(1998) 05 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : C.I.M.A No. 246 of 1997

United India Insurance	APPELLANT
Vs	
Gh.Mohd.Mir, Company Limited	RESPONDENT

Date of Decision : 11-05-1998

Acts Referred:

Jammu and Kashmir Consumer Protection Act, 1987 — Section 12
Jammu and Kashmir Contract Act, 1977 — Section 140

Citation : (1999) 1 SriLJ 276

Hon'ble Judges : A.Q.Parray, J and A.M.Mir, J

Bench : Division Bench

Advocate : V.S.Mehra , S.U.Dar, Noor-ul-Amin, M.H.Beg, J.D.Asgar , J.A.Kawoosa, Advocates appearing for the Parties

Judgement

A.M. Mir, J.—These appeals arise out of a common order/award passed by the learned State Consumer Protection Commission, J and K (hereafter referred to as the commission) on 14.7.1997, whereunder different amounts of

money were ordered to be paid to the respondents who had made different complaints before the commission.

2. Appellants are four different Insurance companies with which the houses belonging to the respondents situated in the historical township of ChorariSharief of Kashmir valley, stood insured in the year 1995. This was a period when

Kashmir valley was engulfed into intense militancy. ChorariSharief happens to have the distinction of having a historical shrine in the form of a Graveyard, of a highly respected saint, Sheikh NoorUdDinNoorani. This shrine is rated as next

to Hazratbal shrine where the holy relic of prophet of Islam (PBUH) rests. Militants in their desperation, wanted to take refuge in these shrines so that the Government is not in a position to use any force against them. Their calculation was that in case of use offeree the damage to the shrines would attract worldwide attention, harming the image of the country. After making an attempt of such exploitation at Hazratbal Srinagar, they repeated the same process at

ChorariShrief on 1st of May 1995. The Militants, including some foreigners, ""Captured"" the most populous township of ChorariSharief. This bid was retaliated by the security forces and the encounter between the two parties continued

from May 8.1995 to May 11.1995. During this encounter major portion of the township including the shrine was torched. As a result of this unfortunate calamity the insured houses belonging to the respondents were gutted to ashes.

Whole of the nation felt shocked. The philonthopists extended help and the central Government placed funds at the disposal of the State Government for rehabilitation of the inhabitants of ChorariShrief, The Government got the loss

assessed and released exgratia relief in favour of all the fire sufferers including the respondents on the basis of their loss and suffering. Quoting example of respondent Ghulam Mohd Mir (CIMA 246/97) he received an exgratia relief of

Rs. 2 lacs from State and Central Govt. The surveyor submitted his report assessing the loss of Rs. 7,14,744/ when the occasion to release the amount of estimated loss was reached, the Insurance company took a stand that Rs. 2.00

Lacs received by him by way of exgratia relief will have to be deducted, on the basis of doctrine of subrogation. Similarly the assessed loss of other respondents, who also received the exgratia relief, was reduced by the amounts they

received as exgratia relief. Payments less by the amounts received as exgratia relief were offered. The dispute with regard to legitimacy of those deductions landed into the State Commissions where all the respondents filed complaints.

The Commission disposed of all the complaints, after passing the impugned order/ award, holding that such deductions were against law. Aggrieved by this order/award, the present appeals have been filed.

3. Learned counsel appearing on behalf of the appellants, Mr. V.S.Mehra, in the inception has submitted that the appeals in hand give rise to a question of law and it would be proper to dispose of these appeals, after addressing to that

point. Mr. M.H.Beg, appearing for the caveatothers, showed his willingness to address fulldressed arguments. On the agreement of the learned counsel for the parties. We admitted all the appeals to hearing and after doing so heard the

arguments in a number of sittings.

4. Apart from a very important question of law which arises in the present case and which this court wants to deliberate upon the appellants feel aggrieved of the following features of the order impugned:

i) That a blanket benefit of the order/ award impugned has been extended even to those of the insured who have not approached the commission;

ii) That the rate of interest awarded at 18% P.A is exhorbitant;

iii) That the interest has been granted from the date of the incident.

Learned counsel, appearing for the appellants, have not laid stress on the rate of interest and the date from which such interest is to be paid. They have, with all fairness, left it open decided by the court in its discretion.

5. In the first instance we would like to adjudicate upon these points. We accordingly want to make a reference to that portion of the order/award which calls upon the insurance companies to accept the liability of all other fire sufferers of

ChurariShrief who had not filed complaints before the commission. Para 28 of the award reads as under:

28. Ws are aware that all the insured have not filed their 3?es before us possibility in the hope hat in case the Commission decline' to accept the stand taken by the insurers they need not resort to litigation. Since we have declined to

accept the contention of the insurers it is advisable for the insurers to accept the liability in terms of this order ever, in respect of all other fire sufferers of ChurariSharief in this very incident who have sot filed cases before us. This order

shall, therefore, be applicable to ail such cases as otherwise it would lead to avoidable litigation and will have effect of rendering insurers liable for oppressive and malicious conduct."" The appellant companies challenges this part of the

order on the ground that this direction is against law and beyond jurisdiction. At a glance the direction contained in the above reproduced para is of an advisory nature. Apparently, the object sought to be accomplished by this direction

seems to he to do away with avoidable litigation and. rescue out the insured from what is termed as 'oppressive and malicious' conduct of the companies.

6. We have considered this aspect of the matter. The J and K Consumer Protection Act, 1987 aims at protection of consumers interests. The function of the authorities under the Act is to settle consumers disputes and matters connected

therewith. A dispute between the parties can be settled only when a complainant approaches the Authority with a case and projects his grievance. Settlement of a dispute implies an inquiry in which the other side also is heard. Therefore,

a relief can be granted by the authorities under the Act only in favour of a person who raises a dispute. Extension of benefit of an award to those of the persons who are not before the Commission seems to go beyond the ambit of powers of the Commission. The Commission, which is the creation of a statute, will have to exercise only those powers which are provided under the Act. There is no provision in the Act which could empower the Commission to

exercise powers of such nature, therefore, the direction with respect to the application to the impugned order/award, to all other persons insured, who were not before the Commission, is not tenable. The same is accordingly quashed.

7. Then we advert to the rate of interest and date from which interest is to be reckoned. The agreed stand of the learned counsel for the parties has shortened the controversy. We have considered both the points. In different cases,

different stands have been taken by the Supreme Court of the Country. In some cases grant of interest from the date of accident was approved while in some other cases a different view was taken. Similarly in certain cases rate of interest

at 18% per annum was upheld, while in others it was according to the facts and circumstances reduced. Perhaps the last decision on the point was delivered by their Lordships in M.K. J. Corporation vs. United India Insurance, reported

in AIR 1997 S.C page 408. In this case their Lordships reduced the rate of interest to 12% and interest was granted from two months after the survey report was received.

We would like to follow the line of action adopted by their Lordships in the above case and modify the award after holding that interest will be reckoned from two months from the date of the surveyothers report and at the rate of 12% P.

A simple interest. The reports in these cases were furnished on 20.11.1995, therefore, interest payable to the respondents will be reckoned with effect from 2111996.

8. This brings us to the moot question of law involved. The question is as to whether or not the amount of money received by the insured respondents by way or exgratia relief can while settling the insurance claim, be deducted under the

agreement, or under general law of subrogation?

This question will hereinafter, for convenience, be referred to as the main question, condition No.8 of the insurance policy, which forms the basis of the claim and which binds the insured and the insurer, makes a stipulation with respect to

the liability arising out of the doctrine in the following words:

The insured shall, at the expense of the company do and concur in doing and prepared to be done, acts and things as may be necessary or reasonably required by the company for purpose of enforcing rights and remedies or of

obtaining the relief or indemnity from other parties to which the insurance company shall be or would become entitled or subrogated upon its paying for or making good any loss or damage under this policy, where such acts and things

shall be or become necessary or required before or after his indemnification by the company.

The case of the appellant company is that by virtue of express terms laid down in this condition, the insured are obliged to allow the appellant company to enforce the right of subrogation by way of making good the loss to the extent of

amount of money which the insured respondents had received from the Government by way of exgratia relief. This is how the appellant companies before the State Commission wanted the amount of exgratia relief to be deducted.

According to Mr. Mehra, appearing for the appellants, this condition in fact puts into practice the doctrine of subrogation. He pleads that an insured cannot be allowed to make profit out of an insurance contract, the essence of which is to

indemnify the insured and nothing more.

9. Mr. Beg has on the other hand interpreted this condition in such a way so as to do or permit to be done all such acts and things as may be necessary for enforcing any rights and remedies available or obtaining relief or indemnity from

other parties. Obviously, the words ""rights"" ""remedies"" and ""relief"" have to be noticed and this condition has to be interpreted after understanding the true purport of these terms. Rights are generally defined as powers in their action. Right

means a claim which one can agitate under the substantive law of the state. Right in concrete terms may be said to be a claim which law of the land empowers him to enforce. It may be a constitutional right or other legal right. Similarly,

remedy"" was held to be an instrument by which a right is enforced or the violation of right is prevented, redressed or compensated. While distinguishing remedies from right their Lordships in case Chelen is v. Luckenbbachss Co. 247 US

372, 38 SCT501,503 62 LED 1171 held remedy to be a means employed to enforce a right.

A relief which can be the subject matter of subrogation has to flow from a right. Once a relief is exgratia, the insured has no right to receive it. The term 'relief has been used as a general designation of the assistance, redress or benefit

which the insured as a complainant would be entitled to before a court of law. Once there was no such right available, no remedy could be sought. The words 'relief or indemnity' from other parties referred to in the condition again relate

to such of the reliefs which can be claimed as of right. Therefore, while interpreting this condition, we will have to find out whether all items of assistance will have to be deducted or those only to which the insured have a legal right and for

enforcement of which a remedy can be brought in. We in the first instance therefore, while interpreting the condition, will have to find out the genesis of the exgratia relief granted to the respondents.

10. The general principle of doctrine of subrogation is that the sur(sic) after payment having been made steps into the shoes of the creditor with respect to every claim that reduces the loss of the insures. In absence of a waiver, express or

implied, the insurer has a right of being subrogated to all the rights which the creditor has against the principle debtor. This doctrine finds place in section 140 of the India contract Act also, which reads as under:

Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place. The surety upon payment or performance of all that he is liable for is invested with all the rights which the

creditor had against the principal debtor.

11. The law with regard to doctrine of subrogation has not developed in our country. While finding an answer to the main question, we do not get any guidance from the highest court of the country, as no judgment on this point seems to

have been returned. Different cases have been decided by court:;, including the Apex Court. These cases had distinct facts, though doctrine of subrogation and principle of indemnity was also involved. A Division Bench of this court

seems to have She distinction of addressing itself to the main question, in case titled National Insurance Company Vs. Ghulam Mohd Shah reported in 1979 K.L. J page 430. In this case exgratia relief was held to be one extended by

way of held on the basis that subjects had suffered because of fire, and ""for other reasons"". Their Lordships did not exclude political reasons also. Such relief received from the Government was equated with assistance received from

other agencies e.g. relatives. It was held that the insurance company could not lay claim upon the amount received by the insured from other sources including the exgratia relief received from the Government. Their Lordships held:

Learned counsel for the appellant then submitted that the compensation which the plaintiff received from the Government may be deducted from the amount chat may be ultimately found due to him from the company. The basis for this

contention was that the plaintiff in his statement admitted that he got some amount from the Government as a fire sufferer for the development of a plot. The company claims that in case the plaintiff suit was decreed it may be given benefit

of the amount already received by the plaintiff and the sum be deducted from the amount of the decree. We are however, unable to accept this claim. The house in question was not insured with the State Government and it cannot be said

that it was because of that the said amount was given to the plaintiff by the State. The amount, if any given to the plaintiff was given to him by way of help on the basis that he had suffered because of fire and for other reasons. Some of

them may be even political. May be the plaintiff received the help from other quarters, say from his relatives and from others. Will such amount also be claimed to be deduction from the amount of the decree? The answer could be only in

the negative. The fire insurance company was required to pay the amount to the insured under the terms and conditions of the agreement entered into between the parties. No term or condition in the insurance policy has been referred to

in support of such a claim. When it was concluded that the fire in question was accidental, the amount of reasonable deductions was payable under the terms of the agreement. The Insurance Company could not morally or legally in the

absence of a specific condition in the agreement be permitted to lay its hands on the monetary help received by the respondent from the other sources.

Their Lordships of the Division Bench, in the above cited case have quoted the following English Judgments, which were referred by learned counsel appearing for the insurance company here also:

(1896) 2 QB 377

(192) 2 KB 753

(1937) 2 KB 113

Their Lordships held that all the English cases were on different facts, therefore the law laid down by the English Courts could not be applied mutus mutandi to case before the court. Mr. Mehra lays stress on findings of the Apex Court in

case titled Union of India Vs. Sri Saradha Mills Ltd, reported in AIR 1973 SC 281. In this case the court had an occasion to consider the principle of assignment of the rights under the policy of Marine Insurance. The court also dealt

with the nature of right of the insured to maintain a claim. This judgment has a relevance because it makes a reference to rights of the assured and maintain that application is based upon fundamental principle that the contract of insurance

contained in a Marine Policy is a contract of indemnity and indemnity only.

According to Mr. Mehra under an insurance policy the respondent insure should only be fully indemnified. They cannot be allowed to make profit out of the insurance policy and raise funds more than the loss suffered.

12. We have considered the law laiddown by their Lordships of the Supreme Court in Sardha Mills case. Their Lordships with perfect clarity have laiddown the law with regard to application of doctrine of subrogation to policies of

insurance. It is also made clear that fulfillment of an insurance contract has the effect of full indemnification of the loss sustained by the insurer but he can never be allowed to receive money beyond the loss sustained. However, their

Lordships while interpreting the scope of the doctrine have held that subrogation is concerned solely with mutual right and liabilities of the parties to the contract. It confers no right upon a third party who are strangers to that contract. The

insurer who has paid the loss gets no direct right or remedy against any one, other than the assured nor can sue such parties in his own name. The insurer, of course, according to their Lordships, is entitled to the advantages of every right

which the assured enjoyed, whether that right consists in the contract, fulfilled or unfulfilled. Such right of the insurer is also enlarged to a remedy for tort being insisted. For this purpose it will be pertinent to reproduce para 39 of this

judgment. It reads as under:

As between the insurer and the assured, the insure is entitled to the advantage of every right of the assured, whether such right consists in contract, fulfilled or unfulfilled or in a remedy for tort capable of being insisted on or already

insisted. But as stated by the privy council in 1896 AC 250 at PP.255, 256.

Subrogation by act of law would not give the insurer a right to sue in a court of law in his own name."" Subrogation is concerned solely with the mutual rights and liabilities of the parties to the contract of insurance; it confers no rights and

impose no liabilities upon third parties who are strangers to that contract and the insurer who has paid a loss gets no direct rights or remedies against anyone other than the assured nor can sue such parties in his own name. See Simpson

Vs. Thomson (1877) 3 App Cas 279 (HL).

The most important terms used in this para are 'every right' capable of being agitated and 'every remedy' capable of being insisted upon. Their Lordships have in best of their wisdom used the word 'right' instead of some other words like

assistance or benefit. Their Lordships have also qualified the word 'remedy' by the expression 'capable of being insisted upon. This adjacent clause goes a long way in pointing towards the enforceability of a right or action ability of a

remedy in order to make it subject matter or a subrogation. Even after reading this judgment we are not able to answer the main question. However, this judgment does say that the insured must have a right to claim from the third party so

as to enable the insurer to be subrogated.

13. After finding that we have no direct judgments from our Supreme Court, we would like to appreciate the judgment of the earlier Division Bench of this court in National Insurance Company Vs. Ghulam Mohd Shah, in the light of

English judgments referred supra. The doctrine of subrogation was first taken note of by an English court in RANDAL Vs. COCKRAN, decided on June 17,1748. During the war between Spain and United Kingdom the King granted

general letter of reprisal on the spainarda for the benefits of his subjects. This concession was granted by way of consideration for loss sustained by the kings subjects by unjust captures. The owners were indemnified by the insurer and

the court in a concise judgment held that the insurer after satisfaction stands in place of the assured as to the goods, salvage and restitution in proportion to what he paid. In this case the intention of the kings letters of reprisal were thought

to be of paramount importance. The object of the concession was to grant benefit to the subjects of the king. Since the owners as well as insurers both were subjects of the king therefore the benefit of the concession was extended to the

insurers to proportion to their entitlement. Perhaps this judgment would have generated a beacon light for interpreting the doctrine of subrogation in our case if the insurers were not king's subjects.

14. The doctrine then came into discussion before the House of Lords in case titles BERNARD Vs. RODO CANACHIF, decided on July 11,1882. The facts of the case are noteworthy, American Congress, the Supreme Legislature of

the country, by way of a legislation extended a benefit to a certain class of people. The property of some of those people had already been insured with the insurance company. These companies after having indemnified the insured

claimed the benefits of the legislation on basis of doctrine of subrogation. The court declined to extend the benefit to the insurance company on the ground that the intention of the legislature did not warrant so. Lord Black Burn, while

outlining the general principle of subrogation and while identifying the distinction between these two cases, observed that in RANDAL Vs. COCKRAN the gift was voluntary and the crown was not bound to make it. The gift was also

made only for these sufferers who were king's subjects. As for BERNARD Vs. RODO CANACHIE is concerned the relief was extended by an Act of the legislature. The insurer in latter case could not get the benefit of subrogation as they did not belong to the class of persons for whom the beneficial enactment was brought into existence. Lord Black Burn while earmarking the features of similarity and distinction between the two cases, RANDOL Vs. COCKRAN

and BERNARD Vs. RODO CANACHIE observed that in the earlier case the King was pleased to release an amount of money to those of his subjects who had suffered from the captures. His Lordship made it clear that the king was

not bound to make such a gift. The king did not have moral obligation also but, to Lord Black Burn, it would have been shabby for the Government if they had not do done it. Lord Celbron L.C lead emphasis on the true legal result of the

contract while discussing the entitlement of an insurer for subrogation. His Lordship observed as under:

For the purpose of the contract of insurance and for the purpose of all rights arising from that contract, it may well be that the valuation in a valued policy is conclusive, and the effect of it may be that for those purposes the

He cannot say that for the purpose of withholding from the insurer any indemnity or right by way of subrogation or constitution to which by the true legal result of the contract the insurer is entitled."" Laying further stress on existence of a

right his Lordship went further in observing as under:

The title to a particular indemnity granted in particular terms out of a particular fund at the disposal of the United State of America by an Act of the Supreme Legislature of the United States is not a title which I think can possibly result in

law from the contract it self. If such a right exists, it must exist by the combined effect of the contract between the assurer and the assured, and the Act of Congress. It cannot follow from the contract of insurance alone without the Act of

Congress. If the Act of Congress is consistent with such a right having regard to the contract of the insurance, still more of the Act of Congress fairly and equitably interpreted confers such a right, there is no reason whatever why the right

should not receive full effect. But how it is possible that such an effect can be produced as to a right which could have no existence apart from the Act of Congress, if the Act of Congress itself expressly excludes it? It can for a moment

understand the doctrine of moral right and obligation or implied trusts affecting supreme governments and independent states, as applied to the question of this kind."" 15. After having interpreted condition No.8 of the insurance policy and

after taking into account the two judgments RANDOL vs. COCKRAN and BERNARD vs. RODO CANACHIE, we find that the insured should have a legal right to receive the benefit or relief so that the benefit or relief when reduced

the loss of the insured, can form the subject matter of a right of subrogation for the insurance com"" pany. He must have a remedy available against the violation of such a right. What is the cumulative cut come of the findings of the courts in

above referred two cases is that for application on of doctrine of subrogation the intention of the donor in making the gift should be gone into and the insured should, according to Lord Celbron (Lord Chancellor) have a right in. the relief

which is actionable.

16. Other English cases referred are as under:

(i) CASTELL1N v/s CRESTON (decided on March 12,1883.

(ii) PHOENTLX ASSURANCE co v/s SPOONER (1905) 2 KB 753.

(iii) JOHN AD WARD and CO. V/S MOTOR UNION INSURANCE CO, reported in 1922 KB volume 249.

(iv) YORKSHIRE INSURANCE CO.LTD v/s NISBET SHIPPING COMPANY, reported in 1962 KB 320.

(v) H. CORRIER LTD v/s DC CARROER LTD 197 Ion 230.

We have gone through the judgments. All these relate to general principles of law relating to subrogation. We have, right from the beginning, net been in any doubt about the comprehension of this doctrine. But the main question is specific

and these judgments do not help us in finding out an answer to that.

17. This brings us back to KLJ 1979 page 430 which excludes exgratia relief from the purview of doctrine of subrogation. Its telegraphic hints that BURNARD vs. RODO CANACHIE and RANDAL vs. COCKRAIN were not

applicable. We find clues in these two cases as to how to answer the question, these clues have a close proximity to condition No.8 of the Insurance policy. The terms of the condition are express. The insured in case of subrogation has

to do or allow every thing to be done for enforcing rights and pursuing remedies, or for obtaining reliefs or indemnity. In RANDOL vs. COCKRAIN, court looked into the intention of the donor and so did the court in BERNARD vs.

RODO CANACHIES, with an added observation that an assistance to form the subject matter of subrogation should flow from a right which is enforceable and against which a remedy can be sought.

18. Therefore, in order to answer the question, we will have to findout the following:

(a)What is the true nature of an exgratia relief/

(b) Can it be claimed as a right?

Dictionary meaning of ""relief' is financial assistance or support granted to an indigent person. Exgratia means by way or grace as a matter of indulgence with regard to payments it means a payment which is made without recognising any

legal obligation to pay. Thus an exgratia relief means a financial assistance sanctioned as an act of grace, without any legal consideration and any legal obligation.

19. In the present case the state of J and K in the best of their wisdom designated the relief granted to the respondents as an exgratia. Therefore, it is obviously an act of grace and the Government had no legal obligation to grant this relief.

Yet acting as a welfare State, as it should. The Govt. for justifying the sufferings of the people granted the exgratia relief. A Division Bench of this court in a case titled State of J and K Vs. Jeet General Stores, reported in 1996 SLJ page

4 had to answer a question as to whether the state has an absolute obligation to protect the life and property of its citizens. It was pleaded by the party seeking damages from the Government that the very factum of payment so exgratia

relief amounted to admission on part of the state of its culpability or negligence. It is in this background that the Division Bench had the occasion to express itself in respect of exgratia relief. The Bench while detailing out certain instances

of exgratia relief observed that such as relief is granted because the state being a welfare state deems it fit to help her citizens during their distress and hour of difficulty. Their Lordships were very clear that the welfare measures of granting

exgratia relief could never be construed to be an admission of any liability or obligation on the part of the Government. Their Lordships held as under:

There are cases galore where the state grants exgratia relief to citizens in some tragic situations and events. Where it even indirectly had no role to play with such events or happenings. Take for instance, the cases of floods, earth quakes

or plain road accidents involving motor vehicles wholly owned by private parties. In all such unfortunate incident and happenings, where the State is not connected with any act, it does grant exgratia relief to the citizens so that they tide

over their immediate difficulties. This is not done by the state because it thinks that it is or was responsible for any such act. This is done only because the state being a welfare state, thinks that it should help citizens in their hour of need by

some assistance, in one form or the other because the citizens have suffered and they need help in their hour of difficulty.

20. Both in Jeet General Stores case as also in National Insurance co. vs. Ghulam Mohd Shah, the two Division Benches seem to have been influenced by the frequency with which the state of J and K comes to the rescue of its subjects

during the period of some natural calamities like fire and flood. In fact the state of J and K owing to its specific geographic terrain is prone to calamities of fire and flood. It is hardly any year when the state is not visited by a flood. Houses in Kashmir Valley are made of timber and usually thatched. Therefore calamity of fire also is usual to befall. We have a department of Relief and Rehabilitation which forms a wing of the Ministry of Revenue. Whenever any calamity occurs, the relief department swings into action and comes to the rescue of its people. It was in this background that their Lordships of the Division Bench in Jeet General Stores case, referred to above, viewed the grant of exgratia relief in cases where it has no legal liability to pay. In Ghulam Mohammeds case their Lordships on the same reasoning were unable to accept the claim of the Insurance Company for right of subrogation. According to their Lordships in that case exgratia relief aimed at reducing the sufferings of the subjects and owed its origin to so many reasons some of which may be even political. Their Lordships have used the term 'Political reasons' in 1973. Now, that much of water has flown from 1973, we may perhaps be required to make a reference to the reasons which can be political in nature, motivating the Government to grant an exgratia relief. The State of J and K has been unfortunate enough in having come within the grip of insurgency for last eight years. An undeclared war is going on. So many people were killed and so many were rendered homeless. So many had to leave their houses and migrate out side the state. The sufferers included both political as well as religious minorities. The Govt. granted exgratia relief to the next of the kins of those who were killed by the militants, Exgratia relief is also granted by way of monthly cash doles and free ration to those of the state subjects who migrated and have no sources to fallback upon. Major portion of our state budget is being spent on relief and rehabilitation now. The militants torching township of CharariSharief belonged to a neighboring country. Whole of the nation shivered when CharariSharief mishap took place. Every Indian, irrespective of caste, creed and colour stood like a rock behind the people of CharariSharief. It is in these circumstances that the Government of India was pleased to place at the disposal of the state Government funds for relief and rehabilitation of the fire sufferers. We feel that under the changed scenario the element of politics in granting exgratia relief cannot be ruled out. We on this premise cannot disagree with the findings of the Division Bench in Ghulam Mohd Shah's case so as to include political reason in grant of exgratia relief.

21. Yet, another aspect as to what was the intention of the Government in granting exgratia relief remains to be seen. According to Mr. Mehra, the intention if made clear by order No: DCB/Char/06 passed by Deputy Commissioner

Budgam on 1261995. This order envisages that the relief was granted for gutted houses. Assessment of loss was got made and relief was granted on assessment basis. According to Mr. Mehra, this relief diminishes the loss, so the

implied presumption that the Insurance Company has right to subrogate. We cannot accept this analogy, because of the allowing reasons:

(1) That an order, notification or instrument, signifying the intention of the Government, should conform to Rule 10 of Rules of Business of Jammu and Kashmir Government. Such an order should be passed by the Government through a

Commissioner Secretary only. This being an order issued by the Deputy Commissioner Budgam, cannot be said to be conveying the intention of the Government.

(2) Even, assuming that this order does not suffer from any vice, it does not anywhere indicate that the Government intends to benefit the insurers also. All it say is that the relief was exgratia and same was granted for the benefit of fire

sufferers for their gutted houses on the basis of assessment of loss made. All this does not mean that it conveys an intention of the relief having been granted for the benefit of insurer also.

(3) The same Deputy Commissioner Budgam, when approached to clarify, as to whether the amount of relief could be deducted by the insurance company, has made the position clear. He has replied the question in negative vide

communication No. DCB/Ref/96/4038 issued on 21 61996. It is proper to reproduce this communication in its original text. It reads as:

Sub. Insurance claim of ChurariSharief fire sufferers.

Sir, It has been represented to the office that the insurance claims of the ChurariSharief fire sufferers of May, 1995 are not being settled and your company is intending to deduct the exgratia relief amount from the insurance claim. It is

again requested that exgratia relief amount provided by the state and the General Governments has no relation with insurance claims and the fire sufferers should be paid their due claims without deducting the exgratia relief granted to

them. Treat the matter most urgent.

The communication makes it clear that the exgratia relief granted by the state as well as central Governments has no nexus with the insurance claim. A direction is made that insurance claim should be paid without deducting the exgratia

relief received. We do not say that the Deputy Commissioner, could, in law pass a direction like this. But this communication should be taken to be the last word so far as intention of the state, if a Deputy Commissioner can make out so.

Therefore, we find that there is nothing to show that the state intended to benefit the insurers. On the other hand, the intention in the circumstances of this case seems to be to benefit the fire suffers.

22. On the analogy of the above observation. We concur with the result of the judgment delivered by a Division Bench of this Court in National Insurance Company Vs. Ghulam Mohd Shah, reported in 1979 KLJ page 430. We hold

that an exgratia relief is, a relief granted by the Government, as a welfare state for rehabilitating those of its subjects upon whom a cetestrophy has befallen whether by vismajor or by some uncontrollable human agency. The Governments

grant exgratia relief by way of grace only. They have no legal obligation to rant such a relief. The sufferers cannot be said to have a legal right to receive such a relief. Nor can a remedy for obtaining this relief be enlarged on the basis of a

legal right. In unfortunate events like militancy, communal riots, external aggression or like factothers which owe their origin to unabated turbulences, the Government, when comes foreword with exgratia relief for sufferers, they want to

come to the rescue of the suffers alone and not to the rescue of their insurersunless the Government so desires and expresses its desire to do so.

We also find that condition No. 8 of the Insurance policy only enables the appellant company to step into the shoes of the insured respondents for enforcing rights and pursuing remedies, against other parties. The company is also entitled

to obtain relief or indemnify from other parties. Insurance Company and claim title to relief or indemnity only if the insured has a right. Here insured have no right to the relief and the claim can not be based upon the condition itself.

Therefore, doctrine of subrogation cannot be attracted in a case of exgratia relief, the claim to entitlement under the condition is not maintainable.

23. We have tried to examine every aspect of the judgment under appeal. We, are in agreement with the Division Bench in Ghulam Mohd Shah's case. We have tried to elucidate the contours of this finding. Judging the finding of the

learned Commission from that perspective we, but for the modifications we have ordered, find to infirmity in the same so far as answer to the main question is concerned. Accordingly we allow the appeals only to the extent of reducing

the rate of interest to 12% instead of 18%, and also to the extent of reckoning interest with affect from 21st of Jan, 1996. We also quash that part of the judgment which grants relief to persons who were not before the commission. So

far as the appeal assails the judgment on basis of doctrine of subrogation, we dismiss the appeal and uphold the judgment.

24. The awards be executed after taking into account payments already made

under the Court orders.

This also disposes of CIMA No's 87,88,89,90,91,92,93,94,95,96,97,98,99,100,

101,102,103,104,105,106,107,108,109,110,111,112,113,114,115,116,117,118,119,120,121,122,123,124,125,126,127,128,129,13ai31,132>134,135,136,137,138,139,140,141,142,143,144,145,146,147,148,149,150,151,152,153,154,155,156,157,158,159,160,161,162,163,164,165,166,167,168,169,

170,171,172,173,174,175,176,177,178,179,180,181,182,183,

184,185,186,187,188,189,190,191,192,193,194,195,196,197,198,199,200,201,202,203,204,205,206,207,208,209,210,211,212,123,214,215,216217,218,219,220,221,223,224,225,226,227,228,229,230,231,232,233,234,235,236,237,238,239,240,241,242,243,244,245,246,247,248,249,250,251,252,253,254,255,256,257,258,259,260,261,262,263,264,265,266,267,268,269,270,271,272,273,274,275,276,277,278,279,280,281,282,283,284,285,286,287,288,289,290,291,292,293,294,295,296,297,298,299,300,301,302,303,304,305,306,307,308

and 309of 1997 alongwith all connected CMP's. Nor order as to costs.

