court, the judgment passed by it is set aside. The High Court would consider the matter afresh in accordance with law. [Para 6] [291-F-G]

New India Assurance Co.Ltd. v. Sita Bai (Smt.) and Ors. **(1999) 7 SCC 575, relied on.** G

Case Law Reference :

(1999) 7 SCC 575	**relied on**	**Para 5**

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2170 of 2009.

From the Judgment & Order dated 22.12.2006 of the High Court of Judicature at Madras in C.M.A. No. 415 of 2001.

S. Paul, A. Gupta, K.K. Bhat, S.N. Bundela and M.J. Paul for the Appellant.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned single Judge of the Allahabad High Court dismissing the appeal filed by the present appellant under Sec.173 of the Motor Vehicle Act, 1988 (in short the 'Act').

3. The factual position is almost undisputed and the only dispute relates to the date of commencement of the policy i.e. the date from which the policy was in operation. The accident took place on 28/5/1996. The policy covers the period from 29.5.1996 to 28.5.1997. The High Court in para 13 of the impugned judgment held as follows:

> "As the cover note has already been issued on 28.5.1996 itself, which is also entered in Ex. B1, Policy, the finding of the Tribunal fastening liability on the appellant cannot be termed as perverse. In view of the above discussion, there is no merit in this appeal. The quantum of compensation has not been disputed by the appellant—Insurance Company. In the result, the Civil Miscellaneous Appeal fails and the same is dismissed."

4. Learned counsel for the appellant brought to our notice the cover note which clearly indicates that the policy was valid from 29.5.1996 to 28.5.1997 though it was issued on 28.5.1996. A copy of the policy was brought on record. Relevant portion thereof reads as follows:

> "Effective date of commencement of insurance for the

purpose of the Act, from 0'clock on (date) 29.5.1996 to midnight of 28.5.1997."

5. A three Judge Bench of this Court in *New India Assurance Co. Ltd. v. Sita Bai (Smt.) and Ors.* [(1999) 7 SCC 575) *inter alia* observed as follows:

> "6. The correctness and applicability of the judgment in *Ram Dayal* case [(1990) 2 SCC 680] came up for consideration before this Court subsequently in a number of cases. In *New India Assurance Co. v. Bhagwati Devi* [(1998) 6 SCC 534] a three-Judge Bench of this Court relied upon the view taken in *National Insurance Co. Ltd. v. Jikubhai Nathuji Dabhi* [(1997) 1 SCC 66] wherein it has 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 from the previous midnight as was the case in Ram Dayal 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 and the policy becomes effective from the time mentioned in the cover note/the policy itself. The judgment in Jikubhai case has been subsequently followed in *Oriental Insurance Co. Ltd. v. Sunita Rathi* [1998) 1 SCC 365] by a three-Judge Bench of this Court also.

6. Since the effect of the aforesaid factual position has not been considered by the High Court we set aside the impugned judgment and remit the matter for fresh consideration in accordance with law.

7. The appeal is disposed of.

R.P. Appeal allowed.