

## **National Insurance Co. Ltd vs Smt. Sobina lakai & Ors on 9 July, 2007**

**Equivalent citations: AIR ONLINE 2007 SC 76, 2009 (16) SCC 766, (2007) 2 CAL LJ 202, (2007) 3 ACC 1, (2007) 4 TAC 19, (2007) 4 PUN LR 614, (2007) 3 ALL WC 2757, (2008) 1 MAD LJ 912, (2008) 1 BOM CR 754, (2008) 1 MAD LW 869, (2008) 2 MPLJ 240, (2007) 9 SCALE 188, 2007 (7) SCC 786, (2007) 4 RAJ LW 3435, (2008) 1 MAH LJ 571, (2007) 3 REC CIV R 582, (2007) 3 KER LT 613, (2007) 68 ALL LR 920, (2007) 3 ACJ 2043, 2007 (3) SCC (CRI) 497, (2007) 57 ALL IND CAS 65 (SC), (2007) 2 WLC (SC) CIVIL 652, (2007) 5 CTC 892 (SC), (2007) 2 WLC(SC) CVL 652, (2007) 57 ALL IND CAS 65, (2009) 8 SCALE 810**

**Author: Dalveer Bhandari**

**Bench: A. K. Mathur, Dalveer Bhandari**

CASE NO.:

Appeal (civil) 1393 of 2001

PETITIONER:

National Insurance Co. Ltd

RESPONDENT:

Smt. Sobina lakai & Ors

DATE OF JUDGMENT: 09/07/2007

BENCH:

A. K. Mathur & Dalveer Bhandari

JUDGMENT:

**J U D G M E N T WITH CIVIL APPEAL NO. 1394 OF 2001 National Insurance Co. Ltd. .. Appellant  
Versus Smt. Kerolin P. Marak & Others .. Respondents Dalveer Bhandari, J.**

1. These appeals are directed against the judgment dated 4.10.1999 passed by the Gauhati High Court in MA (F) Nos. 3 (SH) and 4(SH) of 1998.

2. The facts of both these appeals are identical, therefore, these appeals are being disposed of by a common judgment. For the sake of convenience, the facts of Civil Appeal No. 1394 of 2001 are recapitulated.

3. The question which falls for adjudication in these appeals is whether the insurance company can be held liable for payment of compensation for a period when the insurance policy was not even in

existence.

4. The appellant, National Insurance Co. Ltd. originally issued an insurance policy to the respondent bearing no. 201002/31/92/63/00057 on 22.6.1992 at 12.45 p.m.; this policy expired on 21.6.1993. This policy was renewed after 9 days of its expiry on 30.6.1993 and the said policy also expired on 29.6.1994. After 21 days of the expiry of the said insurance policy, the Bus bearing registration number ML-04-2741 met with an accident at about 9.15 a.m. on 20.7.1994 killing two persons. One died on the spot and another died after a few days in the hospital. Admittedly, in the present case, the insurance policy was renewed on 20.7.1994 at 2.00 p.m. whereas the accident had occurred at 9:15 a.m. on 20.7.1994. The time is specifically mentioned in the document called Motor Renewal Endorsement . It is incorporated in this document that the policy is renewed for twelve months from 20.7.1994 (2.00 p.m.) to 19.7.1995. Since the entire controversy revolves around the time of the renewal endorsement, therefore, we deem it appropriate to fully set out the Motor Renewal Endorsement as under:

MOTOR RENEWAL ENDORSEMENT Endorsement No. E/94/00095 on Policy No. 201002/31/92/63/00057 Insured: M.C.A.B. Martiang, A/c. Shri Eklensing Siangshai Address: Ummulong, Jaintia Hills Distt. It is hereby declared and agreed that the insurance by this Policy is renewed for a period of twelve months from 20-07-94 (2 p.m.) to 19- 07-95 at a premium of Rs.7641/- as detailed below:

The Vehicles Make & year of manufacture Registration Mark & No. Type of Body & C.C. Seating capacity including driver or carrying capacity Insured s estimated value including accessories (Indian Currency) Tata Bus, ML-2741 Bus body, 31.5 28+2 Rs.3,00,000/-

Premium Computation:

a. Act/T.P. Own Damage	.. Rs. 450.00	b, Own damage IEV	..
Rs.3,450.00	c. Rs.3,900.00	d. 28 passengers	.. Rs.3,080.00
Rs. 680.00	f. Rs.7,660.00	Less 5% S.D	Rs. 383.00
S.T	Rs. 363.85	Rs.7,640.85	Net = Rs.7,641/-

Sd/-

Divisional/Branch Manager

5. In the aforementioned Motor Renewal Endorsement , the time and date have been specifically mentioned. According to the appellant, in view of the special nature of contract, the insurance policy came into force only from 2.00 p.m. on 20.7.1994.

6. A claim petition for Rs.1,78,000/- plus interest @ 12% per annum was filed in the Motor Accident Claims Tribunal, Jowai. The appellant company filed a written statement wherein it was specifically pleaded that the policy was not current at the time of accident. The relevant paragraph of the written

statement reads as under:

that the policy was not current at the time of accident. The vehicle was re-insured after a lapse of about 3 weeks on 20.7.94 at about 2.00 p.m. whereas the alleged accident occurred on the same day at 9.15 a.m. As such the opposite party (Insurance Co.) is not liable for any payment to claimant. Copy of insurance certificate is enclosed.

7. The Motor Accident Claims Tribunal allowed the claim petition ignoring the specific terms of the insurance policy and averments of the written statement filed by the appellant company. The Tribunal also ignored the settled legal position as crystallized by a series of judgments of this Court. The Tribunal awarded the compensation of Rs.1,06,000/- along with interest @ 12% per annum from the execution of the claim petition and directed the appellant company to pay the same within a period of two months, failing which additional interest @ 15% shall be paid till the final payment of the compensation is given to the claimant.

8. The appellant company, being aggrieved by the order of the Tribunal, filed MA (F) No. 4 (SH) of 1998 before the Shillong Bench of the Gauhati High Court. The High Court noticed the pleadings and referred to the decided cases of this Court. The High Court, after discussing the various judgments of this Court, culled out the following propositions of law:

i) If time is mentioned in the insurance policy or cover note, the effectiveness of the policy would start from that time and date and not from an earlier point of time;

ii) If the accident takes place on that very date before the time which is mentioned in the insurance policy, the insurer will not be liable to indemnify the insured;

iii) If the time is not mentioned in the insurance policy, it would commence from the date which means midnight and in case the accident occurred on the date of taking the policy, the insurer will be liable to meet the liability of the insured under the award.

9. The ratio culled out by the High Court of the decided cases of this Court is correct but the High Court has wrongly applied the ratio of these cases and erroneously held that the insurance company is liable to pay compensation for the reason that the Cashier and the Development Officer have not been produced by the appellant company.

10. We have heard the learned counsel for the parties and also perused the relevant documents carefully. The learned counsel appearing for the appellant submitted that the controversy involved in the case is no longer res integra. In the instant case, though the High Court has correctly enunciated the law, but has seriously erred in not applying the ratio of the judgments of this Court correctly. He further submitted that when the insurance policy and the motor renewal endorsement were duly filed and these documents were duly proved before the Tribunal, in that event, the entire controversy ought to have been decided on the basis of these two documents and the production of

Cashier and the Development Officer was not at all necessary for deciding the controversy in the case.

11. On the other hand, the learned counsel for the respondents supported the judgments of the Tribunal and the High Court.

12. Admittedly, at the time when the accident had occurred at 9.15 a.m. on 20.7.1994, the respondent did not have the insurance cover. The insurance policy was obtained at 2.00 p.m. on 20.7.1994, which is clearly evident from the motor renewal endorsement set out in the earlier part of the judgment.

13. The insurance policy and the motor renewal endorsement were on record. Both these documents were produced and proved by the appellant company. The Tribunal and the High Court have seriously erred in ignoring these basic and vital documents and deciding the case against the appellant company on the ground of non-production of the Cashier and Development Officer. This manifestly erroneous approach of the High Court has led to serious miscarriage of justice.

14. This Court had an occasion to examine the similar controversy in the case of New India Insurance Company v. Ram Dayal (1990) 2 SCR 570. In this case, this Court held that in absence of any specific time mentioned in the policy, the contract would be operative from the mid- night of the day by operations of the provisions of the General Clauses Act but in view of the special contract mentioned in the insurance policy, the effectiveness of the policy would start from the time and date indicated in the policy.

15. A three-judge Bench of this Court in M/s National Insurance Co. Ltd. v. Smt. Jikhubhai Nathuji Dabhi (1997) 1 SCC 66 has 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, it would be operative from the time and date the insurance policy was taken. In that case, the insurance policy was taken at 4.00 p.m. on 25.10.1983 and the accident had occurred earlier thereto. This Court held that the insurance coverage would not enable the claimant to seek recovery of the amount from the appellant company.

16. Another three-Judge Bench of this Court in M/s Oriental Insurance Co. Ltd. v. Sunita Rathi (1998) 1 SCC 365 dealt with similar facts. In this case, the accident occurred at 2.20 p.m. and the cover note was obtained only thereafter at 2.55 p.m. The Court observed that the policy would be effective from the time and date mentioned in the policy.

17. In New India Assurance Co. vs. Bhagwati Devi [(1998 (6) SCC 534], this Court observed that, in absence of any specific time and date, the insurance policy becomes operative from the previous midnight. But when the specific time and date is mentioned, then the insurance policy becomes effective from that point of time. This Court in New India Assurance Co. Ltd. v. Sita Bai (1999) 7 SCC 575 and National Insurance Co. Ltd. v. Chinto Devi (2000) 7 SCC 50 has taken the same view.

18. In Kalaivani & Ors. v. K. Sivashankar & Ors. [(JT 2001 (10) SC 396)], this Court has reiterated clear enunciation of law. The Court observed that it is the obligation of the Court to look into the contract of insurance to discern whether any particular time has been specified for commencement or expiry of the policy. A very large number of cases have come to our notice where insurance policies are taken immediately after the accidents to get compensation in a clandestine manner.

19. In order to curb this widespread mischief of getting insurance policies after the accidents, it is absolutely imperative to clearly hold that the effectiveness of the insurance policy would start from the time and date specifically incorporated in the policy and not from an earlier point of time.

20. In view of our foregoing conclusion, these appeals have to be allowed and we order accordingly. Consequently, the impugned judgments of the High Court are set aside. In the peculiar facts and circumstances of the case, we direct the parties to bear their own costs.