

SUPREME COURT OF INDIA

New India Assurance Co. Ltd.

Vs.

Rakesh Talwar

C.A.No.3122 of 2000

(K. T. Thomas, D. P. Mohapatra and R. C. Lahoti JJ.)

02.05.2000

ORDER

1. Leave granted.

2. This appeal by the Insurance Company in respect of a motor accident which took place at 1.00 p.m. on 17.10.96. A Motor Accident Claims Tribunal passed an Award for Rs. 1,30,000/- in favour of the legal heirs of the victim of the accident. The Appellant - Insurance Company with whom the vehicle was insured on the relevant date was ordered to pay the amount awarded to the claimants. The relieved insured did not file any appeal against the Award, but the Insurance Company went to the High Court with an appeal contending that the insurance policy was actually taken by the insured only subsequent to the time of accident and therefore in the light of the decision of a three Judge Bench of this Court in Oriental Insurance Company Ltd. v. Sunita Rathi and Ors: AIR1997SC4228 the Insurance Company cannot be mulcted with the liability.

3. A Division Bench of the High Court of Punjab and Haryana repelled the said plea of the Appellant - Insurance Company on the sole ground that "the Appellant could not establish its plea nor did it lead any evidence in this regard." The appeal was consequently dismissed by the High Court as per the impugned judgment.

4. Learned Counsel for the Appellant - Insurance Company contended that the reasoning of the High Court is factually wrong and in fact the Appellant-Company had led evidence to establish that the insurance policy was actually issued only at 2.30 p.m. on 17.10.96.

5. The insured was the registered owner of the vehicle which was involved in the accident. He was examined before the Tribunal as RW-1. He did not utter one word as to the time when the insurance policy was taken, despite the specific plea made by the Appellant-Company through the written statement filed before the Tribunal that the insurance policy was taken at 2.30 p.m. on 17.10.96. That apart, an officer of the Insurance Company was examined as RW-2 and he has proved the certified copy of the cover note issued in respect of the same policy showing the time when the policy was issued. Copy of the cover note shows 2.30 p.m. as the time when the policy was issued. When he was cross-examined a suggestion was put to him by the claimants Counsel that the vehicle was insured at 9.00 a.m. on 17.10.96. It is significant to note that no question was put to that witness on behalf of the insured.

6. The factual premise on which the Division Bench of the High Court concluded that the Insurance Company failed to lead evidence to show the time when the Insurance was taken is therefore non-existent. The evidence of the insurer referred to by us earlier remains uncontroverted so far as the insured Respondent is concerned. He is bound by the decision of the three Judge Bench of this Court in Oriental Insurance Company Ltd. v. Sunita Rathi and Ors. (Supra).

7. In the result we allow this appeal and set aside the impugned judgment. We direct the Respondent insured to pay the Appellant - Insurance Company the entire amount paid by them as per the Award passed in favour of the claimants. If the Respondent - insured fails to pay the amount within two months from today/the Appellant - Insurance Company is permitted to take all legal steps to recover the amount from fourth Respondent - Rakesh Talwar and his assets.

8. The Appeal is allowed, with costs.