(2021) 05 J&K CK 0027

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No. 604 Of 2008

New India Assurance Co. Ltd. APPELLANT

Vs

Rajiv Gandotra And Ors RESPONDENT

Date of Decision : 17-05-2021

Acts Referred:

Citation : (2021) 05 J&K CK 0027

Hon'ble Judges : Sindhu Sharma, J;Pankaj Mithal, J

Bench : Division Bench

Advocate : Jugal Kishore Gupta, Aarti Bahl

Final Decision : Allowed

Judgement

Sharma, J

1. In this petition, the New India Assurance Company Limited has challenged the order dated 15.02.2008 passed by the J&K State Consumer

Disputes Redressal Commission, Jammu and order dated 20.11.2006 of the Divisional Consumer Forum.

2. The J&K State Consumer Disputes Redressal Commission, (for short, State Commission) as well as Divisional Consumer Forum (for short,

Divisional Forum), both have held the New India Assurance Company liable for the loss suffered by the respondent/complainant on account of bomb

blast. The State Commission directed the payment of Rs. 1.00 lac alongwith interest @ 8% per annum as compensation, whereas the Divisional

Consumer Forum has awarded a sum of Rs. 36, 425/- alongwith 6% interest.

3. The petitioner, New India Assurance Company (hereinafter referred to as the Insurance Company) had issued a shopkeeper insurance policy to

Rajiv Gandotra-respondent No. 1 (hereinafter referred to as the Complainant) and insured the furniture, fixture and fitting for Rs. 20,000/-and stocks

in trade for Rs. 80,000/-.

4. The complainantâ??s shop suffered damages due to bomb blast on 01.06.1998. An FIR No. 82/1999 was also registered in this regard at Police

Station Parade Ground, Jammu. The complainant duly intimated the Insurance Company about the incident.

5. A claim to indemnify the complainant on account of loss suffered by him along with all relevant documents was lodged with the Insurance

Company. As per the complainant, his claim was not settled by the Insurance Company, therefore, he filed a complaint before the Divisional

Consumer Forum. The Insurance Company denied their liability to indemnify the insured and therefore, had closed the complainantâ??s claim as

6. The Divisional Forum vide order dated 12.12.2003 allowed the complaint by directing the Insurance Company to pay a sum of 75% of the sum

insured to respondent No. 1 alongwith 9% interest. In an appeal filed by the Insurance Company, this order was set aside by the State Commission on

01.04.2004 and case was remanded back to the Divisional Forum, Jammu for fresh findings.

7. The Divisional Consumer Forum, again decided the complaint vide its order dated 20.11.2006 and directed the Insurance Company to pay an

amount of Rs. 36,425/- alongwith interest @ 6% per annum and Rs.2,000/-as litigation to the complainant for the loss suffered by him.

8. Aggrieved of the order of Divisional Forum dated 20.11.2006, both the complainant as well as the Insurance Company assailed the same before

State Commission. Both these appeals were decided by the State Commission vide order dated 15.02.2008. Appeal No. 2838 of the Insurance

Company was dismissed and Appeal No. 2839 filed by the complainant was allowed by directing the Insurance Company to pay the insured a sum of

Rs. 1.00 lac alongwith interest @ 8% per annum after three months of the receipt of the Surveyor Report and litigation expenses of Rs. 8000/- for the

loss suffered by him.

9. The Insurance Company has assailed the orders of both the Forums on the ground, that as per the policy, the address of the insured premises i.e.,

shop was shown as Kali Jani, Jammu, whereas the occurrence was shown at Raj Tilak Road, Jammu. The address of the insured at Kali Jani, Jammu which was not rectified at any point of time, therefore, Insurance Company was not liable to indemnify the complainant for loss suffered.

10. The denial of its liability by the Insurance Company on the ground that the address of the insured premises in the Policy was Kali Jani, Jammu,

whereas the blast occurred at Raj Tilak Road, cannot be sustained on the basis of findings of fact recorded by both the Forums.

11. The Divisional Forum held while insuring the shop, the Insurance Company had inadvertently wrongly recorded the residential address of the

complainant i.e., Kali Jani Jammu on the policy instead of Raj Tilak Road. This finding is supported by evidence on record. The shop of the

complainant was financed by J&K Bank Shalamar Road was at Raj Tilak, Jammu. Admittedly, a certificate issued by the financer J&K Bank

indicates that the complainantâ??s place of business is at Raj Tilak Road and his residential address as 57 Kali Jani Jammu. It was held that the

Insurance Company would have insured the premises only after inspection of premises of the complainant and the same could not have been done in

case non-existing premises. The State Commission agreed with the finding of the Divisional Forum and has further relied on a communication dated

24.06.1998 issued by the Insurance Company which is on record, wherein loss shown due to bomb blast is at business premises shown as Rajiv

Gandotra C/o M/s Rajiv General Store, Raj Tilak Road. Both the Forums, accordingly, held the Insurance Company liable to indemnify the insured for

the loss suffered by him. We do not find any reason to interfere in the finding of facts by both the Forums.

12. The next contention of the Insurance Company is that the complainant had himself submitted a claim of only Rs. 40,000/- to the Insurance

Company, therefore, compensation more than the amount claimed could not have been awarded. As such, the amount of Rs. 1.00 lakh as awarded by

the State Commission being more than the amount claimed by the complainant is required to be set aside. The Award of interest @ 8% from the three

months after the receipt of the Surveyor report is also erroneous, as the claim was closed as â??No Claimâ??. Therefore, the assessment of the

amount of loss both by the Divisional Forum as well as the State Commission is without any basis, is required to be set aside.

13. Though both the Forums have agreed regarding the liability of the Insurance Company to indemnify the insured for the loss suffered but they have

differed on the amount of compensation to be awarded. The Divisional Forum has awarded a sum of Rs. 36,000/- alongwith 6% interest and Rs.

2,000/- as litigation cost whereas the State Commission fixed the same at Rs. 1.00 lac alongwith 8% interest per annum after three months from the

receipt of the survey report till final payment with Rs. 8000/- as cost of litigation.

14. Perusal of the record reveals that as per the affidavit of evidence filed by the complainant, he had submitted a claim of Rs. 40,000/- only. The

complainant has though stated that it was to the intimidation of the surveyor. The relevant potion of his affidavit of evidence reads as under :-

â??there was stock worth Rs. 2.45 lacs in the shop at the time of the blast and the Insurance Company has also insured the stock and furniture after

its inspection for Rs. 1.00 lac but the surveyor of the company insisted upon the vouchers and intimidated the complainant to submit a false claim of

Rs. 40,000/- only failing which no claim was told to be paid to the complainant. The Insurance Company has provided deficient service and has

harassed the complainant and is liable to compensate for harassment and agony alongwith the claim of Rs. 1.00 lac of the insured amount.â??

15. The claim note in surveyor report was also of Rs. 10,000/- for furniture and Rs.30,000/- for stocks. To support their submission, the Insurance

Company has also annexed a copy of the claim submitted by the petitioner of the same amount. The same coupled with his own admission cannot be

brushed aside.

16. The Divisional Forum accepted the loss of Rs.6425/- caused to the furniture and fixtures as assessed by the surveyor, but allowed a sum of Rs.

30,000/- as loss caused to the stocks in trade as the same could not be denied for non-production of document due to bomb blast. The State

Commission, however, allowed the complainantâ??s appeal and directed the respondents to reimburse him for the total Rs. 1 lakh as claimed in the

complaint alongwith interest @ 8% per annum after three months from the receipt of Surveyorâ??s Report till final payment.

17. The State Commission did not consider the complainantâ??s evidence of submission of claim of only Rs. 40,000/- nor the report of surveyor

which stated that the claim is of Rs. 10,000/- for furniture and fixture and Rs. 30,000/- for stock. Though, as per the complainant, he submitted this

claim on intimidation of surveyor but there is no basis for the same, therefore, the claim of loss as submitted by the complainant was only of Rs.

40,000/-. However, subsequently while filing the complaint, the same was enhanced to Rs. 1 lakh. The State Commission, thus, was not justified in

enhancing the amount awarded by the Divisional Forum without any proof of actual loss of the same.

18. The Honâ??ble Supreme Court in United India Insurance Company Ltd. vs. Kantika Colour Lab. & ors., 2010 (3) Supreme 733 has held as

under :-

â??The happening of the event against which insurance cover has been taken does not by itself entitle the assured to claim the amount stipulated in

the policy. It is only upon proof of the actual loss, that the assured can claim reimbursement of the loss to the extent it is established, not exceeding the

amount stipulated in the contract of Insurance which signifies outer limit of the insurance companyâ??s liability. The amount mentioned in the policy

does not signify that the insurance company guarantees payment of the said amount regardless of the actual loss suffered by the insured.â??

19. We are unable to agree with the compensation as awarded by the State Commission, in absence of any proof on record of actual loss.

20. In view of the aforesaid discussion, the order of the State Commission dated 15.02.2008 to the extent of awarding Rs. 1 lakh compensation

alongwith 8% interest is set aside and order of the Divisional Forum, Jammu dated 20.11.2006 awarding compensation of Rs. 36,425/- is upheld along

with interest @ 6%. We also direct payment of an amount of Rs. 8,000/- as just and appropriate litigation expenses to be paid to the complainant.

21. Records of both the Forums be returned back forthwith by the Registry.

