

(2008) 10 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : CIMA No.64 Of 2008, CMP No.220 Of 2008

Oriental Insurance Co.Ltd

APPELLANT

Vs

Chinar Brick Kiln

RESPONDENT

Date of Decision : 18-10-2008

Acts Referred:

Citation : AIR 2009 J&K 4 : (2009) 1 JKJ 337 : (2009) 1 SriLJ 5

Hon'ble Judges : Manmohan Sarin, C.J and MOHAMMAD YAQOOB MIR, J

Bench : Division Bench

Advocate : N.H. Khuroo, Sami Yaqoob, J. Iqbal, Advocates appearing for the Parties

Judgement

Barin Ghosh, C.J.—The respondent, a partnership firm, approached the State Consumer Disputes Redressal Commission, Srinagar with a

complaint that the appellant, Insurance Company, has wrongfully refuted the claim lodged by the respondent under a policy of insurance obtained

by it from the appellant. The Commission, on the basis of the materials before it, allowed the complaint, assessed the liability and directed payment

thereof with interest and, at the same time, imposed costs. Being aggrieved thereby, the appellant is before us.

2. The undisputed facts of the case are that one of the perils covered by the insurance policy taken out by the respondent was flood. The

respondent claimed that it suffered loss by reason of flood. The appellant carried out preliminary survey and thereupon appointed Mr. Praveen

Agarwal and Mr. M. S. Mallik as surveyors to assess the loss. The appellant also appointed M/s A. M. S. Consultants and M/s R. S. Agarwal &

Sons for conducting joint investigation. The joint investigators filed a report on September 26, 1996, holding out that there was no loss due to flood

as the place in question, namely, the Brick Kiln of the respondent, was not inundated by flood. In February 1997, Mr. Praveen Agarwal and Mr.

M. S. Malik submitted their assessment report and thereby assessed the loss that was sustained by the respondent, allegedly by reason of flood.

There is no dispute that the loss, as was assessed by Mr. M. S. Malik and Mr. P. Agarwal, was accepted by the Commission, as the loss sustained by the respondent.

3. Before the Commission, it was contended by the appellant that there is no evidence that there was flood at the local where the Brick Kiln of the

respondent was situate and, on the contrary, the investigators have reported that there was no flood there and such view has also been endorsed

by the Assistant Commissioner, Anantnag. The Commission has rejected such contention by not placing reliance upon the investigation report for

the reasons indicated in the judgment and order of the Commission. The reasons are as follows:

(i) the investigators have not disclosed the date when they visited the locality;

(ii) the investigators have not indicated in their report who identified the Brick Kiln of the respondent;

(iii) the investigators have not indicated names and particulars of the persons through whom they gathered the information which they purported to state in their report;

(iv) the investigators relied upon a letter of the Assistant Commissioner, Anantnag, which is an undated letter, written in answer to a letter of the

investigators dated January 15, 1996, and in the absence of the letter dated January 15, 1996, it cannot be gathered what queries were being

answered by the said undated letter and to what information contained in the said undated letter should be said to be a conscious information

sought to be answered; and further that the letter was not an official letter, for, it did not contain the seal or the official serial number of letters

issued from the office of the Assistant Commissioner, Anantnag.

4. The learned counsel appearing in support of the appeal could not point out before us as to where the Commission went wrong while

appreciating the report of the investigators in the background of the surrounding circumstances.

We have also not been persuaded to take a different view as regards placing of

reliance upon the said report contrary to what has been done by the Commission.

5. It was next contended by the learned counsel for the appellant that if the said report and evidence given by one of the creators of the said report are not to be accepted, even then there is nothing on record which would suggest that, in fact, there was a flood and the same affected the insured commodity in the manner and to the extent claimed by the respondent and surveyed by the surveyors. It was stated that although the survey report was produced but the persons who created the survey report did not depose to sustain the same. It was contended that as against the oral evidence by one of the investigators, there was evidence of one of the partners of the claimant and, therefore, on the record of evidence, there was assertion and denial of flood and in the absence of the survey report being proved in the manner the same should have been proved by one of the creators thereof, there was, in fact, nothing on which a prudent person could come to a conclusion that flood had inundated the locality where the Brick Kiln of the respondent was situate and that the respondent had suffered to the extent as reported in the said report.

6. The fact remains that the appellant did not dispute the extent of loss assessed in the report. The contention of the appellant, through out, had been that there was no flood; accordingly, loss, if any, is not due to flood.

7. It is true, none, who prepared the survey report, came to depose, but it is significant to note that although the surveyors were appointed by the appellant, in the pleadings filed before the Commission the appellant contended that both the surveyors had entered into an unholy alliance with the respondent for the purpose of securing undue benefit at the cost of the appellant, a public undertaking. It was contended that in the case of RehmatUllah Ganai, a false report was prepared by M/s M. S. Malik and Praveen Agrawal and consequently the police had to register a criminal case. It was alleged that these two surveyors were associates of one Mr. Joshi, a Senior Divisional Manager of the appellant, and that the said Mr. Joshi had to face CBI enquiry. The Manager of the appellant, who deposed before the Commission, accepted that the appellant had not taken any action of its own to delist either Mr. M. S. Malik or Mr. Praveen Agarwal as Surveyors of the appellant. What happened to the first information

report whether a charge sheet on the basis of investigation pursuant thereto was filed or not, was not brought on record. The logical conclusion,

therefore, would be that by taking such pleas against the surveyors, the appellant scared them away from deposing. As aforesaid, assessment of

loss was not questioned, but the reason therefor had been questioned.

8. It was contended that the loss has no bearing with the flood, for, there was no flood. In relation thereto, the Commission considered a certificate

issued by the Assistant Commissioner, Anantnag, bearing No.811/AP/BK dated September 18, 1998. This certificate was not called in question

despite the same having been issued only for insurance purposes. A look at this certificate would reveal that the said certificate was issued on the

strength of flood incident reported by the Executive Engineer, Flood Control Division, Anantnag by his certificate issued under No.FCD/L3/1149

dated August 29,1998. In view of the state of evidence then existing, it is not possible for us to hold, as contended by the appellant, that there was

nothing on record on the basis whereof a prudent person could come to a conclusion that there was flood in the locality and by reason thereof the

respondent suffered loss. As aforesaid, the quantum of loss suffered was not in dispute.

9. The learned counsel for the appellant cited a judgment of the Division Bench of this Court rendered in National Insurance Company v Bashir

Ahmad Wani on October 4,2004 in connection with CIA no.75/1995 where the learned Judges did not accept the claim, for, the learned Judges

felt that the claimants have failed to discharge their initial onus of establishing that the insured car had, in fact, been stolen. On facts, we do not think

that the said judgment has any bearing in so far as the present case is concerned. In the instant case, the dispute inter se the parties was whether or

not there was flood which affected the insured property? As aforesaid, in relation thereto, there was a certificate issued by a competent authority

based on another certificate issued by the person who is required to have knowledge as regards floods taking place in the locality, and as veracity

of those certificates was not challenged either directly or indirectly, it cannot be said that a finding recorded on those certificates is a finding

recorded without any evidence.

10. The learned counsel for the appellant also cited a judgment of the Hon'ble

Supreme Court, where there was reluctance in looking into the report of an investigator in view of the fact that the investigator was not a registered investigator. The Hon'ble Supreme Court directed consideration of the report submitted by the investigator. We do not think that the judgment has any bearing in the facts and circumstances of the present case.

11. For the reasons as above, the appeal stands dismissed without any order as to costs.