A NATIONAL INSURANCE COMPANY LTD.

v.

MRS. CHINTO DEVI AND ORS.

JULY 20, 2000

B [A.P. MISRA AND N. SANTOSH HEGDE, JJ.]

Insurance:

C *Insurance policy—Liability of insurer—Time of issuance of policy disputed—Accident taking place the same day on which policy was issued—Adjudication of time being necessary and it being a question of fact, matter remitted to Tribunal for deciding when the policy was issued and then to determine the liability, if any, of the insurance company—Meanwhile Insurance Company and insured to deposit half and half of the decretal amount before* D *the Tribunal to be paid to the claimant.*

New India Assurance Co. Ltd. **v.** *Ram Dayal and Ors.,* **[1990] 2 SCC 680;** *National Insurance Co. Ltd.* **v.** *Jikubhai Nathuji Dabhi (Smt) and Ors.,* **[1997] 1 SCC 66 and** *New India Assurance Co.* **v.** *Bhagwati Devi and Ors.,* **[1998] 6 SCC 534, cited.**

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1100 of 1992.

From the Judgment and Order dated 27.3.89 of the Punjab and Haryana High Court in F.A.O. No. 118 of 1989.

F P.P. Malhotra, Naresh K. Sharma and K.C. Dua for the Appellant.

D.V. Sehgal, Annant Vijay Palli, Ms. Rina Agarwal and Rekha Palli for the Respondents.

The following Order of the Court was delivered :

G The present appeal by Insurance Company is directed against the order dated 27th March, 1989 by the High Court dismissing in-limine the appeal filed by the appellant against the order of the Tribunal holding the Insurance Company liable under the policy. The question raised in this appeal is, whether the Insurance Company is liable on a policy taken at a time, which is after the time of the accident though admittedly it being of the same date.

H

According to the appellant the policy was taken on 23rd February, 1987 at 4.45 p.m. for which reliance is placed on the covering note. On the other hand according to the respondent-owner the insurance was taken at 10.00 A.M. in the morning and not in the evening. It is not in dispute that the accident had taken place at 11.30 a.m.. The question which was considered and decided by the Tribunal was that when the policy is of the same date of accident, notwithstanding the same being issued at 4.30 p.m., i.e. after the accident, it would still cover the liability of the insurer, from the previous mid-night of the same date. Accordingly, it held the appellant is liable for the same. This was the principle based on the principle decided by this Court in the case of Ram Dayal, stated hereunder.

Learned senior counsel appearing for the Insurance Company submits that since after the decision in *New India Assurance Co. Ltd.* v. *Ram Dayal and Ors.*, reported in [1990] 2 SCC 680, where this Court held, when the policy is of any date, it would cover the liability of the insurer from the previous mid-night preceding the same date hence even where accident, in point of time is earlier than the time when insurance policy was issued the insurance company would be liable. A change in this principle is brought through decision of this Court which holds, if there is any special contract mentioned in the policy, it would be operative in terms of that contract hence where time is mentioned when it was issued then the liability would cover only from the time it was issued. Reference is made in *National Insurance Co. Ltd.* v. *Jikubhai Nathuji Dabhi (Smt.) and Ors.*, reported in [1997] 1 SCC 66. This was a case where the policy was taken at 4.00 p.m. While accident took place at 11.00 a.m. This Court held in view of the special contract mentioned in the policy *viz.* the time of it's issue, it would be operative from that time and not from the previous mid-night. This decision has taken note of the aforesaid Ram Dayal's case. The simliar principle is also decided in *New India Assurance Co.* v. *Bhagwati Devi and Ors.*, reported in [1998] 6 SCC 534.

Relying on the said two decisions submission is, on the facts of this case the policy would only be effective from 4.45 p.m. of 23rd February, 1987 and since the accident took place at 11.30 a.m., the appellant would not be liable to pay to the insured.

However, there is dispute of time as to when this Insurance Policy issued. According to the insured the policy was taken out at 10.00 A.M. and not 4.45 p.m. Reliance is placed about his deposition and that insurance policy does not refer to any time though the date is there. Further submission is that no cover note was issued to the insured. On the other hand submission

A on behalf of the appellant is that cover note clearly indicates date and time of the insurance policy and thus non mentioning of time in the insurance policy would be of no consequence as it can only follow the cover note. Further the insurance policy refers to the number of cover note co-relating to the same number as that referred in the cover note. Therefore, submission is the time recorded in the cover note is correct. The insured seriously B disputes the time of issuance of the insurance policy.

It is not necessary for us to enter into this controversy in this appeal regarding the correctness of time of the issuance of the insurance policy as this is a question of fact and this point has not been adjudicated by the Tribunal or taken note by the High Court. But now in view of the decision C by this Court, in the aforesaid two cases, the adjudication of time becomes necessary for which it would be necessary that now adjudication be made by the Tribunal as to what was the time of the issuance of the policy itself. In view of this, we set aside the impugned order of the High Court qua the liability of the Insurance Company and remand the case back to the Tribunal D for deciding the aforesaid limited question regarding the time when the insurance policy was issued and then decide consequential liability if any on the Insurance Company. Since this point was not in issue then, we grant opportunity to both the parties to lead any further evidence if they are so advised before the Tribunal to the extent it affects the appellant.

E There is nothing on the record to show, whether the claimant has received any sum decreed for an accident which took place in the year 1987. It is appropriate on the facts and circumstances of this case that both the Insurance Company and the insured *viz.* the owner, who are both represented to-day before us, to pay half and half of the decretal amount and this payment F should be deposited by them before the Tribunal within four weeks from today. The amount so deposited may be withdrawn by the claimant without any security. The Tribunal shall intimate to the claimant, about the amount being deposited so that they may come to receive the said amount without any security.

G Normally the liability would either be on the Insurance Company or the insured. After the matter is adjudicated by the Tribunal, the person succeeding will have right to recover the balance amount to the extent of success from the other person. Accordingly, the appeal is allowed to the extent it affects the appellant. Cost on the parties.

H R.P. Appeal allowed.