(2012) 07 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : CIMA No. 56 of 2012

United India Insurance Co. — APPELLANT

Vs

Abdul Rashid Bhat — RESPONDENT

Date of Decision : 27-07-2012

Acts Referred:

Citation : AIR 2013 J&K 12

Hon'ble Judges : M.M. Kumar, C.J;Hasnain Massodi, J

Bench : Division Bench

Advocate : N.H. Khuroo, for the Appellant; Sajood Amin, for the Respondent

Final Decision : Dismissed

Judgement

1. Shri Abdul Rashid Bhat-respondent herein insured a building, co-shared with his brothers Reyaz Ahmad Bhat and Manzoor Ahmad Bhat, with

the appellant Insurance Company. The appellant accepted premium from the respondent for the entire building including shares of Reyaz Ahmad

Bhat and Manzoor Ahmad Bhat. The building suffered damage during the period it had insurance cover. The appellant accepted the claim put forth

by the respondent and assessed the loss to the extent of Rs. 8,53,963/-. However, the appellant paid only one third of the assessed loss to the

respondent, on the ground that he owned only one third of the building and the other two co-owners namely Reyaz Ahmad Bhat and Manzoor

Ahmad Bhat had no right to be indemnified, and claim compensation for the loss assessed as they were not party to the Insurance contract. The

respondent, aggrieved with the decision taken by the appellant, approached the State Consumer Disputes Redressal Commission, with a complaint

registered as complaint No. 15 of 2007. The Commission held the appellant liable to pay the compensation to all the co-owners of the insurance

building and directed the appellant to pay the compensation to other co-owners of the building on the lines it had been paid to the respondent

together with litigation charges of Rs. 5000/-. The Commission placed reliance on United India Insurance Company Vs. Mrs. Parmeshwari

Sawhney, .

2. The appellant questions the order of the State Commission dated 28-2-2012 in the present appeal.

3. We have heard Counsel for the parties, and have gone through the order of the State Commission.

4. The appellant Insurance Company, having received premium for the entire building cannot wriggle out of its responsibility to pay compensation

to all co-owners of the building irrespective of their being party to the Insurance contract. Quite often Karta or head of the family, one of the

partners of the partnership firm or one of the co-owners available at the time of insuring a property, enters into a Insurance contract on behalf of all

the co-owners or partners, who for one or the other reason are not available, and pays full premium for the entire property. The Insurance

Company cannot refuse to indemnify other partners or co-owners who were represented by the partner or co-owner who actually entered into an

Insurance contract and paid premium on behalf of others and refuse to indemnify others. There is thus no scope for any disagreement with the

State Commission that the appellant is under an obligation to reimburse the loss and indemnify the other co-owners of the insured building.

5. The plea that the claim is hit by limitation and that the Commission ought not to have entertained the claim much less directed the appellant to

indemnify other two co-owners, is specious and better to be ignored. Mr. Khuroo who has forcefully advanced his argument placing reliance on

law laid down in Kandimalla Raghavaiah and Co. Vs. National Insurance Co. and Another, , fails to appreciate that it was not a fresh claim by Shri

Reyaz Ahmad Bhat and Manzoor Ahmad Bhat co-owners of the insured building. The complaint before the Commission was filed by respondent

No. 5 in continuation of the claim put forth by him and therefore the question of limitation would not arise. The respondent No. 5 who had insured

the building on his behalf and on behalf of his co-owners and thereafter put forth claim, was not satisfied with the decision taken by the appellant to

pay only one third of the loss assessed and with-hold the rest of the amount on the ground that the other co-owners were not party to the

Insurance contract. Shri Reyaz Ahmad Bhat and Manzoor Ahmad Bhat did not approach the Commission with the complaint complaining

deficiency in service. It is the respondent No. 5 who approached the Commission with the complaint, once the appellant did not accept his claim

and refused to indemnify the respondent to the extent of other two co-owners. In the circumstances, it was not a fresh claim put forth by S/Shri

Reyaz Ahmad Bhat and Manzoor Ahmad Bhat, but continuation of the claim earlier laid by respondent No. 5. The appellant therefore, cannot

draw support from Kandimalla Raghavaiah and Co. Vs. National Insurance Co. and Another, relied upon by him to reinforce its claim. For the

reasons discussed, there is no merit in the appeal. The appeal is accordingly dismissed.