(2000) 02 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : CIMA 25 of 1998

Regional Manager APPELLANT

Vs

Mustaq Hussain Mir RESPONDENT

Date of Decision : 28-02-2000

Acts Referred:

Jammu and Kashmir Consumer Protection Act, 1987 — Section 9
Jammu and Kashmir Insurance Act, 1987 — Section 64VB

Citation : AIR 2001 J&K 66

Hon'ble Judges : T.S. Doabia, J;A.K. Goel, J

Bench : Division Bench

Advocate : Vishnu Gupta, for the Appellant; C.J. Dhar, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Goel, J.—This appeal is directed against the order passed by the J. and K. State Consumers Protection, Jammu, (hereinafter

referred to as the State Commission) in complaint No. 281/1993 on 17-12-1997. By means of impugned order a sum of Rs. 3.75 lakhs with 18%

interest per annum from the date of incident i.e. 4-3-1993 till the date of final payment, has been allowed in favour of the respondent and against

the appellants.

2. Brief facts giving rise to this case are that a complaint was filed on behalf of the respondent against the appellants alleging that there is deficiency

in service on their part (appellants) because they failed to settle the claim of the respondent, therefore, necessity of filing the complaint as per

provisions of J. and K. Consumer Protection Act, 1987. Respondent claims that he had insured stocks in trade in the shape of cloth with the

appellants-Insurance Company at its Batmaloo Branch, Srinagar. Sum insured was Rs. five lakhs vide policy No. 111403 and it was in force from

11-11-1992 to 10-11-1993. Because fire broke out in the premises on 4-3-1993, respondent claims to have reported the matter to the police

and the fire having been extinguished by the Fire Service Department. Since the fire incident had taken place during the validity and currency of the

policy in question, therefore, the matter was reported to the appellants, who deputed one survyor. This man went to the spot, took some

photographs but did not assess the loss because it was beyond his pecuniary authority. According to the respondent, thereafter, one Vishnu

Sharma-Surveyor from Delhi, was appointed to visit the spot, verify the facts and then assess the extent of loss sustained by the respondent. This

Surveyor asked the respondent to complete certain formalities namely, to submit Fire Service Report, Chartered Accountants Report, Stock

position and estimate of loss. All these requirements were met with by the respondent.

3. At this point of time when the matter was in the process of assessment of loss, to the utter dismay of the respondent, he was informed that the

policy issued in respect of the respondent was 111402 instead of 111403 and the name of the insured in this policy was Ghulam Hassan Mir,

Proprietor Mir Mushtaq Cloth House. This policy, respondent claims to have been supplied to him by the insurance Company. Thereafter he was

also required to submit the necessary voucher/bills etc., in respect of this very policy. This was declined by the respondent, as he claimed that he

had never obtained this policy No. 111402 and he felt that there is something fishy in the deal so he refused to become a privy to it. According to

the respondent, the sum insured as per policy No. 111402 was Rs. 3.50 lakhs whereas he had insured his stocks in trade for Rs. five lakhs by

means of policy No. 111403, as per the case set up by him.

4. Appellants-Insurance Company rebutted the claim of the respondent. Its case is that policy No. 111403 does not pertain to the respondent as

per records of the former. This had in fact been issued in the name of J. and K. Bank, S. R. Gunj Branch, Srinagar, its receipt dated 11-11-1992

was attached with the objections filed by it and the Bank receipt No. 522361 vide which respondent claims to have deposited the amount was in

fact issued to Ellaqal Dehati Bank Urban for Rs. 2366/- and it pertained to insurance of some animals.

5. On the other hand as per respondent, in his case insurance premium was Rs. 2553/-. It is, however, admitted by the appellants that the

respondent did approach the office of the appellants at Srinagar but with the policy as claimed by the respondent and when it was found to be

forged he himself put forth policy No. 111402 which was also found to be forged as per records. Respondent was duly informed by the Branch

Manager of Batamaloo Branch of the appellant. It is admitted by the appellants that Mr. S.H. Jan was a Development Officer who is signatory to

policy No. 111403 who when questioned informed that his signatures on this policy were forged. Faced with this situation, appellants obtained

legal opinion from their Advocate, who on the basis of the record advised to repudiate the claim. Keeping in view the circumstances of the case

some enquiry is alleged to have been undertaken by Shri A.R. Rather. Sr. Divisional Manager, who amongst other things had observed in his

enquiry report that signatures on the policy were fictitious though it is issued by Maqbool Hussain, an agent working in the office of Development

Officer, S.H. Jan, besides the stamp on the policy being also forged one. Case came to be tried by the State Commission.

6. Order sheet of the State Commission indicates that evidence of the respondent was closed on 29-11-1994 after he had been allowed numerous

opportunities. This order is to the following effect:

29-11-94: Nemo for complainant. Sh. Vishnu Gupta. Advocate for respondent. Today neither counsel nor complainant are present. His right to

lead his evidence is closed. The case is listed for evidence of respondent on 9-1-95.

7. Record of the case shows that opportunity was allowed thereafter to the appellants to file affidavit(s) before the State Commission and

witnesses were lastly cross-examined on 26-3-1996. Case was ordered to be listed on 15-4-1996, when cross-examination was concluded.

8. In our considered view after the closure of evidence of the appellants, the State Commission ought to have heard the parties and disposed of the

case. However, in its wisdom on 15-4-1996, the State Com- mission allowed the respondent to lead evidence in rebuttal. In this behalf it may be

appropriate to mention that it was for the respondent to have first led evidence with a view to support his case and thereafter it was for the

opposite side like appellants to lead evidence. There is no question of rebutted in the circumstances of this case. Besides this. State Commission

had no power of review. However, in the purported exercise of this power of allowing rebuttal evidence respondent was permitted to do what he

had failed to do with a view to support his complaint, thereafter compensation has been allowed.

9. From the evidence examined on behalf of the appellants it is clear that both the policies i.e. No. 111402 and 111403 had been produced by the

respondent, reason seems to be that there was partial similarity of identity of names in both these policies. Mr. S.A. Qadri, Branch Manager of the

appellant-company at its Batamaloo Branch had filed his affidavit and lengthy cross-examination has been directed against him. Besides him, Mr.

S.H. Jan. Development Officer has also filed his affidavit and also stepped into the witness-box for his cross-examination.

10. On the other hand respondent has filed his own affidavit, besides the affidavit of Ghulam Mohd Mir, who both have also been cross-examined

on behalf of the appellants.

11. Affidavits of Mr. S.A. Qadri, Branch Manager and Mr. S.H. Jan, Development Officer establishes that the latter was a Development Officer

and Maqbool Hussain was working with the Development Officer Mr. S.H. Jan, while he was posted at Bohri Kadal Branch of the appellant. It

has specifically come in the cross-examination of Mr. S.H. Jan that he was transferred to Batamaloo Branch and Maqbool Hussain was not his

agent in this Branch, though he had worked with him from 1990 to 1992.

12. From cross-examination of Mr. S.A. Qadri it is clear that when he was confronted with signatures of original of Annexure P-1 attached with

the complaint before the State Commission, he specifically stated that those are not of his Development Officer Mr. S.H. Jan and he was well

aware with his signatures. Appellant Insurance company came to know about non-payment of the premium on 6-3-1993 and thereafter it was

learnt that no premium had been received by the Branch about which fact superiors were informed by him.

13. Another fact which came to light that policy would be issued by Mr. Qadri only after proposal form of the customer was accepted. He denies

the suggestion on behalf of the respondent that they had pressurized the former to settle the claim in terms of policy-Annexure P-8, which was in

the name of Ghulam Hassan Mir, proprietor Mir Mushtaq Cloth House Magam, Beeru Badgam.

14. On the other hand, respondent claims that he went to the Branch Office at Batamaloo and had paid the premium in cash. It is not understood

that if he had paid the premium in cash why did he not obtain the proper receipt from the Branch Office. As already observed, policy No. 111403

is issued in the name of J. and K. Bank in the name of Ghulam Hassan Mir and that too in the sum of Rs. 3.50 lakhs and was issued by Bohri

Kadal Branch of the appellant-company. Premium charged was also different. Break-up of this amount was Rs. 2.50 lakhs for two storeyed

building and an attic and Rs. One lakh was for house-hold goods. Mr. S.H. Jan, Development Officer had stated that he never signed policy No.

111403 and he issued communication, copy whereof is placed on the file as Annexure R-5, with the objections.

15. From the evidence on record what emerges is that at best Maqbool Hassan can be said to have issued the policy in question which is also the

case of the respondent. Further fact that has come to light is that this Maqbool Hassan was working in the agency of Mr. S.H. Jan, Development

Officer. However, as per cross-examination of Mr. S.H. Jan, this Maqbool Hassan never worked with him on his transfer to Batamaloo Branch,

but was working with him when he was at Bohri Kadal Branch. Still it has to be shown by the respondent that policy No. 111403 was the genuine

policy and had in fact been issued after acceptance of the proposal and receipt of premium on behalf of the appellants at its Batamaloo Branch.

Once respondent is able to establish all these facts appellants cannot escape their liability for the payment of compensation and in the

circumstances of this case there would definitely be deficiency in service on the part of appellants on account of non-payment of the compensation.

16. Agent if any, on the part of the insurance company was Mr. S.H. Jan and not Maqbool Hassan, the person to whom the premium is alleged to

have been paid by the respondent. Merely because he was working under Mr. S.H. Jan will not be a circumstance to fasten the appellants with

any liability. From the cross-examination of the respondent and his witness Ghulam Mohammad Mir it is clear that both of them had gone to the

Batamaloo Branch of the appellant and had paid around Rs. 3,000/-to Maqbool. At such point of time this witness says that this amount was

received by Maqbool Hassan and S.H. Jan for insuring the stocks of the respondent. There is no such suggestion made to Mr. Jan during the

course of his cross-examination regarding he and Maqbool Hassan having received the premium and thus insured the stocks of the respondent.

17. What seems to have weighed with the State Commission and what has been taken note of, is the enquiry conducted by Mr. A.R. Rather,

Senior Divisional Manager. Besides this, State Commission has also ventured into doing the exercise of comparing the signatures on the policy

from the record. On the other hand, stand of the appellants is that both the policies bearing Nos. 111402 and 111403 were forged and the

signatory to it (Mr. S.H. Jan), had stepped into the witness-box and has denied having signed both these policies.

18. Here it may be observed that the proceedings under the Consumers Protection Act are summary in nature aimed at speedy and expeditious

disposal of the claims and the Tribunal is required to adjudicate the disputes in a summary manner on the basis of the material those may be

brought before it.

19. As already observed in the instant case serious plea of forgery and fabrication of policy was raised which could not have been adjudicated

upon by the State Commission, that too in a summary manner. Merely because personal diaries if any, of Mr. S.H. Jan and record relating to the

distribution of serially numbered, policies was not produced, will not discharge the respondent to initially prima facie establish that in fact he

obtained the policy after paying the premium and got the stocks in trade insured as claimed by him.

20. With a view to fasten the appellants with the liability to pay the compensation, there Has to be something to suggest that the offer made in the

shape of proposal by the respondent was accepted by the appellants through some of its authorised agent and thus the contract of insurance has

fructified into a concluded contract. This part of the case in any event is lacking on the basis of insurance policies produced by the respondent as is

evident from the stand of the appellants. Mere acceptance of premium amount will not always result in concluded contract of insurance and thus taking over the risk on the part of the appellant-insurance company. Liability of insurance is assumed by insurance company like appellant after it is

established that the payment of insurance premium was paid by the insured, like respondent in the present case strictly in accordance with Section

64VB of the Insurance Act. Circumstances of the case do not suggest the payment in this manner so as to hold the appellant-insurance company

liable for settlement of the compensation claimed by the respondent.

21. In all fairness State Commission without going into the complicated questions raised and keeping in view the circumstances of this case, should

have directed the respondent to approach the Court of competent jurisdiction for adjudication of his claim in accordance with law.

22. No other point is urged.

23. In view of the aforesaid discussion, we are of the opinion that respondent has failed to make out a case that could be adjudicated upon by the

State Commission in exercise of its summary jurisdiction while adjudicating the complaint of the respondent, as a further consequence of it we

allow this appeal and set aside the order of the State Commission passed in Complaint No. 281/93 on 17-12-1997 and at the same time direct

that the complaint be returned to the respondent for presentation of the same before appropriate forum for its adjudication in accordance with law.

24. No costs.

25. Amount, if any, deposited in the Registry of this Court or with the State Commission shall be refunded together with in- terest accrued on such

deposit to the appellant-company. Similarly amount if any received by the respondent will be returned by him within four weeks from today to the

appellant.

