Oriental Insurance Co. Ltd vs Sunita Rathi & Ors on 4 December, 1997

Equivalent citations: AIR 1998 SUPREME COURT 257, 1997 AIR SCW 4228, 1998 ALL. L. J. 89, 1998 (118) PUN LR 195, 1998 (1) ALL CJ 522, 1998 (2) BLJR 818, 1998 ALL CJ 1 522, (1998) 1 MAD LJ 80, (1998) 1 LS 22, 1998 (1) SCC 365, (1998) 1 PUN LR 195, 1998 BLJR 2 818, (1997) 7 SCALE 469, (1998) 1 MAD LW 14, (1998) 1 RECCIVR 429, (1998) 32 ALL LR 204, (1998) 91 COMCAS 496, (1998) 1 SUPREME 52, (1998) 2 CIVLJ 548, (1998) 1 TAC 697, (1998) 1 CURCC 17, (1998) 1 ACC 193, (1998) 1 ACJ 121, (1998) 1 ICC 787, 1999 SCC (CRI) 146, 1998 (1) KLT SN 39 (SC)

Bench: S.P. Bharucha, A.P. Misra

PETITIONER:
ORIENTAL INSURANCE CO. LTD.

Vs.

RESPONDENT:
SUNITA RATHI & ORS.

DATE OF JUDGMENT: 04/12/1997

BENCH:
S.P. BHARUCHA, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:

THE 4TH DAY OF DECEMBER, 1997 Present:

Hon'ble the Chief Justice Hon'ble Mr. Justice S.P. Bharucha Hon'ble Mr. Justice A.P. Misra Jitender Sharma, Sr. Adv., and B.K. Pal, Adv. with him for the appellant Ashok K. Mahajan, Adv. (NP) for the Respondents.

J U D G M E N T The following Judgment of the Court was delivered:

Verma C.J.I This appeal by the insurer involves for decision only a short point relating to its liability under the policy of insurance issued subsequent to the accident even though it was issued some time later on the same day. The Tribunal as well as the High Court have held against the insurer placing reliance on a two-Judge Bench decision of this Court in New India assurance Co. Ltd. Vs. Ram Dayal & Ors. 1990 (2) SCR

570. The question is whether that decision has been correctly applied in the facts of the present case.

The motor accident occurred on 10th December, 1991 at

2.20 PM It was only thereafter the same day at 2.55 PM that the insurance policy and the cover note were obtained by the insured, owner of the motor vehicle involved in the accident. There is express mention in the cover note that the effective date and time of commencement of the insurance for the purpose of the Act was 10th December, 1991 at 2.55 PM. The applicability of the decision in Ram Dayal's case (supra) has to be considered on these facts. In our opinion the decision in Ram Dayal's case (supra) is distinguishable and has no application to the facts of this case. The facts of that decision show that the time of issuance of the policy was not mentioned therein and the question, therefore, was of presumption when the date alone was mentioned and not the time at which the insurance was to become effective on that date. In such a situation, it was held in Ram Dayal's case (supra) that in the absence of any specific time being mentioned, the logical inference to draw was that the insurance became effective from the previous mid-night and, therefore, for an accident, which took place on the date of the policy, the insurer became liable. There is no such difficulty in the present case in view of the clear finding based on undisputed facts that the accident occurred at 2.20 PM and the cover note was obtained only thereafter at 2.55 PM in which it was expressly mentioned that the effective date and time of commencement of the insurance for the purpose of the Act was 10.12.1991 at 2.55 PM. The reliance on Ram Dayal's case (supra) by the Tribunal and the High Court was, therefore, mis-placed, we find that in a similar situation, the same view which we have taken, was also the view in M/s. National Insurance Co. Ltd. vs. Smt. Jikubhai Nathuji Dabhi & Ors. 1996 (8) SCALE 695, wherein Ram Dayal's case (supra) was distinguished on the same basis.

It follows that the insurer cannot be held liable on the basis of the above policy in the present case and, therefore, the liability has to be of the owner of the vehicle. However, we find that the High Court, without assigning any reason, has simply assumed that the owner of the vehicle was not liable and that the insurer alone was liable in the present case. This conclusion, reached by the High Court, is clearly erroneous. The liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract of insurance. There is, thus, a basic fallacy in the conclusion reached by the High Court on this point.

The question now s of the final order to make in the present case. We find that the insurer has made the payment to the claimants in tee present case in satisfaction of the entire claim and it has been

fairly stated by the insurer that this appear was filled only for getting a decision on this point pertaining to its case, we deem it fit to say that the amount already paid by the insurer to the claimants is not required to be refunded by the claimants to the insurer.

For the aforesaid reasons, the appeal is allowed. The judgment of the High Court and Tribunal are set aside. However, as indicated earlier, the claimants are not required to refund the amount already paid to them by the insurer.