(2011) 04 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : CIMA No. 98 of 2010

DM, United India Insurance Company Ltd. — APPELLANT

Vs

Amarjeet Singh — RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

Jammu and Kashmir Consumer Protection Act, 1987 — Section 15

Citation : AIR 2011 J&K 148 : (2011) 2 JKJ 1

Hon'ble Judges : Aftab H. Saikia, C.J;Gh. Hasnain Massodi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Gh. Hasnain Massodi, J.—The short controversy involved in the instant Civil 1st Miscellaneous Appeal is whether the Respondent had an

insurable interest"" in the property insured on the date, Insurance Policy was obtained from the Appellant-Insurance Company.

2. First, an overview of admitted facts.

3. The Respondent, running business under name and style of ""Pahalgam General Store"" in part of a double storey building with basement at

Pahalgam, insured the building along with stock-in-trade, deep freezer, fridges, soda machines, coffee machine and other appliances for an amount

of Rs. 17.00 lacs (17,00,000/-) with the Appellant-Insurance Company. The insurance policy was to remain in operation with effect from

13.03.2005 to 12.03.2006. The insured building along with the stock-in -trade and other appliances etc. was destroyed in fire mishap on

08.11.2005. The Respondent immediately after the fire incident, laid a claim with the Appellant - Insurance Company for compensation on account of loss to the subject matter of the insurance policy. The Appellant - Insurance Company appointed Sh. Rajan Sharda, Surveyor & Loss

Assessor to assess the loss. The Surveyor assessed loss to the insured goods and the building at amount of Rs. 12,27,230/- and submitted the

report to the Appellant - Insurance Company. The claim laid by the Respondent was nonetheless repudiated by the Appellant - Insurance

Company vide its No. SSG/1888/2006 dated 10.11.2006, on the ground that the insured building did not belong to the Respondent but was

owned by his sons namely, Sh. Jagjeet Singh and Narinderpal and thus Respondent had no ""insurable interest"" in the subject matter of the

insurance policy.

4. The Respondent, aggrieved at the repudiation of his claim by Appellant-Insurance Company, approached J&K State Consumer Disputes

Redressal Commission Jammu with the complaint u/s 15, J&K Consumer Protection Act, 1987 (herein after ""the Act""). The Respondent pleaded

that he insured double storey building with basement at Pahalgam (Kashmir), wherein the Respondent carried on his business under name and style

of ""Pahalgam General Store"" and also insured the stock-in-trade, machines and other appliances with the Appellant - Insurance Company for a

total amount of Rs. 17.00 lacs (17,00,000/-) and obtained Insurance Policy bearing No. 111800/11/04/00321 valid with effect from 13.03.2005

to 12.03.2006, on payment of requisite premium to the Appellant - Insurance Company; that on 08.11.2005 at around 12:15 hours, an accidental

fire broke out in adjoining building and engulfed the subject matter of the insurance policy. It was further averred that Sh. Rajan Sharda, Surveyor

& Loss Assessor, appointed by the Insurance Company to assess the loss, vide his report No. RSA/26/F/453 dated 13.11.2005 estimated the

loss to the insured building stock-in-trade, appliances etc., because of the fire mishap at an amount of Rs. 12,27,230/-. The Respondent

maintained that he had an ""insurable interest"" in the subject matter of the insurance policy and was entitled to receive loss assessed by Surveyor-

cum-Loss Assessor appointed by the Appellant - Insurance Company and also Rs. 50,000/- on account of harassment and litigation expenses.

The Respondent pleaded that there was ""deficiency"" in service by the Appellant - Insurance Company and the Respondent had a cause to file the complaint.

5. The Appellant - Insurance Company, in its objections to the complaint, reiterated that the Respondent did not have an ""insurable interest"" in the

subject matter of insurance policy and thus was not competent to claim much-less receive compensation from the Appellant - Insurance Company

on account of loss suffered by insured building. The Appellant - Insurance Company insisted that mere insurance of the property, at the instance of

the Respondent or appointment of Surveyor - cum - Loss Assessor to assess the loss, would not give right to Respondent to raise his claim for

indemnification in absence of ""insurable interest"" in the subject matter of the Insurance Policy. The Appellant - Insurance Company disputed that

Respondent put-forth any documentary evidence to show that he had been authorised by his sons namely, Jagjeet Singh and Narinderpal Singh to

insure the building in question on their behalf.

6. The State Commission rejecting the objections raised by the Appellant - Insurance Company to the Respondent's complaint, held the repudiation

of genuine claim by the Appellant - Insurance Company as illegal exercise of lawful authority en its part amounting to denial of service to the

Respondent. The Commission opined that negligence on the part of Insurance Company amounted to deficiency in service. The State Commission

accordingly allowed the complaint and directed Appellant - Insurance Company to pay an amount of Rs. 12,27,230/-' to Respondent along with

interest at the rate of 8% per annum from the date of loss till its final payment. The State Commission also allowed litigation expenses of Rs.

10,000/- in favour of Respondent.

7. The State Commission judgment is questioned in present Civil Miscellaneous 1st Appeal on the grounds that the State Commission has not

applied his mind to the case set up by the Appellant - Insurance Company and fail to appreciate that the Respondent did not have an ""insurable

interest"" in the subject matter of insurance policy and thus not entitled to lay a claim for compensation on account of loss to insured property. The

impugned judgment is said to suffer from non application of mind and to be based on surmises and conjectures.

8. We have gone through the memorandum of appeal as well as the record received from State Consumer Commission, Jammu.

9. Insurance is a device to make possible equitable distribution of financial losses suffered by a person (insured) by compensating him from the

fund build up by the contribution (premium) from others who like the person suffering the loss opt for such device. It spreads the risk of loss

making use of the contribution or premium made by each member of the group to which, the risk or loss is spread over. In other words, it is a

contractual service obtained from the insurer for a price called the premium. The amount of premium to be paid obviously depends on the nature of

the risk(s) covered. A fire insurance contract is a specie of insurance contract where principle object is to indemnify the insured against loss or

damage occasioned by fire. The extent of insurance liability is limited by the sum assured and not by the extent of the loss or damage. The insurer

has no interest in the safety of the insured property apart from his liability under the fire insurance contract. For a contract of insurance - fire

insurance or otherwise, it is necessary that the insured must have an ""insurable interest"" in the property insured. An insurance contract having all the

attributes of a valid contract, like competence of contracting parties to enter into contract, presence of consent-free from coercion, undue

influence, or misrepresentation, as also a lawful consideration would not make a contract of insurance valid unless and until the insured has an

insurable interest"" in the subject matter of the insurance. The reason, being that an insurance contract entered into by a person having no interest in

the insured property would amount to ""agreement by way of wager"" and thus void in terms of Section 30 of the Jammu and Kashmir Contract Act,

1977 Svt.

10. It is well settled that a person who is so interested in a property as to have benefit from its existence and to be prejudiced by its destructions

has an ""insurable interest"" in that property and thus can insure the property. Insurable interest and ownership of the insured property may not go

hand in hand and the property may be insured by a person other than the owner provided such a person has an ""insurable interest"" in the property.

In other words, ""insurable interest"" is not limited to the absolute ownership of the property and may be available to a person other than the absolute

owner - a person have only partial, limited, or equitable right. To illustrate a joint owner, mortgagor, mortgagee, trustee, lessee, bailee, beneficiary or a person in a lawful possession of a property have an ""insurable interest"" in such property.

11. The Supreme Court in Contship Container Lines Ltd. Vs. D.K. Lall and Others, , while dealing with true purport of expression ""insurable

interest"" though in the context of Marine Insurance referred to following from Halsbury's Laws of England, Fourth Edition

...It may be stated as a general principle that to constitute an insurable interest it must be an interest such that the peril would by its proximate effect

cause damage to the assured, that is to say cause him to lose a benefit or incur a liability.

Lawrence J, in Lucena v. Craufurd (1806) 2 Bos & PNR 269, has defined ""insurable interest"", {also quoted with approval in Contship Container

Lines Ltd. case (supra)} in following words:

A man is interested in a thing to whom advantage may arise or prejudice happen from the circumstances which may attend it;...and whom it

importeth that its condition as to safety or other quality should continue. Interest does not necessarily imply a right to the whole or part of the thing,

nor necessarily and exclusively that which may be the subject of privation, but he having some relation to, or concerning the subject of the

insurance; which relation or concern by the happening of the perils insured against, may be so effected as to produce a damage, determent or

prejudice to the person insuring. And where a man is so circumstanced with respect to matters exposed to certain risks and dangers as to have a

moral certainty of advantage or benefit but for those risks and dangers, he may be said to be interested in the safety of the thing. To be interested in

the preservation of a thing is to be so circumstanced with respect to it as to have benefit from its existence, prejudice from its destruction.

The litmus test thus as laid down in United India Insurance Company Vs. Mrs. Parmeshwari Sawhney, , to determine whether a person has an

insurable interest"" in the insured property is to see whether the person claiming ""insurable interest"" would suffer pecuniary loss in the event of loss

to property and would draw benefit from preservation of the insured property.

12. In the present case, the insured though not an absolute owner of the insured property, is not a stranger to the property. The insured is the father

of the recorded owners of the property and also in lawful possession of the insured building, running his business in part of the building and using

other part of the building for residential purposes along with his two sons - recorded owners of the building. The Respondent has not only insured

the building owned by his two sons but also stock-in-trade, deep freezer, fridges, soda machines, coffee machine and other appliances admittedly

owned by him, with the Appellant - Insurance Company.

13. In the circumstances, the Respondent is not only a lessee or tenant of the property and in its lawful possession but also a trustee of the property

on behalf of his two sons, i.e. owners of the property. Considering the interest of the Respondent in the insured property on the touchstone of

settled legal principles, it is more than evident that the Respondent as a lessee/ person in lawful possession of insured building, running business in

part of insured building and using other part of the building as his residence and that of his family including the recorded owner and also as a

trustee"", would be exposed to pecuniary loss in the event of loss to the property and would be benefitted by preservation of the insured property.

14. It further needs to be pointed out that the Respondent did not make any misrepresentation or concealment as regards ownership of the

property at the time, the Respondent obtained insurance policy in question, from the Appellant - Insurance Company. The Respondent made an

honest declaration that the insured building was in the name of his sons namely - Sh. Jagjeet Singh and Narinderpal and that he was insuring the

building on their behalf as also his merchandise and other appliances. Sh. Jagjeet Singh and Narinderpal, the recorded owners of the building in

their depositions before the State Consumer Commission took the stand that the property was purchased by the Respondent out of his own funds

in their name and that they were living in a joint, un-divided family with the Respondent as head of the family.

15. Sh. H.S. Risam, Deputy Manager of the Appellant - Insurance Company extended support to the case set up by the Respondent before the

State Commission, that the Respondent along with his two sons, is residing in the insured building, in a part whereof the Respondent is also running

his business under the name and style of ""Pahalgam General Store"". Sh. H.S. Risam, Deputy Manager of the Appellant -Insurance Company

further admitted that the Respondent at the time of obtaining the insurance policy, informed the Appellant - Insurance Company that the building

was in the name of his two sons and the Appellant - Insurance Company fully aware of this fact, accepted the premium, from the Respondent and

agreed to insure the property.

16. The evidence brought on the file by the parties thus reinforces the Respondent's claim that Respondent had an ""insurable interest"" in the insured

building.

17. The plea that the Respondent is not a ""consumer"" and a ""complainant"" within the meaning of Section 2(d), 2(b) of J&K Consumer Protection

Act, 1987; that there was no ""deficiency"" in service provided by the Appellant - Insurance Company in terms of Section 2(g) of the J&K

Consumer Protection Act, 1987 and that the complaint u/s 15, J&K Consumer Protection Act, 1987 was not maintainable, is bereft of any merit.

18. The ""insured"" is a person who hires services from the Insurance Company or the ""insurer"" for a consideration called ""premium"" paid by the

insured"" at the commencement of the insurance contract. The ""insured"" thus is a consumer within the meaning of Section 2(d)(i) and ""complainant

within the meaning of Section 2(b)(i) of the Act. The definition of ""service"" appearing u/s 2(o) expressly brings the insurance service within its fold.

The repudiation of insurance claim by the Insurance Company after fair, thorough and full-fledged enquiry, on a valid ground and in good faith, may

not amount to ""deficiency"" in service leaving only option with the aggrieved to approach the Civil Court. There is, however, no universally

applicable principle that whenever the claim is repudiated by the Insurance Company, consumer redressal mechanism, envisaged under the Act,

cannot be pressed into service by the ""insured"" and a complaint lodged with the Divisional Forum or State Consumer Disputes Redressal Forum,

as the case may be. In case, Divisional Forum or State Commission is held to have no jurisdiction to entertain a complaint, merely because the

insurance claim is repudiated by the ""insurer"", the ""insured"" in almost all the cases involving repudiation of insurance claim irrespective of validity of

the decision would be deprived of a hassle free, cost free and speedy redressal mechanism available under the Act. Such a conclusion, it needs no

emphasis, would run contrary to object, spirit and scheme of the Act.

19. If follows that mere repudiation of the insurance claim does not strip the

Divisional Forum or the State Commission of jurisdiction to see

whether the repudiation was made in good faith on valid and justifiable grounds and whether there was deficiency in service. In other words,

repudiation of insurance claim, without an in-depth, objective and transparent enquiry, on filmsly, malafide and legally untenable grounds would

amount to ""deficiency"" in service and entitle the ""insured"" to file a complaint under the Act. In the present case, the Appellant -Insurance Company

unmindful of its conduct, while accepting the insurance proposal from the Respondent for insurance of the building in question and stock - in -trade,

appliances etc. and the fact that to its knowledge, the Respondent had an ""insurable interest"" in the insured building wriggled out of its obligation

under the insurance contract on legally and factually untenable grounds. There was, thus, ""deficiency"" in service on part of the Appellant -

Insurance Company and the State Commission rightly entertained and dealt with the complaint filed by the Respondent.

20. For the reason discussed, the appeal is held merit less and dismissed along with CMP(s). The State Commission judgment dated 03.12.2009

is upheld, without any order as to cost.

