(2010) 08 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1098 of 2007 and CMP No. 1590 of 2007

Oriental Insurance Company Ltd. APPELLANT

Vs

Surinder Singh and Others RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:
Jammu and Kashmir Consumer Protection Act, 1987 — Section 11

Citation : AIR 2011 J&K 44 : (2010) 3 JKJ 586

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Judgement

J.P. Singh, Judge

1. M/s Vashuki Films insured its Sony 3 Chip CCD Colour Video Camera and other items used for Indoor and Outdoor Shooting purposes, with

the Oriental Insurance Company Limited, for Rs.6,92,064/- vide Insurance Policy No. 234300/48/97/000059/304/00023 which was to remain in

operation from 23.08.96 to 22.08.97. The Policy was extended from time to time and the last extension was for the period commencing from

23.08.2001 to the Mid Night of 22.08.2002. The insured items with the sum assured are indicated in the Policy Schedule as follows:-

S.No Qty. Description of Yr.of Sum Excess %Mirt

Items Manfr insured CA Excess

1. 5 EQUIPMENT 1996 Rs.4245005 Rs.2500

1. SONY

CHIP CCD

COLOUR

VIDEO.

2. 6 2. CAMERA 1996 Rs.2640005 Rs.2500

WITH THE

FLLG ACCS

1.5"" B/W

VIEW

FINDER.

3.FUJINON

ZOOM LENS

(12X0

CARRYING

CASE

TRIPOD

ADAPTOR

EQUIPMENT

VRT 8800

MODEL

Rs.150000/-

2. JVC.

RS.22000/-

3. GUN MICE

SONY

RS.20000/-

RIPOD

RS.30000/-

4. CHARGER

SONY

RS.40000/-

5. LOPEL

MICE RS.

2000/-

2. Mr. Surinder Singh, the Proprietor of M/s Vashuki Films, was carrying the insured Camera on his scooter on 07.07.2002 when it met with an

accident in which the Camera was severally damaged. After informing the Insurance Company of the accident and the damage caused to the

Camera, he lodged a claim with the Company to indemnify the damage. Repudiating the claim, the Company informed the petitioner vide its

Communication of March 13, 2003.

3. The complainant approached the Divisional Forum constituted under the Jammu and Kashmir Consumer Protection Act, 1987 seeking a

direction against the Company for payment of Rs.4,24,500/- along with interest @ 12% per annum, besides Rs.50,000/- by way of compensation

and Rs.10,000/- as costs.

4. Responding to the Complaint, the Insurance Company pleaded that after the receipt of the information of damage to the insured Camera, it

appointed Mr. Mukesh Purdhani-Surveyor, for assessment of the loss, who vide his Report dated 07.09.2002, assessed Rs.84,800/- as net loss

to the Camera. The claim was, however, repudiated as it was not covered by the terms and conditions of the Insurance Policy.

5. Justifying its stand of repudiating the Claim, the Insurance Company denied the complainant's entitlement to compensation for the damage

caused to the Camera.

6. Holding the repudiation of complainant's Claim erroneous, the Divisional Forum allowed the complainant's claim, but only for Rs.84,800/-, as

assessed by the Surveyor, on total loss basis.

7. Questioning the quantum of compensation awarded by the Divisional Forum and seeking allowance of his claim, as projected in the Claim

Petition, the complainant approached the Jammu and Kashmir State Consumer Disputes Redressal Commission, ""State Commission"" for short, by

his Appeal.

8. While allowing the complainant's Appeal, the State Commission has directed the Insurance Company to pay, the respondent, Rs.4,24,500/-

along with interest @ 9% per annum with Rs.6000/-as costs.

9. Aggrieved by the order of the State Commission, the Insurance Company has

filed this Writ Petition seeking quashing of the State Commission's

Order of November 30, 2007.

10. The finding of the Divisional Forum that the complainant-respondent's claim was covered by the terms and conditions of the Insurance Policy

and the Insurance Company had wrongly repudiated the claim, has not been disputed by the Insurance Company's learned counsel, who

questioned the State Commission's order, only on the ground that the Commission had erred in awarding Rs.4,24,500/-, whereas the claimant was

entitled only to the amount as assessed by the Surveyor appointed by the Company.

11. Learned counsel for the claimant, on the other hand, justified the State Commission's Award urging that the Surveyor had erroneously

deducted Rs.3,18,000/- by way of 75% depreciation and 5% of the claim amount, from the value of the Camera taken at Rs.4,24,000/- and the

order passed by the State Commission thus did not suffer from any error of law, warranting interference by the Court in exercise of its extra

ordinary Civil Writ Jurisdiction.

12. I have heard learned counsel for the parties and perused the records.

13. Perusal of the pleadings of the parties indicates that the specific claim of the complainant for Rs.4,24,500/- as the cost of the Camera,

Rs.50,000/- as compensation and Rs.10,000/- as litigation expenses was not specifically denied by the Insurance Company, for all that has been

pleaded by it, in response to the respondent's Complaint, is the avoidance of its liability stating that the Claim was not covered by the terms and

conditions of the Insurance Policy, of course with the bald denial of paragraph No. 9 of the claimant's Complaint where he had spelt out the break

up of its claim.

14. The Company had not pleaded and projected any specific case to dispute its liability to pay compensation more than the one assessed by the

Surveyor. It is not indicated in the Company's Response to the Complaint as to how was the Company entitled to deduct 75% depreciation from

the accepted value of the Camera.

15. In terms of the provisions of Section 11 of the Jammu and Kashmir Consumer Protection Act 1987, only those facts which were disputed,

could be set down for proof by evidence.

16. As only deficiency in service pleaded by the complainant had been disputed by the Insurance Company, so the Divisional Forum had to

examine the disputed issue only, on the evidence which the parties had adduced in the case.

17. The Divisional Forum was thus not right in holding the complainant entitled only to Rs.84,800/- on the ground that the complainant had not

produced any evidence to rebut the estimate of the Surveyor. This is so because the claim of the complainant having not been questioned by the

Insurance Company in its Response to the Complaint, the complainant was not required to lead any evidence to support its claim that stood

admitted by the Insurance Company which had disputed the claim only on the ground that it was not covered by the terms and conditions of the

Insurance Policy.

18. Be that as it may, even otherwise, the Divisional Forum appears to have accepted the deduction of 75% depreciation from the accepted value

of the Camera at Rs.4,24,500/-, without giving any reason(s) in support thereof. Before accepting the report of the Surveyor in so far as it

pertained to depreciation at the rate of 75% from the accepted value of the Camera, the Divisional Forum was required to give reasons for such

high rate of depreciation for a period of about 11 months.

19. The Insurance Company having accepted, the value of the Camera at Rs.4,24,500/- in its latest Policy, during which the accident had taken

place in which the Camera got damaged, and taken premium therefor on it, on the aforesaid amount, was not entitled to claim depreciation taking

the value of the Camera on the date it was initially insured in the year 1996 After having demanded and accepted the premium for insurance of the

Camera, taking its market value at Rs.4,24,500/- as on August 23, 2001, the Company could, at the most claim depreciation from August, 2001

to 07.07.2002 when it was damaged in file accident. Thus, the amount which could be deducted by way of depreciation from the value of the

Camera could be for 10 months and in this view of the matter only 10% of the value of the Camera could be deducted by way of depreciation to

assess the market value of the Camera. In this view of the matter, the complainant, even if one were to allow the Insurance Company to deduct depreciation value from the accepted cost of the Camera, despite its having not so pleaded in defence to the Complaint, the market value of the

Camera at the time of the accident would come to Rs.3,82,050/-. Taking note of the Excess Clause appearing in the Policy and allowing 5%

deduction from the Claim on that account, the Complainant's Claim for loss of the Camera would come to Rs.3,62,948/-.

20. Both the Divisional Forum and the State Commission have not considered the petitioner's claim of Rs.50,000/- by way of compensation

although his evidence led in this behalf, had remained uncontroverted by the Company. In view of the findings of the two Forums holding the

Insurance Company wrong in rejecting the complainant's claim as not covered by the terms and conditions of the Insurance Policy, the claimant

becomes entitled to compensation u/s 12(d) of the Jammu and Kashmir Consumer Protection Act, 1987 for deficiency in service in settling the

complainant's claim.

21. Allowing Rs.20,000/-, which, in the circumstances of the case, is considered just and proper compensation to the Complainant for deficiency

in service by the Insurance Company, and Rs.6000/- as costs as allowed by the Commission, the Complainant becomes entitled to Rs.3,88,948/-.

The order passed by the Commission directing Insurance Company to pay Rs.4,24,500/- thus needs to be modified to Rs.3,88,948/-.

22. For all what has been said above, I, therefore, do not find any merit in the petitioner's learned counsel's submission that the State Commission

had erred in directing enhancement of the amount of compensation awarded by the Divisional Forum except to the extent indicated hereinabove.

23. The claim of respondent no.1 thus succeeds for an amount of Rs.3,88,948/- along with interest as allowed by the State Commission.

24. This Writ Petition is, accordingly, disposed of on the above terms. The Registrar Judicial of the Court to release the amount deposited by the

appellant, in terms of this judgment minus, however, the amount already received by the complainant during the pendency of the litigation before

the Consumer Forums. The excess amount, if any, shall be refunded to the petitioner-Insurance Company.

