

BALBIR KAUR & ORS.

v.

NEW INDIA ASSURANCE COMPANY LTD. & ORS.  
(Civil Appeal No.1838 of 2009)

APRIL 15, 2009

[S.B. SINHA AND P. SATHASIVAM, JJ.]

*Constitution of India, 1950 – Article 142 – Fatal accident – Tribunal awarded compensation holding insurer liable – High Court set aside the award opining that accident took place a day before when policy to take effect, hence insurer was not liable – Meanwhile claimants withdrew the amount deposited by insurer – Held: In view of peculiar facts and circumstances of the case, interest of justice would be subserved if in exercise of discretionary jurisdiction under Article 142 of Constitution, insurer is directed not to recover the amount from claimants – Motor Vehicles Act, 1988 – s.166 – Insurance Act, 1948 – s.64VB*

**The deceased was riding on a two wheeler scooter which was hit by a bus. As a result, he died. The Tribunal awarded compensation of Rs.7.96 lacs to the claimants. High Court allowed the appeal of Insurance Company and set aside the award of tribunal opining that the cover note of the insurance was issued on 15.03.1996 but the same was to take effect from 19.03.1996 and the accident took place on 18.03.1996, the insurer was not liable therefor. The High Court, in its impugned judgment, directed refund of the said amount to the Insurance Company. Hence the appeal.**

**A limited notice was issued to this Court, confining to the question as to whether in the peculiar facts and circumstances of the case and, particularly, in view of the fact that the appellants already withdrew the amount deposited by the Insurance Company, this Court can issue a direction to the Insurance Company to recover**

A the amount from the owner and the driver in the same proceedings.

Partly allowing the appeal, the Court

B HELD: 1. Section 64 VB of the Insurance Act, 1938 merely provides that no insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such persons in such manner and within such time as may be prescribed or unless and  
 C until deposit of such amount as may be prescribed, is made in advance in the prescribed manner. [Para 12] [332-A-B]

D 2. A policy which is issued from a future date must be with the consent of the holder of the policy. The insurance company cannot issue a policy unilaterally from a future date without the consent of the holder of a policy. Even the circular letter was not produced and/ or no material was placed as to why the policy was issued from a later date. Keeping in view the peculiar facts and  
 E circumstances of the case and in particular having regard to the fact that the appellants have already withdrawn the amount, the interest of justice would be subserved if this Court in exercise of its discretionary jurisdiction under Article 142 of the Constitution of India direct the insurance company not to recover the amount from the  
 F appellants subject of course to its right of recovery from the owner and the driver of the vehicle. [Paras 13 and 15] [332-C-G]

G *National Insurance Co. Ltd. v. Jikubhai Nathuji Dabhi (SMT) and Ors. (1997) 1 SCC 66 and J. Kalaiveni and Ors. v. K. Sivshankar and Anr. JT (2001) 10 SC 396, referred to.*

Case Law Reference:

	(1997) 1 SCC 66	referred to	Para 10
H	JT (2001) 10 SC 396	referred to	Para 10

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. A  
1838 of 2009.

From the Judgment & Order dated 21.03.2007 of the High  
Court of Delhi in MAC Appl. No. 64 of 2004.

Santosh Chaurihaa, Hari Shankar K, Vikas Singh Jangra B  
and Pramod Kharwar for the Appellant.

Salil Paul (for Manjeet Chawla) for the Respondents.

The Judgment of the Court was delivered by

**S.B. SINHA, J.** 1. Baljit Singh, deceased was riding on a C  
two-wheeler (scooter) bearing Registration No. DAB 6529. The  
said scooter was hit by a bus driven by one Ramesh Singh  
Rawat. He suffered multiple grievous injuries in the said  
accident. He was taken to Deen Dayal Upadhyya, Hospital, New  
Delhi where he was declared 'brought dead'.

2. Appellants filed an application before the Motor D  
Accident Claim Tribunal, Delhi (Tribunal) under Section 166 of  
the Motor Vehicles Act, 1988 (for short "the Act") claiming a  
sum of Rs. 20,00,000/- towards compensation for death of Baljit  
Singh *inter alia* on the premise that the accident was caused E  
by reason of rash and negligent driving of the said bus by its  
driver Shri Ramesh Singh Rawat.

3. In the said claim petition, the income of the deceased F  
was stated to be Rs. 4,000/- per month. He was aged 34 years  
on the date of accident. Indisputably, in relation to the said  
accident, a criminal proceeding was also initiated under  
Sections 279 and 304A of the Indian Penal Code.

4. The Tribunal upon considering the materials brought on G  
record by the parties awarded a sum of Rs. 7,96,000/- to the  
appellants. Respondent No. 1 preferred an appeal thereagainst  
before the High Court. By reason of the impugned judgment,  
the High Court set aside the award passed by the Tribunal  
opining that as the cover note of the insurance had been issued  
on 15.03.1996 but the same was to take effect from 19.03.1996  
and the accident having taken place on 18.03.1996, the insurer  
was not liable therefor. H

A 5. Appellants are, thus, before us.

6. By an order dated 13.08.2007, this Court issued a limited notice to the following effect:

B "Issue notice confined to the question as to whether in the peculiar facts and circumstances of the case and, particularly, in view of the fact that the petitioners have already withdrawn the amount deposited by the Insurance Company, this Court can issue a direction as to whether the Insurance Company may recover the amount from the owner and the driver in the same proceedings."

C 7. Before adverting to the contentions raised before us, we may notice that the High Court while issuing notice to the appellants directed the respondent No. 1 herein to deposit the awarded amount pursuant whereto the said amount has been deposited. Appellants have also withdrawn the same.

D However, the High Court, in its impugned judgment, directed refund of the said amount to the respondent No. 1.

E 8. The Tribunal in the said claim petition *inter alia* formulated the following issues:

"1. Whether the insurance cover in the present case was effectively only from 19.3.96 to 10.3.97, replaced on behalf of R-3 in their WO7OPR3.

F 2. Whether premium insurance policy referred to in above issue No. 1 was paid on 15.3.96 and if so to what effect?"

G 9. On the first issue, the Tribunal noticed that in the cover note the policy was shown to have been issued with effect from 18.03.1996 in view of a circular issued by the insurance company but it had not been given effect to. Having regard to the fact that a photocopy thereof had been produced, it was held:

H "...Besides the proposal form relating to the impugned insurance policy has also not been produced to show as to what were the terms and conditions on which the

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insurance policy was to be executed with regard to the  
offending vehicle. There is no material on record to show  
that the insured was made aware of the office circular Ex-  
R3W1/B that if there was no other insurance policy in  
operation with regard to the offending vehicle immediately  
preceding 15.3.96 in these circumstances the insurance  
policy covering third party interest would be issued three  
days after the receipt of the proposal. The material on  
record placed by both the petitioner as well as respondent  
No. 3 in clear terms shows that the injured had made the  
payment of the premium on 15.3.96 and there was no  
reason for the insurance company to have issued the  
insurance policy covering third party interest w.e.f.  
18.3.96..."

10. The High Court, on the other hand, having regard to  
the decisions of this Court in *National Insurance Co. Ltd. v. Jikubhai Nathuji Dabhi (SMT) and Ors.* [(1997) 1 SCC 66]  
and *J. Kalaiveni and Ors. v. K. Sivshankar and Anr.* [JT 2001  
(10) SC 396], held:

"9. In view of the clear cut position of law explained by the  
Supreme Court, it is clear that policy of insurance  
commences risk coverage only in terms of the policy of  
insurance and if certificate of insurance has not been  
issued, on the terms of the cover note."

11. Chapter XI of the Act provides for insurance of motor  
vehicles against third party risks. Indisputably, the deceased  
was a third party. In terms of Section 146 of the Act, an owner  
of a motor vehicle must take out an insurance in respect of a  
third party risk. Section 147 of the Act provides that a policy of  
insurance referred to in Section 146 thereof must be a policy  
which satisfies the conditions under Clauses (a) and (b) of Sub-  
section (1) thereof. Sub-section (5) of Section 147 reads as  
under:

"(5) Notwithstanding anything contained in any law for the  
time being in force, an insurer issuing a policy of insurance  
under this section shall be liable to indemnify the person  
or classes of persons specified in the policy in respect of

A any liability which the policy purports to cover in the case of that person or those classes of persons."

B 12. Section 64 VB of the Insurance Act, 1938 merely provides that no insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such persons in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

C 13. For the purpose of this case, we would assume that an insurance policy, in law, could be issued from a future date. A policy, however, which is issued from a future date must be with the consent of the holder of the policy. The insurance company cannot issue a policy unilaterally from a future date without the consent of the holder of a policy. Even the said circular letter had not been produced and/ or no material was placed as to why the policy was issued from a later date. It is, however, not necessary for us to delve deep into the matter in view of the limited notice issued by this Court.

E 14. Respondent No. 3, however, owner of the vehicle has not questioned that part of the order passed by the High Court. He, therefore, accepted the judgment of the High Court. Accordingly, liability to pay the awarded amount by him is not in question.

F 15. Keeping in view the peculiar facts and circumstances of the case and in particular having regard to the fact that the appellants have already withdrawn the amount, the interest of justice would be subserved if this Court in exercise of its discretionary jurisdiction under Article 142 of the Constitution of India direct the insurance company not to recover the amount from the appellants herein, subject of course to its right of recovery from the owner and the driver of the vehicle.

G \* 16. The appeal is allowed to the aforementioned extent. No costs.

H D.G. Appeal partly allowed.