(2018) 07 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Cimiscellaneous Appeal No.131 Of 2008

National Insurance Company @APPELLANT@Hash Geeta Devi And Others

Date of Decision : 02-07-2018

Acts Referred:

Citation : (2018) 07 J&K CK 0012

Hon'ble Judges : Dhiraj Singh Thakur, J;Sanjeev Kumar, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

1. This is a Ist Miscellaneous Appeal against the order dated 27.03.2008 passed by the Jammu & Kashmir State Consumer Disputes Redressal

Commission, Jammu, whereby the complaint has been allowed and the appellant company has been directed to pay an amount of Rs. 10 lakhs with

interest @ 6% per annum from the date of accident till the final payment is made along with litigation charges of Rs.5000/-.

2. Briefly stated the material facts are as under:-

3. A complaint came to be filed by the successors-in-interest of deceased-Sanjeev Kumar Sharma before the Jammu & Kashmir State Disputes

Redressal Commission, Jammu. In the complaint it was averred that the deceased was employed as Assistant Engineer/ Site Inspector with

respondent no.3, which was an associated company of the principal contractor, respondent no.4. It was stated that the deceased was entrusted with

the duty to maintain the quality control of the material which was being used by the contractor and the principal contractor for the construction of a

dam on river Chenab known as â??Baglihar Hydro Electric Project, Chanderkot?. It was stated that on 29th September, 2002, the deceased was on

official duty relating to project work but unfortunately met with a road accident at Gangyal near National Highway, Jammu, and died on the spot. It

was stated that the deceased was being paid Rs.7500/- per month and as per the insurance policy obtained by respondent no.3, the deceased was

insured for a sum of Rs.10 lakhs for the risk of his life. It was pursuant to the rejection of the claim by the insurance company that forced the

complainants to approach the Consumer Commission.Â

4. Respondent, Insurance Company, in its objections took a stand that M/s Jai Parkash Industries Ltd., took a personal group policy for their

employees and capital sum insured was Rs. 5 lakhs each. It was stated that the liability of the company was to be fixed in accordance with the

parameters prescribed in the policy. It was stated that the policy was restricted to the project area of Baglihar Hydro Electric Project. According to

the objections, the â??project area? meant the area where the permanent and temporary works in the vicinity of works area in Doda District were

situate in Jammu & Kashmir State. It was stated that since the death had not occurred with the project area, the insurance company was not liable.

5. M/s Jai Parkash Industries Limited-respondents 2 and 3 in the complaint, took a stand that according to the Group Janta Personal Accident

Scheme obtained by it in regard to its employees, the employees who were getting pay up to Rs. 5000/- were to get Rs. 5 lakhs in case of death, those

employees in the pay scale of Rs.5000 to 7500 were to get Rs.7.5 lakhs in the event of their death and those in the pay scale of Rs.7500 and above

were to get Rs. 10 lakhs. It was also stated that according to the terms and conditions of the contract of insurance, the insurance company was liable

to pay compensation not only for accidents within the project area but even the extended project areas.

6. The State Commission by virtue of its order dated 27.03.2008 allowed the complaint and awarded an amount of Rs. 10 lakhs as compensation with

interest along with litigation charges of Rs.5000/-. For awarding compensation of Rs.10 lakhs, the Commission placed reliance upon policy

no.350700/96000002/2/98 which was valid up to 31.05.1998.

7. In the present appeal, the appellant company challenges the order passed by the Commission on two counts; firstly it was urged that the insurance

company was not at all liable inasmuch as the death has occurred in a road accident outside the project area and secondly, assuming that the insurance company was liable, the liability was to the extent of Rs. 5 lakhs only.Â

8. Heard counsel for the parties.Â

9. As regards the first objection, it is necessary to notice the terms and conditions subject to which the company was to be made liable.Â

10. The special conditions of the contract of insurance envisaged as under:Â

Â â??5. Special Conditions:Â Â 1. The policy is restricted to the project Area of Baglihar H.E.Project. The project area would mean the area Stated

in the contract clause.â??

The project area was defined as under:

â??Project Area? shall mean the area where the Permanent and Temporary Works will be located in the vicinity of the Works in Doda District of

Â J&K State.â??Â

Clause 1.33, defines the temporary work, which mean all temporary works of every kind required in or about the execution of the works.Â

Clause 1.37 defines the works, which mean and include all permanent and temporary works to be executed, all items and things to be supplied/ done

and services and activites to be performed by the Contractor within or outside the Project Area, in pursuance of and in accordance with the Contract

but shall not include the Contractor?s Construction Equipment its related spares and wearing parts.

11. On a perusal of the various clauses above, it thus becomes clear that the policy did cover not only the actually project site but also those areas

where permanent and temporary works would be located. Works would also include services and activities to be performed by the contractor within

or outside the project area.Â

12. Keeping in view the aforementioned clauses, it has come on record that the deceased was working as an Assistant Civil Engineer/ Site Inspector

who was deputed by the company on an official tour to Jammu but met with an unfortunate accident on 29th September 2003. The evidence that the

petitioner was deputed on official work remains uncontroverted. The finding recorded by the Commission holding the Insurance Company liable on

that count cannot be said to be legally erroneous.Â

13. From a perusal of the record, it appears that the insurance company had filed an application dated 23rd November, 2007 for placing on record

copies of the insurance policy. On a perusal of the policy which was duly authenticated by the insurance company, it appears that the deceased

Sanjeev Kumar Sharma along with others whose names figure in the said policy was insured for a sum of Rs. 5 lakh each. The risk was covered from

24th March, 2002. The documents comes from the office of the National Insurance Company Limited which bore its stamp and was duly

authenticated. There was, therefore, no reason or justification for the Commission to disbelieve the contents of the said policy and award an amount in

excess of Rs. 5 lakhs which was the maximum limit prescribed for each of the employees mentioned therein. It appears that the Commission was

overwhelmed of the fact that in the year 1999, the insurance company had issued a policy in favour of M/s Jai Parkash Industries Limited, which did

cover various employees according to their scales of pay. The Commission, it appears presumed that the policy issued in the year 1999 would continue

to cover future contractÂ Â for subsequent years as well on the same terms and conditions. The view taken by the Commission in our opinion was

not correct. The liability of the insurance company, in our opinion, cannot be made to exceed Rs. 5 lakhs in any case as was the maximum amount

prescribed for each individual employee including the deceased.Â

14. For the reasons mentioned above, this appeal is partly allowed. The insurance company is held liable to pay an amount of Rs.5 lakhs as

compensation with interest @6% per annum from the date of filing of the complaint till its final realization. The insurance company shall also pay an

amount of Rs.5000/- to the complainants towards the litigation charges.Â Â