(1998) 11 J&K CK 0056

In the Jammu And Kashmir High Court

Case No : CIMA 61/95

Oriental Insurance Company Ltd.and another — APPELLANT

Vs

Pyare Lal Koul — RESPONDENT

Date of Decision : 13-11-1998

Acts Referred:

Citation : (1999) SriLJ 405 : (1999) 2 SriLJ 405

Hon'ble Judges : G.D.Sharma, J and T.S.Doabia, J

Bench : Division Bench

Advocate : V.Bhat , P.N.Goja, Baldev Singh, A.Gandotra, Advocates appearing for the Parties

Judgement

1 .Whether an order passed by the President of the State Consumer Protection Commission constituted under Jammu and Kashmir Consumer

Protection Act of 1997 (hereinafter referred to as 1987 Act) and one or its members is a valid order of the State Commission when the

Commission consists of three members is a question which stands referred to this Bench.

2.The circumstances under which this reference came to be made by noticed:

Respondent, Pyare Lal Koul, (hereinafter referred as the complainant) had a house lat Badgam in Kashmir valley. He had insured this house

alongwith some other household goods. This insurance cover was against theft, loot, arson and damage which might be caused by terrorist activity.

It is stated that on the night intervening 13th and 14th April, 1989, a theft was committed in the aforesaid house. After committing the theft, the

house was set on fire. A FIR was lodged. This was done on 16th Apri/,90. The complainant also lodged a claim for the loss with appellant

Insurance Company. This was also lodged on 16th April,90. A surveyor was appointed. He conducted the survey and reported the loss. As there

was unwarranted delay in the matter of setting the claim, the complainant approached the State Consumer Protection Commission, (hereinafter

referred to as the State Commission). A complaint was filed on 2nd March,93. The appellant Insurance Company denied the claim. The

complainant was asked to substantiate his case. Evidence was led. Thereafter the State Commission expressed an opinion that house of the

complainant did suffer damage, ft was held that the movable property belonging to the complainant was also the subject matter of theft. The loss to

the house was assessed at Rs.51,000/. So far as the household goods are concerned, the loss was assessed at Rs.84,ooo; . The total

compensation amount was fixed at Rs. one lac fourteen thousand (Rs.1, 14,000)The State Commission also allowed interest. This was at the rate

of 18%. The appellant Insurance Company was also burdened with the costs. These were fixed at Rs.3000/. It is this order passed by the State

Commission on 20th April,95, which is the subject matter of challenge in this appeal.

3.It be seen that at the time when the appeal was preferred, it could be heard by a Single Bench. When the matter came up for hearing before the

learned Single Judge of this Court, an objection was raised. This was to the effect that the State Commission consisted of three members i.e. the

President and the two members and as the final order was not singed by all three members, therefore, the order under appeal is liable to be

quashed for this reason alone. It was urged that a final order which is signed by the President of the State Commission and by one of its member, it

not an order of Commission. The learned Judge Primafacie fund substance in the submission of the appellant. On 19th June 1996, a question of

law come to be formulated. This is as unden""Whether it is necessary in view of Section 14 reads with Section 12(2) of the J and K Consumer

Protection Act, 1987, that the Chairman and all Members of the Commission should sign the orders passed by it in a complaint preferred before

it.

Before proceeding further in the matter, it would be apt to notice that the Act of 1987 stands amended. This amendment was made by the State

Legislature vide Act 19 of 1997.

4.The scheme the Act be noticed in brief. The ""State Commission"" has been defined in Section 2 (b) to mean a Consumer Dispute Redressal

Commission established in the state under clause (b) of Section 7 of the Act. The composition of the State Commission is indicated in Section 14

of the Act. This has to consist of a President and two other members. A person who is or has been a judge of High Court is to be appointed as

President. So far as two another member are concerned, they should have adequate knowledge or experience dealing with the problems relating to

economics, law, commerce, accountancy etc. etc. The jurisdiction of the State Commission and the procedure to be followed has been indicated in

Sections 15 and 16 of the Act. Section 16 prescribes that the procedure specified in Sections 10,11 and 12 and the Rules made thereunder for the

disposal of complaints by the Divisional Forum shall, as far as applicable, would be the procedure for disposal of disputes by the State

Commission. The procedure which is to be by the Divisional Forum is given in Section 12 of the Act. As the dispute pertains to the procedure

which is to be followed by the State Commission, it would be apt to notice Section 12 and 16 of the 1987 Act, as these stood before there

amendment these provisions read as under:

Every order made by the Divisional Forum under SubSection (1) shall be signed by all the members constituting' it and, if there is any difference of

opinion, the order of the majority of the members constituting it shall be order of the Divisional Forum."" Section 16:

The Procedure applicable to the State Commission. The Procedure specified in Section 10, 11 and 12 and under the rules made thereunder for

the disposal of complaints by the Divisional Forum shall, with such modifications as may be necessary, be applicable to the disposal by the State

Commission.

5.Thus, under the Act of 1987 as it stood before its amendment it was provided that every order made by the Divisional Forum has to be signed

by all the members constituting it. It was further provided that if there is any difference of opinion, the order of the majority of the members

constituting the Forum shall be the order of the Divisional Forum. This procedure is to apply to the State Commission also.

6.The Act as indicated above, came to be amended by Act 19 of 1997. Section 12(2) as amended reads as under: ""Every order made by the

Divisional Forum under SubSection (1) shall be signed by the majority of members constituting it and it shall be deemed to be the order of the

Divisional Forum:

Provided that where the proceeding is conducted by the President and one member and they differ on any point, they shall state the point or points

on which they differ and refer the same to other member for hearing on such point or points and the opinion of the majority shall be the order of the

Divisional Forum.

7. The amended Section 12 thus makes a provision to the effect that the order signed by the Forum would be a valid order if it is signed by the

majority of the members constituting it. If it is so signed, the order shall be deemed to be order of the Forum. As the procedure which is applicable

to the state Commission is the same as that applicable to the Divisional Forum, therefore, an order of the State Commission if signed by majority of

the members constituting it, would be deemed to an order of the State Commission. It is this material change which was made in Section 12 and it

is this material change which would have impact on the decision of this case.

8.To repeat, under the unamended section 12(2) order of the Divisional Forum was required to be signed by all the members. In case, there was

difference of opinion, the majority view was to prevail. The Act as amended by Act 19 of 1997 provides that the order can be signed by the

majority of the members constituting the forum and if it is so done, then the order shall be deemed to be the order of Divisional Forum. This would

apply even to the orders passed by the state Commission. Before amendment, all the members were required to sign the order. After the

amendment two of them could sign the same.

9.Another amendment which is relevant for the purposes of disposal of this appeal is the one be which the proceedings which may not be in

consonance with the unamended Act are sought to be validated. This has been done by inserting Section 16A. This reads as under

Notwithstanding anything contained in Section 16, no order passed by the State Commission and Divisional Forum shall be called in question

simply on the ground that it has not been signed by all the members of the

Divisional Forum or the State Commission as the case may be and all

such order shall be and shall always be deemed to have been validly passed if signed by the majority of the members.

10.In addition to the statutory provisions which have been noticed above, the Rules framed under 1987 Act namely Jammu and Kashmir

Consumer Protection Act. 1987 (hereinafter referred to as Rules) in so far as these are relevant are also required to be noticed. The relevant Rules

are R. 7(viii), (ix), 9(iii) 12(viii)and 12(ix). These read as under:""R. 7(viii):

No Act or proceeding of the Divisional Forum shall be held invalid by reason of any vacancy of its president or Member or any defect in the

constitution thereof."" ""R. 7(ix):

In case of difference of opinion among the Members of the Divisional Forum, the opinion of the majority shall prevail.

The meeting of the Divisional Forum shall be presided over by the President. In his absence the senior most member (in order of appointment) shall

preside over the meeting."" ""R. 12(viii)

No Act or proceedings of the State Commission shall be held invalid by reason of any vacancy of its President or Members or any defect in the

constitution thereof.

In case of any difference of opinion among the members of the State Commission opinion of the majority shall prevail.

11 .The argument raised by the learned counsel for the appellant Insurance Company is that if the provisions as they existed before the amendment

are taken into consideration, then it becomes apparent that the quorum of the State Commission could be said to be complete only when the

proceedings were conducted by the President alongwith two members. It is submitted that the State Commission has to follow the same procedure

which is to be followed by the Divisional Forum. Reference is made to section 12(2) of the Act in this regard. It is urged that as every order of the

Divisional Forum has to be to signed by all the members constituting it, therefore, it was mandatory requirement of law that the order should have

been signed by the President and also by the other two members of the State Commission. It is also urged that if there is difference of opinion, then

the order of majority of members is to prevail. To repeat, it is urged that every order of State Commission has to be signed by all the members constituting it. As this has not happened in this case, therefore, the order under challenge is voidabinitio. It is also urged that not only the final order

but all the proceedings which are the basis for passing of the final order have to be conducted by the President and its two members. According to

the learned counsel appearing for the appellant, this is missing in this case. It is urged that the final order based on proceedings which were not

conducted by the President and two members of the State Commission are not in accordance with the statutory provisions and are thus liable to be

declared void and these proceedings cannot be relied upon for the purpose of giving the final verdict.

12.So far as section 16A by which the proceedings are sought to be validated is concerned. It is urged that by Legislative Amendment, judicial

proceedings suffering from inherent lack of jurisdiction, cannot be permitted to be validated. It is further urged that section 16A validates only the

final order and not the proceedings and, therefore, section 16A cannot be looked into with a view to validate the proceedings.

13.So far as the merits of the controversy are concerned, it is urged that there was not evidence available visavis the loss qua the movable and

immovable property. It is urged that the stand taken by the complainant in the FIR, in the complaint submitted to the State Commission and in the

affidavit filed during the course of proceedings is at variance and, therefore, the findings recorded by the State Commission cannot be said to be

findings based on cogent material.

Thus, the argument raised are:

i/ That the proceedings of the State Commission were required to be conducted by the President and its two members. As this has not been done,

therefore, proceedings are bad:

ii/ That the final order passed on the basis of these proceedings which are irregularly conducted, would also be bad:

iii/ That the final order has necessary to be signed by the President and its two members. This having not been done in this case the final order is

bad;

iv/ That validating provisions as contained in section 16A do not cure the proceedings. As this section validates only the final order, therefore, an

order based on the proceedings which are irregularly conducted are no proceedings.

14. Another plea has also been raised. It is urged that the argument were, infact, heard by the President of the State Commission alone and the

second member had merely put his singnatures lateron, on the order. This according to the learned counsel for the appellant is not the correct

procedure.

15.The argument of the learned counsel for the appellant on the basis of unamended provisions be examined at the first stage.

16.So far as the proceedings of State Commission and the final order is concerned, a distinction would have to be drawn between the two. As far

as the proceedings are concerned, the procedure to be followed by the Divisional Forum has been indicated in the Rules. These rules have been

noticed above. Section 12(2) of the Act as it existed originally on the statute book, lays down that the final order has to be signed by the all

members. This section does not deal with the quorum when the proceedings are being conducted by the Divisional Forum. The procedure relating

to the conduct of the meetings of the Divisional Forum is to be such as may be prescribed by the Government. This is so laid down in section 12(3)

of the Act. This can be provided by Rules. The Rules have been framed in the exercise of power conferred under section 24 of the Act. Rule (iii)

provides that the meetings of the Divisional Forum shall be presided over by the President. In his absence, the meeting can be presided over by the

senior most members. Thus, so far as the proceedings are concerned. Rule 9(iii) does visualise that these can be conducted even if full quorum is

not available. For facility of reference, R.9(iii) is reproduced below:

The meeting of the Divisional Forum shall be presided over by the President. In his absence the senior most member (in order of appointment)

shall preside over the meeting."" Rule 9(iii) and 9(iv) are differently worded. These Rules authorises the holding of the proceedings even if all the

three members are not present. As such, so far as proceedings conducted by the District Forum and the State Commission are concerned, these

can be conducted by two members. The statutory requirement in the Act as it stood before its amendment was to the effect that final order had to

be signed by all the members. The Legislature left the procedure which was supposed to be followed to be indicated by the subordinate

Legislature. This has been done, the proceeding could be conducted by two members also. Thus, the proceedings cannot be said to have been

conducted contrary to the Act and the Rules. The argument that proceedings were also required to be conducted by all the members is thus

negatived.

17 .The question to whether the final order was required to be signed by all the members of the State Commission in terms of the unamended Act

be examined.

18.Section 12(2) used the words that ""every order passed by the Divisional Forum shall be signed by all the members constituting it."" The State

Commission is to follow the same procedure which is to be followed by the Divisional Forum. In these circumstances, the learned counsel

appearing for the appellant rightly submits that the final order was suppose to be signed by all the members of the Commission. He has rightly

placed reliance on the decision of the Calcutta High Court reported as Nimal Taneya Vs. Calcutta District Forum (ii) 1992 CPJ.59 wherein it was

held that when there is no President in office, according to the Act or ""any member to discharge the function of the President as said herein before,

then there would no sitting of the District Forum in the eye of law and any order passed by such a District Forum is but a nullity.

19. In 1992 CPJ 677. while examining the Provisions as contained in the Consumer Protection Act of 1986 (central Act), it was observed that the

President of the District Forum and /or President of the State Commission alone does not constitute such Forum or Commission as the case may

be. It was accordingly held that President of the District Forum and the President of the State Commission sitting alone could not pass any order in

proceeding taken under the Act. This authority does support the proposition put across by the learned counsel appearing for the appellant

Insurance company. He has also rightly placed reliance on a decision given by the National Consumer Dispute Redressal Commission. This is

reported as Oriental Insurance Co. Vs. Rajesh Kumar, Hira lal Bazaa 1995(3) CPJ 370. In this case the appeal was heard by the President of the

State Commission sitting singly, when the final order came to be issued, it was signed by the President and one other member. It was held that this

is not an order in terms of the Statutory Provisions. The above decisions given by the Calcutta High Court and the other given by the National

Consumer Dispute Redressal Commission which deal with final order which were passed in original proceedings and in appeal so far as the case

before the National Consumer Dispute Redressal Commission is concerned, if the ratio of the above decision is applied to the facts of this case, it

can be said that the final order passed by the State Commission was not in terms of the Statutory provisions. This, however, would not put an end

to the controversy. The impact of Section 16A as brought on the Statute book by Act 19 of 1997 has also to be taken note of. Section 16A

provides the notwithstanding anything contained in Section 16. an order passed by the State commission and the Divisional Forum cannot be called

in question simply on the ground that it has not been signed by all the members of the Forum, section 16A provides that an order shall be deemed

to be a valid order even if signed by the majority of the members.

20 .On a plain reading of Section 16A of the Act, it becomes apparent that all orders passed by the Divisional Forum or the State Commission

suffering from some irregularity i.e. they were not signed by all the members, stand cured by the validating clause. The Legislature does possess

power to validate irregular proceedings. In this regard reference be made to the decision reported as "" The Government of Andhra Preadesh and

Another. Vs. Hindustan Machine Tools Ltd."", AIR 1975 SC 2037. In this case it has been held that the Legislature has the power to

retrospectively validate the proceedings. Counsel for the complainant laid great stress on the word 'deem' which occurs in section 16A. It. is urged

that whenever the word 'deem' is used then by a statutory fiction it brings into existence a state of affairs which may not be actually in existence. As

to what meaning is to be assigned to the word 'deem', the learned counsel submits that the guidance can be had from the decision reported as AIR

1954 SC 155. Reliance is also being placed on the decision reported as Gokaraju Rangaraju Vs. State of Andhra Pradesh"" AIR 1981 SC 1473.

In the aforementioned case, the appointment of Sessions/Judge was declared invalid on the ground that the appointment was not in consonance

with Article 233 of the Constitution of India. Defacto doctrine was applied and it was observed that the judgments pronounced by such a judge

prior to such declaration are .not void. It be seen that in ""Chandra Mohan Vs.

State of Uttar Pradesh"", AIR 1966 SC 1987, the appointments of

District Judges made otherwise than in accordance with the provisions of Article 233 and 235 were declared invalid. Such appointments were

made in many States. The Constitution was amended. Twentieth Amendment of the Constitution recognised the doctrine of defacto exercise of

power. This doctrine was applied to remove any taint, illegality or invalidity that may have attached to the judgments, decrees, sentences or orders

passed or made by certain District Judges appointed before 1966, otherwise than in accordance with the provision of Article 233 and 235 of the

Constitution of India.

21 .The arguments raised was that but for the amendments, the judgments, decrees of the judicial officers would be void. Reference was made to

the statement of objects which led to be the Twentieth Amendment in the Constitution. The argument that the judgments rendered were void was

repelled. This judgment does support the proposition that the Legislature can validate and cure irregularity in judicial procedure also.

Again giving retrospective effect to legislative amendment is accepted to be valid exercise of legislative power. The well known pattern of all

validation Acts is to be found in M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh 1958 SCR 1422=(AIR 1958 SC468). The

power of the legislature to pass a law includes a power to pass it retrospectively legislation in regard to election is the decision reported as in Kanta

Kathuria Vs. Manak Chand Surana, AIR 1970 SC 694. The appellant therein a Government advocate stood for election to the State Legislative

Assembly of Rajasthan and was declared elected. The High Court set aside the election on the ground that the appellant was holding office of

people. While the appeal was pending in the Supreme Court of India Rajasthan Act 5 of 1969 was passed declaring among others that the holders

of the office of a Special Government Pleader was not disqualified from being chosen for being a member of the State Legislative Assembly. The

Act was given retrospective effect having the consequences of removing the appellant's disqualification retrospectively. It was held that the

parliament and the State Legislatures can legislate retrospectively.

We are accordingly of the opinion that by bringing Section 16A on the Stature Book, the lacuna or the irregularity from which the final order suffered stands validated by the Jammu and Kashmir Consumer Protection Amendment Act 19 of 1997. If this be the position, then the argument

raised on behalf of appellant that order framed by the State Commission having not been signed by all the members looses significance.

22.We are accordingly of the opinion that:

i) So far as Act of 1987 as it originally existed, it required the final order to be signed by all the members of the Commission. This would imply that

the hearing has to be given by all the members. As this was not done in this case, therefore, order of Commission did suffer from a legal lacuna.

ii) The above legal lacuna stands rectified on account of the validating provisions incorporated in the parent Act by Amendment Act 19 of 1997.

Section 16A which has now been brought on the Statute book provides a shield to ill the defects and irregularities which may have cropped in on

account of the fact that the final order had not been signed by all the members of the State Commission. These orders shall always be deemed to

have been passed in accordance with the law of if signed by the majority of the members.

iii) So far as proceedings are concerned, the presence of three members is not essential. The proceedings are not required to be conducted by

State Commission having quorum of three members. As such, no fault can be found with the procedure adopted by the Commission.

The merits of the controversy be examined.

23.The learned counsel for the complainant respondent has argued that the provisions of the Act deal with a social reform legislation. It is

accordingly urged that the provisions of this Statute should be construed in favour of the consumer. It is submitted that if only this approach is

adopted, only when the purpose of this social and beneficial enactment can be achieved. It is urged that the primary duty of the court while

construing the provisions of this Act is to adopt a constructive approach so that maximum benefit becomes available to the consumers. It is

accordingly urged that when the relief is to be granted, then that the relief is not to be limited to awarding of value of goods or service.

Compensation has also to be grated for harassment, mental agony and oppression suffered by the consumer. Reliance for this is placed on the

decision reported as ""Lucknow Development Authortiy Vs. M.K.Gupta. ""AIR

1994 SC 787. It is accordingly urged that when the disputes are

settled under the Consumer Protection Act, then that approach should be adopted which should be beneficial to the consumer. In the light of what

has been said by the Supreme Court in the aforementioned case, the factual submission which has come on the record be examined:

24.The learned counsel appearing for the complainant respondent has urged that the finding recorded by the Commission are based on legal and

valid evidence and these should not be interfered with. It is further submitted that the rate of interest has been rightly allowed by the State

Commission. This as per the counsel has been allowed with a view to compensate the complainant respondent not only for its actual relief but also

for the harassment, mental agony and oppression suffered by the complainant.

25.The learned counsel for the appellant Insurance Company has on the other hand urged that the complaint submitted by the complainant

respondent is no complaint in the eyes of law. It is vague. It lacks in material particulars and this should not have been adjudicated upon. It is

further urged that the version as given in the FIR, as in the complaint and the statement made before the Commission is at variance visavis loss of

movable property. It is also urged that the affidavit submitted before the State Commission is again not in consonance with the information given in

the FIR. It is stated that the identity of the goods which is given in the FIR and the information given to the State Commission does not tally. It is

accordingly urged that the claim made by the complainant could not be granted on the basis of vague information. It is also urged that while

granting the relief, the State Commission could not grant interest at the rate of 18%. The further submission made is that when the loss is assessed,

then the Commission cannot add any figure by way of 'compensation'. What is being paid to the complainant is , infact, a compensation and,

therefore, no further amount could be added again under the same head. It is thus urged:

i) That the interest should not be more than 20%;

ii) That the interest should be awarded not from the date of loss but from a date of two months after the surveyor gave his report.

26.The question as to whether the complainant has been able to establish the loss as projected by him, be examined.

27.So far as the loss to the house is concerned, the complainant did lodge a FIR. The report so lodged reads as under:

Subject: Registering an FIR with regard to theft my house hold property from residential house at Badgam. Sir, An FIR regarding the above cited

subject may kindly be registered and investigated immediately. The incident of theft of the house hold articles lias taken place between the night of

13th and 14th April 1990. The house hold goods including T.V. Tape recorder, Radio, Clothing, bedings utensils, similar other items. These have

been taken away. The matter may kindly be got investigated at the earliest.

When the complainant appeared before the commission, he filed an affidavit. In this affidavit, the loss which was sustained by him was elaborated.

The loss as given in the affidavit is being noticed. This affidavit reads as under:

S.No. Items Total Qnt. Stolen Value of goods items in Rs.

1. T.V.(Colour) One

2. Tape Recorder One

3. Beds(double) Three

4. Beddings Ten

5. Gas stove One with Regulator

and Cylinder.

6. Utencils Plates 15

One 12,500.00 One 2300.00 Three 5400.00 Eight 7300.00 One 1800.00

(Steel) Cups 10 Patillas 5 Patillas 5

7. Lady Suits Fifteen

8. Gents Suits Nine

9. Silver cup, Three Plates glass

10. Suit Case Six

11. Trunks Five

12. Blankets Four

13. Lady shawls Ten

14. floor mattings 200 Yds

15. Namdas Four

16. Gas Stove One

17. Tea set(steel) One

18. Dinner set One (steel)

19. Carpet 9* 14 One

Plates 15 5475.00 Cups 10

Nine 3500.00 Six 4000.00 Three 2000.00

Four Two Four Ten

2300.00 1000.00 3700.00 7500.00

150 Yds 2250.00

Four One One one

3100.00 1200.00 1500.00

2700.00

One 15000.00

Total: 84525.00

28.When the complainant appeared in the witness box, he made a statement indicating the loss sustained by him. This statement does not tally with

versions as given in the FIR and the figures given in complaint. Another factor which is required to be taken note of is the description of the

property which was indicated in the Insurance Policy. This is also being noticed. This reads as under:

i/ Buildings including boundary wall fencing ground floor and two upper storeyes in height.

ii/ Household goods and personal effects; T.V. Tape recorder, Beddings, furniture, clothings, ladies and gents, utensils, cooking gas and similar

other items whilst lying therein. 29.The complainant has given four versions visavis the property which was the subject matter of theft. The property

which was insured is given in the Insurance Policy. The loss which was sustained was indicated first in the FIR. when the complainant appeared

before the commissions, he filed an affidavit. In this affidavit the loss given is different. The reasonable way to look at the loss of the movable

property would be to see as what items were mentioned in the policy. These items when compared with the items mentioned in the affidavit, then it

becomes apparent that following items are common.

i/ T.V Rs. 12500.00

ii/ Tape recorder Rs. 2300.00

iii/Benddings Rs. 7300.00

iv/ Utencils Rs. 5475.00

v/ Cooking gas Rs. 1800.00

vi/ Clothings Rs. 3500.00

ladies

vii/ Clothings Rs. 4000.00

gents

30.Thus items which were insured and which as per the complainant were the subject matter of theft have been indicated above. The loss thus,

sufferred by the complainant respondent is less than as assessed by the commission. The loss assessed by the Commission i.e. Rs84,000/is thus

reduced to Rs. 35875.00 So far as the house is concerned, the figure as given by the State Commission is not varied. As a matter fact, no

meaningful argument was raised by the learned counsel appearing for the Insurance company which could persuade this court to alter the figure

visavis the loss which was to the house of the complainant (immovable property).

31 .The question as to what should be the rate of interest and as to from which date, it should be paid, is another matter on which serious argument

were raised by the learned counsel appearing on both the sides.

32.The learned counsel appearing for the complainant has urged that the Insurance Companies are supposed to assess the loss without delay. This

involves the assessment to be made by the Surveyothers This as per complainant is expected to be completed expeditiously. It is accordingly urged

that the general guidelines issued by the Insurance companies should be taken note of. Reliance has been placed on one such guidelines namely

Claim Management Guide"". This guide provides that the process of appointing a Surveyor is to be completed within 24 hours of the date on which

the loss is reported to the Insurance company. The Surveyor is required to visit the site immediately. He is supposed to give report regarding the

estimate of the loss. Other relevant information which is necessary for the disposal of the claim has also to be made available to the Surveyor. A week's time as per the claim Management Guide is indicated for the purpose. In the guidelines, it is further provided that so far as simple claims are

concerned, these should be settled within a period of 30 days. The complicated claims are required to be settled within a period of 45 days. A

period of ninety days has been fixed as reasonable period for settling those claims which required approval of the Head office. Reliance in this

regard is placed on paragraphs 2.5.2.4. and 7.2. of the Guidelines. It is accordingly urged that 90 days should be outer limit for settlement of the

claims. This 90 days period should be taken form the date, the claim is lodged with the Insurance company. If the claims are not settled within 90

days then it is urged it can be presumed that there is deficiency of service and the claimant should become entitled to the interest from the expiry of

the period noticed above. It is further urged that the rate of interest has been rightly allowed at the rate of 18%. This interest has been allowed as

per the claimant by this court also. Reliance is placed on a decision given in CIMA 13/98 ""National Insurance Co. Vs Uday Chander"", decided on

20.1.1998. Another case where the interest was allowed at the rate of 18% is the one reported as ""Divisional Manager"", CIA 31/97 decided 21st

July 97. The Division Bench of this court observed that there is no impediment in the way of State Commission to grant interest at the rate of 18%

and that also from the date of lodging the FIR.

33.On the other hand, the learned counsel for the Insurance Company has placed reliance on the decision given in ""CIMA 62/97"" National

Insurance Company Vs. Abdul Gaggar Ganaie and Another."", decided on 15.9.1997. On the basis of the decision given by the Supreme Court, a

Division Bench of this court reduced the rate of interest from 18% to 12%. This was to be calculated two months after the date of receipt of

Surveyothers report. Reliance is also placed on a decision of the Supreme Court reported as ""United India Insurance Corp. Ltd. Vs. M.KJ.

'Corp. AIR 1997 SC 408."" In .his case, the interest was allowed at the rate of 12% to be payable from the date, the Surveyor gave his report. It is

accordingly urged that the rate of interest should be 12% and it should be from the date two months after the Surveyor gave his report.

34.As to what should be the terminus from which the complainant is entitled to be indemnified and reimbursed, is a matter which has been gone into by the various High Court while dealing with the claims arising under the Motor Vehicles Act of 1988 and also by the authorities constituted

under Consumer Protection Act. In Girdhari Lal Bansal Vs. Oriental Insurance Company"" (1994) CPT 118, The Haryana State Consumer

Disputes Redressal Commission, Chandigarh, observed that the terminus from which a complainant is to be indemnified is the very date of loss and

this would constitute cause of action also. While giving this opinion, reliance was placed on a decision reported as ""Brij Mohan Singh and Another.

Vs. State of Punjab and Others"" 1978 A.C.J. 491 and ""Vidhya Kakkar and Others Vs. Delhi Transport Corporation and AIR."", 1989(2) A.C.J.

1088. Reliance was also placed on a decision given in ""Col. Bhim Singh Vs. Regional Manager,

National Insurance Co. Ltd and Arn."", 1(1992) CPJ (N.C) 205. It was ultimately concluded that the complainant is liable to be reimbursed from

the date on which the loss has occurred.

In the decision reported as United India Insurance the Vs. M.K.J. Corporation, AIR 1997 SC 408. The interest was allowed from the date to be

counted two months after the Surveyor submitted his report.

Some of the decisions under the Motor Vehicles Act where interest has been allowed at the rate of 12% from the date of application till the

realisation of the claim amount are as under

United India Insurance Co. Ltd. Vs. Sukha Devi, (Himachal Pradesh) (1995)ACJ 796. Bihar State Road trans. Coprn. Vs. Nita Rampal,(Patna)

(1995) ACJ 870. United India Insurance Co. Ltd. Vs. Sarita Rani Dhaka, (Allahabad) (1995) ACJ 895. Bhalchandra N. Donge Vs. Mohan G.

Butala, (Bombay) (1995) ACJ 898. Andra Pradesh State Road Trans. Corpn. Vs. B. Krishnaji Rao, (Andhra Pradesh) (1995) ACJ 983. Dr.

Naresh Chandra Mytle Vs. Haryana State (Punjab and Haryana) (1995) ACJ 987. Mukesh Vs. Madya Pradesh State Road Trans. Corpn.

(Madya Pradesh) (1995) ACJ 1083 oriental Insurance Co. Ltd. Vs. Edward Ducruz Rodrigues, (Bombay) (1995) ACJ 1106. S. Chandra Vs.

Pallavan Transport Corpn. (Supreme Court of India) (1995) ACJ 1170.

35.Thus, almost all High courts have allowed the interest at the rate of 12% and that also from the date of filing the claim petition.

36.1f the decisions given under the Motor Vehicle Act and the decisions of the

Supreme Court reported as United India Insurance Co. Ltd. AIR

1997 Vs. M.K.J. Corporation. SC408 is taken note of then it can be safely concluded that the interest at the rate of 12% would be a reasonable

rate and this would compensate the complainant for the delay in the settlement of the claim.

37.The question as to from which date the interest should be allowed, may now be examined.

38.So far as the cases arising under Motor Vehicle Act are concerned, the rate of interest has been allowed from the date of filing the application

before the claims Tribunal. So far as the view expressed by the State commission of Haryana is concerned, it has been indicated that the interest

should be allowed from the date of loss. This view has been followed in one of cases which went before the National Commission. The Supreme

Court of India in one of the cases has indicated that the interest should be allowed from a date to be counted two months after the Surveyor gives

his report. The question of grant of compensation is basically a claim which arises out of a contract. In this situation, it may be possible to contend

that when the Insurance Company has laiddown guidelines in the matter of settlement of claim, then this can be a reasonable criteria for determining

the date from which the interest should be granted. As 90 days period has been fixed for settlement of claims where the claims are complicated in

nature, this as suggested by the complainant, should be taken as reasonable guide for determining the date from which the compensation should be

allowed. If this was the only factor then the above criteria could have been fixed by in the present case, there is a direct authority of the Supreme

Court. This is reported as United India Insurance Co. Limited Vs. M//s. M.K.J. Corporation, AIR 1997 SC 408. In this case the interest was

granted two months after the Surveyor had submitted its report.

39. We are accordingly of the opinion that the claimants would be entitled to interest from the date two months after the Surveyor submits its

report and the rate of interest should be 12%.

40.It may however be seen that whenever the divisional Forum or the State commission comes to a conclusion that there is inordinate delay in the

matter of claims being settled in proceedings pending before it and that the delay is attributable to the Insurance Company then the rate of interest can be even at a higher rate. In this situation, the Divisional Forum as also the State commission can grant higher rate of interest by then the reasons

for this have to be given. Again once compensation has been allowed then there is no justification to grant another amount as compensation for

delay and harassment as this is taken care of by grant of interest. In fact costs can be imposed, costs should be based on realism. These are

compensatory of to the extent of actual amount incurred by the litigants. Thus we are of the opinion:

(i) that the rate of interest should be 12% (ii) that this should be payable from the date two months after the Surveyor sub mils its report.

(iii) that if the Divisional Forum or the State Commission conies to a conclusion that there is inordinate delay caused by the Insurance Company

and the proceedings have lingered on, on account of dilatory tactics adopted by the Insurance Company then it can award even higher rate of

interest but in doing so, reasons would have to be mentioned.

(iv) that another amount of way of compensation for delay and harrassment is not to be allowed.

41 .Before parting with this case another argument which was raised by the learned counsel for the appellant company be also noticed.

42.It was urged that hearing was afforded' by only the President and the order came to be signed by the other members also.

43.It be seen that this is a matter which cannot be agitated at this stage. The judicial proceedings are to be taken as having been correctly

recorded. Reference in this regard be made to a decision reported as State of Maharastra Versus Ram Dass Shri Niwas Naik AIR 1982 Sc

1249. It is accordingly held that this argument cannot be looked into and it would be persued that the proceedings were conducted in accordance

with law.

44.We are accordingly of the view:

(i) that so far as the proceedings are concerned these can be conducted by two members. The presence of President is not necessary.

(ii) that under the unamended act there was requirement that the final order should be signed by all the members of the Commissions. There was no

requirement that the proceedings have also been conducted by all the members.

(iii) that the lacuna in the matter of order having been not signed by all the members stood validated by the validation Act. Section 16A which was

brought on the Statute Book Validates, the proceedings which were not in confirmity with the Act as it originally existed;

(iv) the rate of interest should be 12%

(v) that the interest is to be allowed from a date which is 2 months after the Surveyor submits his report.

(vi) that in case the Divisional Forum or the State Commission comes to the conclusion that the Insurance Company has delayed the proceedings

then the rate of interest can be on the higher side but in doing so, special reasons would have to be given.

(vii) No extra amount by way of compensation for delay is to be allowed.

(viii) that the order signed by two members is to be taken as a valid order;

(ix) that the argument that the President heard the argument and the other members signed the order latter on, cannot be looked into in this appeal.

45. This appeal is accordingly disposed of with the modifications regarding the rate of interest and also the quantum of loss regarding the movable

property. So far as movable property is concerned the loss is brought down to Rs. 36875/.The total loss wouldbeRs.87875/. The complainant

would be entitled to interest at the rate of 12% to be calculated from the date 90 days after the claim was lodged with the Insurance Company.

46. Disposed of in the manner indicated above.

