

New India Insurance Co.

Vs

Bhagwati Devi and Others

Civil Appeal No. 1550 of 1994

(CJI M. M. Punchhi, M. Srinivasan, K. T. Thomas JJ)

10.02.1998

### JUDGMENT

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.
3. As a result, this appeal is allowed on the basis of the decision of this Court in the *Jikubhai* case ((1997) 1 SCC 66) in such manner that the claim of the complainant for compensation would stand rejected against the appellant-insurance company but would otherwise remain allowed against the driver and the owner of the offending vehicle. No costs.