(2014) 12 J&K CK 0044

In the Jammu And Kashmir High Court

Case No : CIMA No. 16 Of 2005

National Insurance Co. Ltd.	APPELLANT
Vs	
Makhan Lal Zijoo	RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Citation : (2015) 2 JKJ 392

Hon'ble Judges : M.M. Kumar, CJ;Tashi Rabstan, J

Bench : Division Bench

Advocate : Jugal Kishore Gupta, Advocate, for the Appellant; K.L. Bhat, for the Respondent

Final Decision : Dismissed

Judgement

Tashi Rabstan, J.â?"This Civil 1st Miscellaneous Appeal is directed against the judgment dated 15.12.2004 passed by the J & K State Consumer

Protection Commission, Jammu, in complaint No. 2471/2003, whereby the learned Commission while allowing the complaint, directed the

National Insurance Company, appellant herein, to pay an amount of Rs. 2,62,090/- with 6% interest with effect from 12.10.1994 to the

respondent herein. Admitted facts of the case are that respondent-complainant insured his residential house situated at Rainawari, Srinagar with the

appellant herein under Policy No. 402003/3600039/89 from 12.01.1989 to 11.10.1999 for an amount of rupees five lacs. Due to turmoil in

Kashmir Valley he migrated to Jammu in 1990. At the time of migration he renewed the policy and paid the renewal premium of Rs. 310A vide

Cheque No. 0237722 dated 23.02.1990. The insured house of respondent-complainant got gutted in fire on 22.11.1990. Respondent-complainant lodged his claim before the appellant-Insurance Company vide letters dated 12.12.1990 and 04.03.1991. Appellant-Insurance

Company deputed the Surveyor, namely, M/s. V.S. Sarin Pvt. Ltd., to furnish the assessment report of damaged house. The Surveyor assessed

the loss to the tune of Rs. 2,62,090/-. However, the appellant-Insurance Company repudiated the claim of respondent-complainant on two counts;

first, the claim was barred by time and, second, no renewal premium was received by the appellant-Insurance Company because the cheque-in-

question had been returned with the remarks ""branch closed"".

2. Respondent-complainant filed a complaint before the learned Commission and the learned Commission vide its judgment dated 15.12.2004

directed the appellant-Insurance Company to pay an amount of Rs. 2,62,090/- with 6% interest with effect from 12.10.1994, i.e., after the

assessment report was submitted by the Surveyor. Hence the present appeal.

3. The precise ground taken by the appellant-Insurance Company is that the learned Commission did not consider the objection raised by it

regarding the limitation period in filing the complaint nor there was any contract existed between the appellant and respondent as the cheque-in-

question for payment of renewed premium was never honoured.

4. Heard learned counsel appearing for the parties and perused the record.

5. Record of learned Commission reveals that the repudiation letter had been sent by the appellant-Insurance Company to the respondent-

complainant on 21,07.1995, i.e., after about five years of the claim raised, that too was sent at the Srinagar address of respondent-complainant,

when he had already migrated from Kashmir in the year 1990. The fact that respondent-complainant time and again had been informing the

appellant-Insurance Company regarding his new place of residence was never denied by Insurance Company. Despite this the appellant-Insurance

Company sent the repudiation letter at the Srinagar address of the respondent-complainant. Therefore, the appellant-Insurance Company is

debarred from raising the plea of limitation. Otherwise also the learned Commission has already dealt with in detail about the preliminary objection

raised by the appellant-Insurance Company regarding the limitation period.

6. Further, the repudiation letter addressed to respondent-complainant by the Divisional Manager of National Insurance Company, Shalamar

Road, Jammu, reveals that the cheque-in-question seemed to have been presented before the ""State Bank of India"", Batmaloo Branch for

encashment and the same was returned with the remarks that the Bank had already been closed. But, the fact of the matter is that the cheque

issued by the respondent-complainant was of ""Bank of India"" and not ""State Bank of India"" as mentioned by the appellant-Insurance Company in

its repudiation letter. It is also not the case of appellant-Insurance Company that there was no balance in the account of respondent-complainant.

The very basis of the claim of respondent-complainant is that there was sufficient amount in his account which was being maintained in Bank of

India at the time of issuance of cheque-in-question. Therefore, the respondent-complainant cannot be held responsible and made to suffer for the

lapse on the part of appellant-Insurance Company. The appellant-insurance company in order to cover up the lacuna of its own working and

coordination has tried to attribute the same to respondent-complainant for repudiating his claim.

7. The Apex Court in Life Insurance Corporation of India and Others Vs. Smt. Asha Goel and Another, has held that the repudiation of a policy

should not be made in a mechanical and routine manner, rather the same should be issued after taking sufficient care and caution. It would be

appropriate to reproduce paragraphs 5 & 16 thereof hereunder.

5. Examining the matter on merits the learned single Judge referred to the provisions of Section 45 of the Insurance Act, 1938 which imposes

certain restrictions on the scope of repudiation of a claim by the insurer and held that the Corporation has not brought on record satisfactory

evidence to establish any of the conditions envisaged in the second part of Section 45

16. In course of time the Corporation has grown in size and at present it is one of the largest public sector financial undertakings. The public in

general and crores of policy-holders in particular look forward to prompt and efficient service from the Corporation. Therefore the authorities in-

charge of management of the affairs of the Corporation should bear in mind that its credibility and reputation depend on its prompt and efficient

service. Therefore, the approach of the Corporation in the matter of repudiation of a policy admittedly issued by it should be one of extreme care and caution. It should not be dealt with in a mechanical and routine manner.

8. Learned Commission has considered each and every aspect of the objections raised by the appellant-Insurance Company. Therefore we are

not inclined to take a view other than the one taken by the learned Commission. The appeal, therefore, merits to be dismissed. Dismissed as such

along with connected CMA(s). Let the record of the learned Commission be sent back alongwith copy of this judgment.