

(2006) 06 J&K CK 0016
In the Jammu And Kashmir High Court

Oriental Insurance Co.

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 09-06-2006

Acts Referred:

Citation : (2007) 1 JKJ 120

Hon'ble Judges : Bashir A. Kirmani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bashir A. Kirmani, J.—On an insurance claim preferred by respondent/Oil Mill, the Divisional Consumer Forum awarded an amount of Rs.

1, 67,6557- in their favour against petitioner/Insurance Company at 9% interest with effect from six months after occurrence till actual realization,

which on challenge by ""petitioners was confirmed by State Consumer Protection Forum with a slight modification that depreciation shall be 50% as

awarded by the surveyor with 9% interest payable with effect from one year after the date of actual loss.

2. Aggrieved thereby the petitioner/insurance Company has instituted this writ petition for having both the awards quashed on the grounds that they

have been passed against facts of the case and law governing the matter because surveyors had reported that respondent's claim did not qualify for

indemnification as the insured premise was surrounded by security forces and there was no chance of burglary therein particularly while first

respondent had admittedly closed down the unit after eruption of militancy in the valley and got it insured only in 1997 even while it was not

functional, etc.

3. In reply the contesting respondent No. 1 has inter alia pleaded that the writ petition is not maintainable because petitioners have agitated many questions of fact etc. On merits also he has controverted every plea raised by petitioner/Insurance Company and sought to contest the matter accordingly. During course of submissions learned Counsel appearing for rival sides have reiterated the contents of their pleadings with reference to annexures on record.

4. I have heard learned Counsel and considered the matter. The basic premise on which the whole subject is required to be assessed, is that while the petitioners/Insurance Company admit subsistence of insurance cover for the respondent/unit on the relevant date, they seek to dispute the awards of the two for a below for modification to the extent that they were not warranted in facts of the case, particularly because the surveyor deputed to report the loss had recommended non-admission of the claim etc. With admission of insurance cover however, the petitioner/insurance company automatically contract a liability to indemnify the first respondent for loss stated to have been suffered by him on account of alleged burglary in the insured premises. Once that is so it is for them to explain albeit substantiate the reasons for refusing the insurance claim. Incidentally however they have failed to do because all they have pleaded is based on intricate questions of fact relating to the location of respondent/Unit, its status on relevant date, and existence of machinery therein etc. which cannot be adjudicated upon in writ proceedings due to which the writ petition must fail.

5. Before proceeding further, it may be appropriate to mention that judgment quoted by petitioners counsel in support of his prayer does not appear to apply in the present case. In the case-under reference in said judgment National Insurance Co. Ltd. Vs. Harjeet Rice Mills, the matter had been heard by this Court in appeal against findings of State Commission wherein this Court as the appellate forum was at liberty to go into all questions of fact including that of fraud alleged in that case; while as in this case the court is considering the matter in exercise its writ jurisdiction and not as an appeal court and as such an adjudication on triable facts alleged by respective parties is not admissible; and in that much the judgment quoted appears to be distinguishable.

6. For purpose of this proceeding the award of the State Consumer Commission does not appear to suffer from any jurisdictional error, in view

whereof the petition does not appear to have any force and is accordingly dismissed alongwith connected CMPs.