(2000) 04 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : CIMA No. 6 of 2000

Rajinder Kaul APPELLANT

Vs

United Insurance Co. Ltd., Madras and Another RESPONDENT

Date of Decision : 25-04-2000

Acts Referred:
Jammu and Kashmir Consumer Protection Act, 1987 — Section 3, 6

Citation : AIR 2000 J&K 112

Hon'ble Judges : B.P. Saraf, C.J;Arun Kumar Goel, J

Bench : Division Bench

Advocate : P.N. Goja, for the Appellant; Vishnu Gupta, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Saraf, C.J.—This is an appeal against the order of the J & K State Consumers Protection Commission. Jammu (""Commission"") by

which the complaint of the appellant against the respondent Insurance Company was dismissed on the ground that the claim for loss or damage

was not made within period of 12 calendar months as contemplated by condition No. 4 (iii) of the Policy of insurance.

2. The Commission relied on the decision of the Supreme Court in National Insurance Co. Ltd. Vs. Sujir Ganesh Nayak and Co. and another, .

3. We have heard the learned counsel for the appellant. There is no dispute about that fact that the loss took place in March 1992 and it was

reported to the Insurance Company after about 3 years in January, 1995. Clause 4(i) of the Policy of Insurance stipulates that on the happening of

any loss or damage, the insured shall forthwith give notice thereof to the Company and shall within 15 days after the loss or damage or such further

time as the Company may in writing allow in that behalf deliver to the Company a claim in writing. Clause 4(iii) of the Policy provides that in no

case whatsoever the Company shall be liable for any loss or damage after the expiration of 12 months of the incident unless the claim is subject to

pending action or arbitration. Admittedly, in the present case, none of such conditions were fulfilled. Notice of loss was given to the Insurance

Company for the first time after 2 years and 10 months. That being so, in view of Clause 4 of the Policy, the Insurance Company was not liable for

the loss. In that view of the matter, the Consumers Protection Commission, in our opinion, was justified in rejecting the complaint of the appellant.

4. We have also perused the decision of the Supreme Court in National Insurance Co. Ltd. v. Sujir Nayak & Co. (supra). In that case, the

Supreme Court has clearly laid down that the clause providing for filing of claim within a stipulated period was binding on the parties. The Supreme

Court also held that such a clause was not hit by Section 28 of the Contract Act. In view of the above, we are of the clear opinion that in the

instant case, the J & K State Consumers Protection Commission was fully justified in dismissing the claim of the appellant on that ground. In order

to sustain the claim, which is based on contract of Insurance, the claimant must satisfy that the conditions of Policy of Insurance are fulfilled. One of

the conditions being making of claim within 12 months of the loss, he would not be entitled to raise the claim before the Consumer Forum unless he

had made the claim within that time.

5. We are not impressed by the contention of learned counsel for the appellant that condition of the Insurance Policy would not apply to claim

before the authorities under the J & K Consumers Protection Act (""Act""). The Act has been enacted to provide for better protection of the

interests of the consumers by establishing Consumer Councils and other authorities for the settlement of consumers' disputes. The provisions of the

Act are only in addition to the provisions of any other law in force and not in derogation thereof. This has been made abudantly clear by Section 3

of the Act which states that the Act is not in derogation of any other law. Section 3 reads as follows :--

3. ACT NOT IN DEROGATION OF ANY OTHER LAW . -- The provisions of this Act shall be in addition to and not in derogation of the

provisions of any other law for the time being in force.

6. Learned counsel for the appellant relies on Section 6 of the Act in support of his contention that the conditions of Policy are not applicable in

case of claims made before the authorities under the Consumers Protection Act. This submission, in our opinion, is wholly misconceived. Section

6, which deals with the object of the State Council, provides that the objects of the State Council shall be to promote and protect the rights of the

consumers. It does not say that the State Council, in exercise of powers under the Act, can allow claims in disregard to the provisions of any law

for the time being in force. If the right to make the claim gets extinguished under the contract, the claim for enforcement of such right cannot be

entertained by the authorities under the J & K Consumers Protection Act. In view of the clear provisions of Section 3 of the Act, the authorities

under the Consumers Protection Act cannot act in contravention of the provisions of any law for the time being in force.

7. In view of the above, we do not find any merit in this appeal. The same is, therefore, dismissed at admission stage itself.