Kerala High Court
Oriential Insurance Company ... vs Sivan And Ors. on 27 October, 1989
Equivalent citations: I (1990) ACC 302, 1990 ACJ 533, AIR 1990 Ker 202
Author: R Menon
Bench: K R Menon, T Ramaksishnan
JUDGMENT Radhakrishna Menon, J.

1. The comon question that arises for consideration in these appeals is, whether the insurance policy was effective from 11 a.m. on 15-7-1985 as contended for by the appellant or was effective with effect from the mid-night of 14-7-985 as contended for by the claimants as well as the insured.

2. The answer to the question depends upon the construction of the provisions contained in Chapter VIII of the The Motor Vehicles Act, 1939 read with the relevant rules of The Motor Vehicles (Third-Party Insurance) Rules, 1946, for short The Third-Party Insurance Rules. Section 94 of the Motor Vehicles Act highlights the need for insurance against third party risk. Section 95 provides that in order to comply with the requirement of Chapter VIII a policy of insurance must be a policy which satisfies the requirements prescribed thereunder. Particular reference requires to be made to Sub-section 4 of Section 95. This subsection says that a policy shall be of no effect unless and until the insurer issue a certificate of insurance in the prescribed form and containing the prescribed particulars etc., in favour of the person by whom the policy is effected. Equally relevant is the provision contained in Sub-section (3) of Section 96. This section provides that where a certificate of insurance has been issued under Sub-section (4) of Section 95 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in Clause (b) of Sub-section (2) shall, as respect such liabilities as are required to be covered by a policy under Clause (b) of Sub-section (I) of Section 95, be of no effect. Alongside we should focus our attention on the relevant rules contained in the Third Party Insurance Rules. Rule 4 makes it imperative that the insurer shall issue to every holder of a policy a certificate of insurance in Form A set out in the schedule attached to the Rules. Similarly every policy, in the form of a cover note issued by an insurer, shall be, in Form B set out in the Schedule. The above in short is the scheme of the relevant provisions pertaining to the issue of insurance policy. Going by this scheme every certificate of Insurance shall contain the following particulars.

"Certificate No. Policy No.

1. Description of the vehicles insured-

(a) Registration mark and number.

(b) Cubic capacity of the Vehicles.

(c) Make and year of manufacture.

(d) Carrying capacity.

2. Name and address of insured.

3. Effective date of commencement of insurance for the purpose of the Act.

4. Date of expiry of insurance,

5. Persons or classes of persons entitled to drive.

6. Limitation as to use.

7. Insurance premium.

There shall be issued a certificate signed by the authorised insurer that the policy in which the certificate relates as well as the certificate of insurance are issue in accordance with the provisions of Chapter VIII of the The Motor Vehicles Act, 1939. The insurance policy-thus issued, to be valid, must be one that complies with the requirements prescribed under the provisions contained in Chapter VIlI read with the Third-Party Insurance Rules. If that be the position, the policy of insurance here, for the purpose of the Act, is effective from 15-7-1985. An incidental question would however, arise and it is this; What is the effective date of commencement of the insurance for the purpose of The Act?

3. The learned counsel for the appellant submits that the risk under the policy must be held to have commenced with effect from 11 a.m. on 15-7-985. In support of this argument he pressed into service the writings in the pplicy namely., 'effective date of commencement of insurance for the purpose of the Act 15-7-1985 (11 a.m.)' and also relied on a decision of the Court of Appeal in Cornfoot v. Royal Exchange Assurance Corporation. (1904) 1 K.B 40. The learned counsel for the appellant therefore argues that such clauses could be had in a policy and if there is one such clause the parties arc bound by the same. This being the position in law, the effective time of the commencement of the risk under the policy, the learned counsel submits, must be held to be 11 a.m, on 15-7-1985. The observations of Collins M.R. discernible from the above ruling namely "that the expression '30 days' in the policy meant thirty consecutive periods of twenty-four hours, the first: of which began to run at 11.30 a.m. on August 2: and, therefore, that the insurance had come to an and before the loss occurred" do support the above argument of the learned counsel.

4. The above principle which is nothing but a restatement of the common law principle, however has no application here because the law governing the 'Motor Vehicle Insurance is codified in India. The dispute arising out of a contract of insurance therefore requires to be solved with reference to the relevant provisions of the codifying Act. The Motor Vehicles Insurance policies in India, as already noted, are issued under Chapter VIII of The Motor Vehicles Act read with The Third Party Insurance Rules. A policy issued under these provisions must satisfy the requirements prescribed thereunder. Any Clause in the policy which runs counter to the prescriptions will be void because if the said

Clause is given effect to, it would defeat the provisions of The Act. Now let us see whether the clause in the policy pressed into service by the appellant to sustain his plea that effective time of the commencement of the risk is 11 a.m. on 15-7-1985, is valid. Our answer is, No; becuase, no such clause can be inserted in the certificate of Insurance, the insurer is obliged to.issue under The Motor Vehicles Act read with The Third-Party Insurance Rules. The clause, in regard to the commencement of the contract of insurance that requires to be inserted in the certificate of insurance, (it is relevant to note that that the certificate of insurance requires to be issued (See R:4 of The Third-Party Insurance Rules) in the case of a specified vehicle or to specified vehicles shall be in Form A) shall be this: 'Effective' date of commencement of insurance for the purpose of the Act'. That means the insurer's liability for the purpose of The Motor, Vehicles Act would commence from the date of commencement of insurance. A clause to; the certificate of insurance inconsistent with the above requirement therefore will be of no consequence. Therefore no insurance policy, within the meaning of The Motor Vehicles Act, containing a clause that the risk under the policy would commence with effect from a specified time on a date can validity be issued. Such a policy would thus become effective from the date of commencement of the policy. The word's date of commencement are synonymous with 'day of commencement'. We must in this connection take note of the definition of the word 'day' recognised by courts namely "The whole or any part of period of 24 hours from midnight to midnight".-- See Black's Dictionary. The risk under the policy therefore must be held to have commenced with effect from the midnight of 14-7-1985 and not with effect from 11 a.m. on 15-7-1985. A reference in this connection to the decision in Cartwright v. Maccor-mack, (1963) 1 All ER 11 is profitable. We are therefore constrained to reject the argument of the learned counsel for the appellant that the risk under the policy must be deemed to have commenced with effect from 11 a.m. on 15-7-1985. No other question arises for consideration.

5. The appeals are therefore liable to be dismissed. We accordingly dismisss the same. But in the circumstances there will be no order as to costs.

6. Respondents 1 and 2 who are the petitioners in M.V.O.P. 18, 1986, have filed the cross-appeal.

7. Facts relevant and requisite to consider the cross appeal briefly stated are; the only son of respondents I and 2 met with an accident on 15-7-1985 and later died in hospital on 2-9-1985. The car involved in the accident belonged to the fourth respondent. It was driven by the third respondent. The owner of the car had obtained a certificate of insurance issued by the appellant. Though respondents claimed a sum of Rs. 1,00,000 -as compensation, the Tribunal has awarded only a sum of Rs. 27,125 -. Out of this one lakh sum of Rs. 30.250 - is claimed towards compensation for loss of dependency or future deficiency sustained. This claim however has wrongly been shown in the application as one coming under the head 'permanent disability and loss of earning power.

8. The Tribunal found that the deceased could have earned Rs. 500 - a month. After deduction of statutory liabilities etc. the multiplicand has been fixed at Rs. 1,500 -. The multiplier has been fixed as 15. The amount of compensation calculated adopting the above method would come to Ruppees 22.500 -. But it has been fixed as Rupees 18,000 -. This obviously is a mistake.

9. The learned cousel for respondents 1 and 2 argues' that while determining the damages under this head the Tribunal ought to have had in view the life expectancy of the deceased or of the beneficiaries whichever is shorter. It is further argued that as general rule the respondents are entitled to recover the present cash value of the prospective service of the deceased minor child. He is well founded in this argument. A reference in this connection to the decision of the Supreme Court in C.K.S. lyer v. T. K. Nair, AIR 1970 SC 376 is profitable. The Supreme Court has held thus (Para 14):--

"The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the Court must exclude all considerations of matter which rest: in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority."

The Tribunal has not taken into account these aspects while fixing the compensation under this head. Ordinarily, we should have remitted this case to the Tribunal for a reconsideration. But the facts relevant to decide this issue are already on record. The son at the time of his death was aged 17. The father was aged 46 years at the time of the accident. The span of life could be taken to be 70 years in view of the high rise in life expectancy. It has been so held by the Supreme Court in Jyotsna Dev v. State of Assam. (1987) 1 ACC CJ 172. The life expecancy of the deceased in the case will be more than that of the claimants and therefore the life expectancy of the claimants alone can be taken into account for the purpose of calculating the damages falling under the head 'general damages'. If that be the case, the, multiplier shall be 24. But taking into account the various aspects of the case we fix the multiplier at 20. Calculated on that basis, the amount of compensation would come to Rs. 30,000 -. We are of the view that this is a fair and reasonable compensation that can be awarded under the head 'general damages'. Accordingly Rs. 30,000, - is awarded as compensation.

10. Respondents 1 and 2 are also entitled to get interest on the entire amount awarded as compensation at the rate of 12% from the date of the petition till realisation. The interest awarded at the rate of 9% accordingly is modified and fixed at 12%.

The cross appeal is allowed to the extent indicated above. There will be no order as to costs.