

M/S. NATIONAL INSURANCE CO. LTD. A
v.
SMT. JIKUBHAI NATHUJI DABHI AND ORS.

NOVEMBER 20, 1996

[K. RAMASWAMY, G.T. NANAVATI AND B
K. VENKATASWAMI, JJ.]

Insurance :

*Insurance policy—Insurance of motor vehicle—Renewal premium— C
Not paid within renewal date—Effect of—Renewal premium due to be paid
on 14.10.1983—Premium paid at 4 P.M. on 25.10.1983—Insurance policy
remained under suspension from 14.10.1983 to 25.10.1983 till 4 P.M.—
Contract of renewal came into force at 4.00 P.M. on 25.10.1983—Accident
took place at 11.14 A.M. on 25.10.1983—Liability of insurance company— D
Held, in view of special contract mentioned in insurance policy, namely it
would be operative from 4.00 P.M. on 25.10.1983, the insurance coverage
would not enable the claimant to seek recovery of the amount from the
insurance company—Claimant is at liberty to make any claim against owner
of the vehicle.*

*New India Assurance Co. v. Ram Dayal, [1990] 2 SCR 570, referred E
to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2671 of 1991.

From the Judgment and Order dated 20.12.89 of the Gujarat High F
Court in F.A. No. 1366 of 1989.

Jitander Sharma, Mrs. Gunwat Dara, Ms. Minakshi Vij. P. Gaur for the Appellant. G

H.A. Raichura for the Respondent in C.A. No. 2671/91.

The following Order of the Court was delivered :

This appeal by special leave is confined to the question as to whether H

A the accident had occurred during the operation of the insurance policy in controversy. The admitted position is that the renewal of the insurance was effected as under :

"Address: Jal Apartment,.....Pd. Vile Parle (N) Bombay.5.

B It is hereby understood and agreed that the renewal premium of Rs. 1307 only under this Policy having been paid on 25.10.1983 and not within the renewal date viz.14.10.1983 the Insurance by this Policy is suspended from 14.10.1983 (4. p.m.) to 24.10.1983.

C Further, it is declared and agreed that the cover under this Policy is reinstated and renewed for a further period of twelve months from 25.10.1983 to 24.10.1984 at a premium of Rs. 1307."

D The Tribunal also had recorded, as a fact, that on October 25, 1983 at 4.00 p.m. the contract of renewal had come into force and it would be operative upto October 24, 1984. The Tribunal also recorded, as a fact, that the accident had occurred on October 25, 1983 at 11.14 a.m. that is, before the renewal of the contract. Under these circumstances, it would clear that the accident had occurred when the renewal had not taken effect.

E This Court in *New India Assurance Co v. Ram Dayal*, [1990] 2 SCR 570, had held that in the absence of any specific time mentioned in that behalf, the contract would be operative from the mid-night of the day by operation of provisions of the General Clauses Act. But in view of the special contract mentioned in the insurance policy, namely, it would be operative from 4.00 p.m. on October 25, 1983 and the accident had occurred earlier thereto, the insurance coverage would not enable, and claimant to seek recovery of the amount from the appellant-Company.

G The appeal is accordingly allowed only to the above extent. In respect of any claim against the owner, the respondent is at liberty to have it recovered. No costs.

R.P.

Appeal allowed.