(2001) 01 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : C.I.A. No. 57/99

United India Insurance Co.Ltd.through its Senior Divisional Manager, 9 Divisional Office, Regal Chowk, Srinagar — APPELLANT

Vs

Ghulam Hassan Waza, Prop.Waza Carpets — RESPONDENT

Date of Decision : 01-01-2001

Acts Referred:
Jammu and Kashmir Consumer Protection Act, 1987 — Section 11

Citation : (2001) KashLJ 7

Hon'ble Judges : B.P.Saraf, C.J and Syed Bashir-Ud-Din, J

Bench : Division Bench

Advocate : Noor-ul-Amin, M.Ali, Advocates appearing for the Parties

Judgement

Syed BashirUdDin, J.—In Complaint No. 156/97, on the file of Jammu and Kashmir State Consumers Protection Commission. Srinagar

(hereafter for short ""Commission""), the Commission awarded Rs. 3.00 lacs with 12% interest PA from the date of loss till payment, as

compensation, claim to proprietor Ghulam Hassan Waza, complainant against United India Insurance Company Ltd.. the Opposite parties before

the Commission In respect of fire and loss claim raised by the Complainant regarding various types of Carpets stocked in his showroom situated at

Bus Stand Beerwa. The United India Insurance has challenged this order dated 23061999 of the Commission, in this Appeal

2. The facts necessary for our present purposes are that the respondent Ghulam Hassan Waza took fire PolicyA effective from 11071996 to

1071997 for a sum of Rs 4.00 lacs in respect of his single storey building with fixtures and fittings and two rooms used for housing Carpets.

Second policy for Rs. 1.00 lac subsisting for the period as above, was taken by him for household goods. In addition, a third policy for Rs. 4.00

lacs was taken for Waza Carpets with Ghulam Hassan Waza as Proprietor, to cover the fire, burglary and terrorist risks to all kinds of finished

Kashmiri hand knitted silk, staple and woollen carpets lying the show room of the Waza carpets Beerwa. This third policy subsisting from 11796

to 10797 was taken through Jammu and Kashmir Bank Beerwa, which extended cash credit facilities to Waza Carpet against hypothecation of

stocks and good in trade lying in the premises show room covered by the Insurance policy. No dispute is raised to these facts on either side.

3. Respondent/Complainant's case is that the show room covered by the above third Insurance Policy cover is one of the shops in the building

known as ""Unjaman Mazharul Haq"". This building complex comprises of number of shops and is situated/located at Bus Stand Beerwa. He had

taken on lease this shop where Carpets were stocked and sold. This show room ""Waza Carpets"" was partly financed by Jammu and Kashmir

Bank, Branch Beerwa, which extended cash credit facility to him. He was availing of the facility at Beerwa Branch of the Bank. The stocks were

hypothecated with the Bank. It was in fact the Jammu and Kashmir Bank which obtained the Insurance cover for stocks of all types of carpets

stocked in the show room situated at Bus Stand Beerwa. The appellant is contesting this statement. Instead appellant's counter case is that two

rooms in the residential buildings of respondent, covered by First Insurance Policy, were infect used as show room for ""Waza Carpets"" and there

was no independent show room of ""Waza Carpets"" at Beerwa Bus Stand. It is this contentious issued which merits to be examined on

evidence/material brought on record before the State Commission. The Commission has come to the conclusion that the show room covered by

the insurance policy/cover is the one that was situated at Beerwa Bus Stand and on this finding awarded the claim with interest under appeal

4. We have heard the counsel for the parties. Mr. Manzoor Ali, is at pains to explain and submit that the show room covered by the insurance

cover in fact comprises of two rooms of the residential house of complainant, used for Carpet stock/sale and not the shop run at Beerwa Bus

Adda with address ""Waza Carpets"" as shown in the Insurance papers. He refers to the report and statements of the two Surveyothers who visited the spot soon after the fire incident which took place on 2996. The counsel canvasses that the preliminary enquiry conducted by Mr. Waris Sheikh

points out that on reaching spot he did not notice any such shop in the gutted building to indicate its use as show room to house carpets. He simply

found two rooms in the residential house of petitioner which were just ordinary and normal rooms in a house. They contained some carpets. On his

entertaining doubts NaseerAijaz another Surveyor and Loss Assessor was engaged who visited the spot, collected information made local

inspection and enquired from locals on the spot. He concluded and reported that the stocks of all kinds of carpets were only lying in respondent's

residential house and there was no shop in the Bus Stand used for stocking and sale of carpets though there was one shop at Bus Stand Beerwa

under use and occupation of respondent, but same was used for trade in manyari, hosiery, cosmetics etc and was as well used for sale of

silk/staple yarn and some other articles but not the carpets.

5. The counsel for respondents/complainant in reply submits that the two Surveyothers visited the spot only after the devastating fire totally

destroyed the shop and the show room. The persons named in the Surveyothers report from whom information is stated to have been got on

enquiry have not been examined before the Commission. Their statements are not even recorded by the Surveyothers There is nothing to indicate

that infect these persons and local police was approached in the matter. He further submits that the documents which respondent has produced

before the Surveyor, coupled with the correspondence of the Bank with all concerned on the subject, appreciated with evidence led by him before

the Commission, sufficiently proves his claim of having suffered loss by fire of carpets stored in the show room at Bus Stand Beerwa, the stocks in

trade (Carpets) whereof are independently covered by the Insurance Policy referred herein above as third policy.

6. The counsel also submits that the two rooms in the residential house which he used additionally for stocking the Carpets, were in fact covered

by Fire PolicyA which he had taken out for the house and its fixtures and the two rooms stocking the Carpets. The Commission en application of

mind and appreciation of evidence/material has found his claim genuine! and after noticing the deficiency of service by the Insurance Coy, awarded claim in part with interest to him.

7. We find that the approach of the State Commission cannot be found fault with. While arriving at the conclusion that showroom at Beerwa Bus

Stand is in fact covered by the Policy, the Commission has minutely examined the reports and depositions of preliminary Surveyor Mr. Waris

Sheikh, as well as the Surveyor and Loss Assessor Mr. M.N Aijaz. The Commission has noted that though the Surveyor Mr. M.N. Aijaz has

referred to Abdul Hamid Ahanger, Ghulam Jeelani and Ghulam Mohd. Ganai, as the persons from whom he enquired about the matter on spot,

but neither their statements have been recorded nor their statements have been tendered in evidence nor there is anything on record to show that

any other witness has supported this version put forth by the Surveyor. The Surveyor has visited the spot on 1551997, to investigate the claim

when the fire broke out and destroyed the show room on 291996. What the Surveyor could find on site on his visiting after 81/2 months of the fire

incidence in anybody's guess. The preliminary Survey by Mr. Waris Sheikh did not show that there was no show room of ""Waza Carpets"" in

Beerwa Bus Stand but what he pointed out was the doubt he entertained about such shoe room and hence re^ quested for a detailed investigation.

As pointed out by the Commission on thorough examination of the matter in its order, we find the reports of both these surveyothers, is based on

inferences drawn from the Insurance Policy contents and not on evidence examined/material received in the case. Respondent/Complainant and his

witnesses, Bashir Ahmad Wani, Ghulam Nabi Dar. Ali Mohd. Khan, Ali Mohd. Ganai and Mohammad Ayoob bancley have all testified that the

complainant had a decent Carpets show room in the shop situated at Bus Adda Beerwa. Copies of the rent note concerning the shop. FIR to

Police, Fire Service report, shop registration certificate, affidavit in support of hypothecated stocks issued by the Bank and correspondence of the

Beerwa Bank Branch made with its Head Office and the Insurance Coy all corroborate the above ocular evidence of, complainant having

showroom in the shop at Beerwa Bus Adda, where he stocked the Carpets, hypothecated with J and K Bank. The parol and ocular evidence in

totality, firmly and substantially support the conclusion of the Commission that there was a show room in Beerwa Bus Stand of ""Waza Carpets"", where Carpets of different sizes and kinds were stocked which were destroyed in the fire incident covered by the subsisting Insurance cover. Even

the circumstantial and physical evidence referred by the Commission is available of the above conclusion.

8 The two reports of the Surveyothers no where show that the insurerrespondent before us. was afforded real and effective opportunity to meet

raised objection(s) of Surveyothers The report of the loss Assessor Mr. M.N. Aijaz is quite unsatisfactory and gives an impression of having been

drafted casually with a cavalier attitude or made to meet the desired end. We do not find the order under appeal vitiated or legally infirm. It is

based on evidence, parol and documentary as well as material placed before the Commission The award of claim of Rs. 3 lakhs after treating the

claim as substandard and after giving 25% remission on application of doctrine of approximation cannot be said to be unreasonable and not based

on facts, evidence and circumstances of the case, However, we notice that award of 12% interest on the sum from the date of loss merits to be

modified to the extent that this rate of interest shall be payable six months after the loss till payment

9 In result, with the indicated modifications of payment of rate of interest, six months from the date of loss, till payment, the impugned order is

confirmed. The appeal except to the extent as above is dismissed.

