

New India Assurance Co.Ltd.

Vs

Sita Bai (Smt) and Others

Civil appeal No. 5005 of 1999

(CJI Dr A. S. Anand, M. Srinivisan, R. C. Lahoti JJ)

10.09.1999

ORDER

SLP (C) No. 12511 of 1991

1. Leave granted.

2. Respondents 1 to 4 filed a claim petition before the Motor Accident Claims Tribunal, Khandwa against Respondents 5 and 6 and the appellant herein- New India Assurance Co. Ltd. The claim petition arose out of an accident which took place at 10.00 a. m. on 16-4-1987. But no CPO 9104, owned by Respondent 5 and driven by respondent 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 5) as well as the Insurance Company (appellant herein) were liable under the provision 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 Respondent 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 11-3-1991,, 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* ((1990) 2 SCC 680 : 1990 SCC (Cri) 432) held that the appeal had no merits and dismisses the same summarily. Aggrieved, that the appeal had no merits and dismissed the same summarily. Aggrieved, the appellant Insurance Company is before us by special leave.

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

4. the proposal for insuring the vehicle in question was made by the owner of the vehicle on 16-4-1987 at 2100 hours. The cover note was issued by the appellant in respect of that vehicle, being No. P/703802 on 16-4-1987 at 2100 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 (2100 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.

5. 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 case*¹.

6. the correctness and applicability of the judgment in *Ram Dayal case*¹ 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. Jikubjai Nathuji Dabhi* ((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 from the previous midnight* as was the case in *Ram Dayal Case*¹ 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 surfing 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*³ been subsequently followed in *Oriental Insurance co. Ltd v. Sunita Raathi* ((1998) 1 SCC 365) by a tree-judge Bench of this Court also.

7. In the fact situation of this case since the commencement of the policy at 2100 hours on 16-4-1987 was after the accident which had occurred at 1000 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 *Ramdayla case*¹ which, on facts, had no application to this case. This case is squarely covered by the judgment in *Jikubjai case*³ 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.