(1998) 11 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : C. I. M. A. No. 24 Of 1997

National Insurance Company APPELLANT

Vs

Abdul Razak Mir and Sons Bud Shah RESPONDENT

Date of Decision : 14-11-1998

Acts Referred:

Jammu and Kashmir Consumer Protection Act, 1987 — Section 2

Citation : (1999) KashLJ 528

Hon'ble Judges : Bhawani Singh, J and Syed Bashir-Ud-Din, J

Bench : Division Bench

Advocate : N.D.Kapra, J.A.Kawoosa, Advocates appearing for the Parties

Judgement

1 J&K State Consumer Protection Commission (hereafter the Commission) ordered National Insurance Coy. appellant to pay an amount of Rs.

3,58,222 to the complainant with 18% interest (from date of loss till the date of final payment). The amount was awarded on 02061997 by way of

insurance claim to respondent, Abdul Razak Mir & Sons, after they lodged complaint No. 37/96 with the Commission. This order of the

Commission is impugned in this appeal.

2. Abdul Razak Mir and his sons were running furnishing business under trade name M/S Shalimar Furnishing House. The business was being run

in the building situated at Lai Chowk, Srinagar, which is also owned by said Abdul Razak Mir. The building was insured separately. The stocks of

the business included all kinds of furnishing, like Durets, Dragets, Danes, Coirmates, Doormates, Foam Bedding, Floor coverings, Cushions, etc,

clothing and fabrics of various kinds etc. as also the furniture, fixture and fittings in the shop in the said building at Budshah Chowk Srinagar. These stocks were insured for a sum of Rs. 12 lacs for a period of twelve months from 121993 to 3111994. The building and the stocks were lost in the

fire incident of April 10,1993 which occurred in Lai Chowk area. The claim in respect of the loss to building has been settled. However, the claim

in respect of the stocks came to be repudiated on 1205 1994, after the Insurance Coy. came to the conclusion that the stocks were lying in third

floor, which was not part of the shop and therefore, not insured.

3. The complainant approached the Commission on 22041998. His complaint was registered. Appellant before us filed objections and contested

the case. The Commission on inquiry and after receiving evidence adjudicated the matter and came to the conclusion that the loss by fire of trade

articles/goods in the premises (in the building at Lai Chowk) was loss of the stocks of the trader and premises, where these stocks in trade were

kept, formed part of the shop and therefore, stood fully covered by the Insurance Policy. The compensation of Rs. 3,58,222 was awarded on the,

basis of the loss assessed by the surveyor Shri A. K. Govil in terms of his report on record. Further 18% interest was also awarded on this amount

from the date of loss till date of payment

4. Mr. J. A. Kawoosa Advocate, for the Appellant submits that the insurance policy issued by the National Insurance Company, appellants,

covers only stocks in the shop located in the Budshah Chowk, but not the loss which was caused to the stocks housed in 3rd floor of this very

building, so far as, the fatter cannot be said to be part of the shop. The shop was located in the ground floor of the building, whereas, the godown

as repository of stocks was located in the 3rd floor of the building. The National Insurance Company received the report of Shri A. K. Govil and

Associates (Surveyors and loss Assessors), that the loss to the stocks is in the sum of Rs 3,58 222' But as the stocks were housed in the 3rd floor

of the building which is independent of the main shop in the ground floor, therefore, the goods and the articles stocked in the 3rd floor cannot be

said to be covered by insurance policy. The shop and the godown for storage are separate Identities. Therefore, though the loss was sustained by

the respondents, the respondents were not entitled to claim the loss as the policy did not grant coverage to the stocks stocked in the 3rd floor. The

N. I. C on the aforesaid basis closed the claim and dispatched reputation letter to the respondents on 12051994.

5. The counsel for the respondents submits, that the word ""shop"" cannot be interpreted so narrowly as to leave out and separate the godown

meant for stone of stocks in trade and business, from the show room or the premises, where the stocks in trade are offered for sale. The shop

includes not only the actual place in a building where articles/goods are bought and sold, but also a show room and the godown where the articles

and goods forming stocks in trade, are stored. In the fire insurance policy covering the stocks in question, the building is shown situated at Budshah

Chowk Srinagar and the premises is shown as shop and the stocks include all kinds of furnishings such as, Durets, Dragets, Daries, Coirmates ,

Doormates, Foam bedding, flooring coverings, cushions, certain clothing, fabrics of all kinds etc. lying in the shop for sale situate at Budshah

Chowk, Srinagar Kashmir.

6. From the policy, it is seen that the said stocks in the shop at BudshahChowk, Srinagar are mentioned. The word ""shop"" in the context in which it

has been used in this case, has to receive as interpretation which represents the intention of the parties when the contract of insurance vyas entered

into. The word ""Shop"" has to be interpreted in the manner it is ordinanly understood, ff so, shop would mean, a building or part thereof occupied

and in use principally for business or trade.

7. In M/S International Ore and Fertilizers (India) Pvt. Ltd. V/S. Employees State Insurance Corporation (1987) 4 Supreme Court Cases 203,

while interpreting the word ""shop"" and explaining what it constitutes, the Apex Court observed:

.... According to the Shorter Oxford English Dictionary the expression ""shop"" means ""a house or building where goods are made or prepared

for sale and sold."" It also means a ""place of business""or ""place where one's ordinary occupation is carried on."" In ordinary parlance a ""shop"" is a

place where the activities connected with the buying and selling of goods are carried on

8. in J&K Shops and Establishments Act 1996, the word ""shop"" has been defined as :

(22) ""shop"" means any premises where goods are sold, either by retail or wholesale or both or where services are rendered to customers, and

includes an office, a store room, godown, warehouse or workplace, whether in the same premises or otherwise used in connection with such trade

or business out does not include a factory, a commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public

amusement or entertainment or shop attached to factory where the person employed in the shop are allowed the benefits provided for workers

under the Jammu and Kashmir ^Factories Act. 1957.

9. It will be seen that the premises where activities connected with sale or purchase of goods carried is a shop. It is not necessary that the goods

are sold or purchased and stocked or stored, in one and the same room. Actual storing, stocking, delivery of goods need not be at one and the

same point. It is not necessary that all acts of storing, stocking purchase or sale should be carried in one and the same room. The carrying of

business and pursuing ordinary occupation as trader in buying and/of selling goods at a premises, is an essential requisite of term ""shop"". Storing of

the stocks offered for sale though part of trade activity, is not sole determinative feature of term ""shop"". It is not denied that the entire building was

owned by the respondents (opposite party) and the stocks which were offered for sale in the room in ground floor, were stored and stocked in the

3rd floor of the building.

10. Keeping in view the nature and type of stocks offerd for safe by M/S Shalimar Furnishing House, it cannot be said that the stocks would not

require the space or a godown as part of the shop. Even, in the policy, it is very clearly laid; ""on stocks of all kinds of furnishings as Durets,

Dragets, Daries, Coirmates, Ooormates, Foambedding, Floor coverings, Cushions, certain clothing and fabrics of all kinds and other items of the

nature lying in the shop for sale, situated at Budshah Chowk Srinagar Kashmir."" (emphasis supplied). It shows that besides stocks of the specified

goods, the other items lying in store in the premises are fully covered by the Insurance policy. It not only covers items lying in the ground floor, but

also other like items stored in the premises.'

11. Obviously, the shop included both the places marked in the ground floor as also in the 3rd floor of the one and the same building in the lal

Chowk. The whole space can be said to be the place of business, where M/S Shalimar Furnishing House, carried its activities relatable to its business and pursued its trading occupation. The whole activities connected with buying and selling of the goods, stock and store were carried by

respondents in the premises.

12. Interpreting the word ""shop"", thus we hold that the stocks/goods and articles in the 3rd floor of the building form part of the shop and

therefore, are covered by the insurance policy. The loss assessed by Shri. A. K. Govil and Associates, Surveyors and Loss Assessors, in the sum

of Rs. 3, 58,222/ allowed by the Commission, is in order. The finding of the Commission thereto and award of the amount does not suffer from

any vice or illegality. It is based on evidence both oral and documentary placed before the Commission.

13. The counsel Mr. J. A. Kawoosa, contends next that the complaint before the Commission was barred by time and despite the objections

taken by opposite party, the Commission has not adjudicated this aspect of the matter. We find from the record and the order of the Commission,

that no such argument has been placed before the Commission, in so far as no mention is made of any such plea by the Commission. Besides, the

argument also needs to be rejected on merits. We find that it was only by Act XIX of 1997 that the J&K Consumers Protection Act of 1997

provided limitation period in respect of complaints to Divisional Forum or the Commission by incorporating Section 18(a) in the Act of 1997.

14. Section 18(a) provides that the Divisional Forum or the State Commission may not admit a complaint unless it is filed within two years from the

date the cause of action arose, though the complaint can be entertained, for reasons to be recorded, even after the said two year period if the

Divisional Forum or the State Commission is satisfied that the complainant had sufficient cause for not filing complaint within above two year

period. The complaint has been filed and registered on 2241996, much earlier to the insertion of Section 18(a) in the main Act of 1997, by the

amending Act of XIX of 1997.

15. Mr. J. A. Kawoosa, Advocate, next submits that the award of 18% interest from the date of loss till actual payment, is excessive and

unconscionable. We find award of interest @ 18% excessive and on higher side. Keeping in view the facts and circumstances of the case, we

allow interest @ 15% from March, 1994.

16. We, accordingly, dismiss the Appeal with above modification as to rate of interest and the date from which the interest is to be allowed.

17. Parties to bear their costs.

