
(2010) 07 J&K CK 0024
In the Jammu And Kashmir High Court
Case No : C.I.M.A. No. 129 of 2009

United India Insurance Company	Vs	APPELLANT
Mrs. Parmeshwari Sawhney		RESPONDENT

Date of Decision : 12-07-2010

Acts Referred:

Citation : (2012) ACJ 370 : AIR 2010 J&K 138 : (2010) 4 JKJ 898

Hon'ble Judges : Hasnain Massodi, J; Hakim Imtiyaz Hussain, J

Bench : Division Bench

Judgement

Hasnain Massodi, J.—Mrs. Parmeshwari Sawhney-Respondent herein, insured property known as ""Sawhney Mansion"" situated at -

Srinagar with the Appellant Insurance company in the year 2003-2004 (herein after referred to as Appellant Company). The insurance policy-

Standard fire Policy"" was obtained by the Respondent from Lucknow branch of the Appellant company on 26th November, 2003 and was valid

up to 25th November, 2004. The insured property during intervening night of 1st/2nd February, 2004 was gutted and extensively damaged in a

devastating fire mishap. The fire incident was reported to Police Station, Kothibagh, on 2-2-2004 whereupon an case FIR No. 14 of 2004 was

registered. The Respondent some time after the fire mishap, laid a claim for compensation before the Appellant Company. The claim was

registered as 0801010/01/11/03/00004. The Appellant Company deputed Shri Vinod Sharma as Surveyor and Assessor from Delhi, to assess the

loss. On inspection of the gutted structure the loss was assessed at an amount of Rs. 27,23,177/- as against the total insurance cover of Rs.

77,68,000/-.

2. The Appellant Company notwithstanding the report of Surveyor at Loss Assessor repudiated the claim set up by the Respondent. The

objections raised mostly related to non-submission of title documents in respect of insured property. The Respondent confronted with the

recalcitrance of the Appellant Company was left with no option, but to approach Jammu and Kashmir State Consumer Disputes Redressal

Commission with a complaint. The complaint was registered as complaint No. 72 of 2007. The Respondent complained that the Appellant

Company, without any cause or justification and despite being under contractual obligation, repudiated claim raised by the Respondent and that the

State Consumer Disputes Redressal Commission, had jurisdiction to entertain and deal with the complaint and command the Appellant Company

to pay compensation, assessed by the Surveyor and Loss Assessor appointed by the Appellant Company.

3. The Appellant Company, in its reply to the complaint, insisted that the complaint was not maintainable because of non-joinder of a Lucknow

Branch of the Appellant Company, wherefrom the Insurance policy was obtained. The claim was stated to be raised after long delay which

according to the Appellant Company was not explained by the Respondent. The Appellant Company pleaded that the Respondent was owner of

only 1/4th share of the insured property and the Power of Attorney executed in her favour by other three co-sharers, did not clothe the Respondent

with the status of ownership in respect of the insured property. The Respondent, according to the Appellant Company, had wilfully withheld

important information as regards extent of her ownership in the insured property. The suppression of aforesaid information, according to the

Appellant company, disentitles the Respondent from the compensation and gives the Appellant company right to repudiate the claim. The

Appellant company while admitting that on receipt of the insurance claim, the company appointed Sh. Vinod Sharma Surveyor and Loss Assessor,

for assessment of the loss to the insurance property and that Shri Vinod Sharma assessed the loss at Rs. 27,23,177/- as reflected in report dated

18th January, 2005, company pleaded that even if Respondent's claim was accepted the Respondent in view of her share in insured policy was at

the most entitled to 1/4th of the assessed loss.

4. The Commission on perusal of the complaint and response of the Appellant company and the record and on hearing the Learned Counsel for

the parties accepted the complaint and held the Respondent entitled to receive Rs. 27,23,177/- along with interest at the rate of 8% per annum

from 18-1-2005, to receive from the Appellant company. The Commission also awarded 8% interest on the amount awarded, from the date the

Surveyor and Loss Assessor, submitted his report to the Appellant company.

5. The judgment and order are assailed in this Statutory appeal on the grounds almost identical to the objections taken up before the Commission

in reply to the complaint. It is pleaded that Commission has erred while holding the Respondent entitled to the entire assessed amount

notwithstanding extent of her share/ownership rights in insured property. It is urged that the Appellant company had no contract with the co-

sharers of the Respondent, who held 3/4th share of the insured property and the Appellant company was not under any obligation to indemnify the

other co-sharers on account of loss suffered. The Power of Attorney, pressed into service by the Respondent before the Commission to claim the

entire assessed amount, according to the Appellant company did not confer any proprietary rights in respect of the 3/4th share of insured property

on the Respondent. It is insisted that the Respondent in the circumstances could not derive any power/right from the Power of Attorney to receive

the entire assessed amount. The Appellant company urges that the ownership rights and insurable rights in the insured property in respect of

insured property coexist and cannot be treated as two different concepts. The Commission is said to have erred while awarding interest from the

date of receipt of the Survey Report and quantify the litigation expenses in the sum of Rs. 25,000/-.

6. We have gone through the memorandum of appeal, and judgment and order of the Commission dated 22-6-2009 - impugned herein. We have

heard learned Counsel for the parties.

7. The core issue involved in this appeal is whether the Respondent though having only 1/4th share in the insured property was competent to insure

the property beyond her share and whether the Respondent because of damage to the insured property in the fire mishap was to be indemnified by

the Appellant company to the extent of loss assessed by the Surveyor and Loss

Assessor, appointed by the Appellant company, All other issues

as regards rate of interest and the date from which the interest is to be calculated or the costs quantified are peripheral in nature.

8. It is no more res-integra that insurance of subject-matter and its ownership may not go together and contract of insurance may very well cover

the interest of a person other than the person(s) insuring the interest/property. The person insuring the interest may not be the owner of the

property. The contract of insurance is valid as long as there is an insurable interest in the property. The litmus test to determine, whether the

persons claiming insurable interest would suffer pecuniary loss in the event of loss of property or would attain pecuniary advantage from the

preservation of the insured policy.

9. It is equally well settled that a person having partial interest in the property is entitled to insure to the extent of full value of the property rather

than to the extent of his actual interest. It is not necessary that all the co-sharers should become a party to the insurance policy. Once the insurance

company receives premium for the whole property from the insured, it makes itself liable to indemnify the loss to the property and not to the extent

of share of the co-sharer who steps forward to insure the property. Cases are conceivable where all the co-sharers of a building are not available

when the building is insured or the term of the insurance policy already obtained for the building, comes to an end. In such event one or more co-

sharer may obtain the insurance policy not necessarily restricted to their share in the building and may obtain an insurance policy for whole of the

building/property. The insurance Company after having accepted premium for the whole of the property cannot in the event of a fire mishap turn

around, as is tried to be done in the present case, and the Company shall only pay to the co-sharer who insured the property and that also to the

extent of their share of the property.

10. In the present case the Respondent even if accepted to be holding V* of the share in the insured property viz. "Sawhney Mansion" decided to

insure whole property, 3/4 part of which is held by her two daughters and son and the Appellant company accepted the premium and insured

property for an amount of Rs. 70,68,000/-. The Appellant company while admitting all the elements of Respondent's claim cannot wriggle out of its

responsibility under contract to indemnify the Respondent against the loss assessed by its Surveyor and Loss Assessor on the ground that another co-sharers had not taken Insurance Policy for their share of the property. In such a case what is important is not the number of co-sharers who have come forward to obtain from the insured the property but the extent of property that has been brought under insurance cover. The reason being that it may neither be possible for one of the co-sharers of a joint property nor in the interest of the Insurance Company to permit insurance of a segment of or undefined/un-delineated part of the insured property. It is always safe for the Insurance Company as well as for one of the many co-sharers in the joint property that whole property is insured and pay premium on whole insured amount. The position becomes less controversial where the other co-sharers neither question the right of one of the co-sharers who has insured whole of the property to insure the property, nor oppose the payment of assessed loss to the co-sharer(s) who took the risk to pay whole of the premium and step forward to insure the joint property. In the case in hand, the co-sharers who did not join the Respondent in insuring the property in question, have not only accepted right and authority of the Respondent to insure the property but have executed a Power of Attorney in favour of the Respondent authorizing her to collect the entire amount of assessed loss. Needless to mention that where one, amongst many co-sharers, volunteers to insure a joint property and the insured property thereafter suffers a loss and such co-sharer is indemnified and by the insurance company, the amount of loss assessed, the co-sharer holds the amount received in trust on behalf of other co-sharers, and is bound under a quasi contract to pay to the co-sharers their respective shares out of the amount so received. The controversy if any as may arise regarding payment of the amount of assessed loss to the co-sharers by co-sharer who insured the whole of the property is essentially between the co-sharers of the insured property and the Insurance Company has no role to play in such controversy. The Insurance Company goes off the hook, the moment it the co-share(s) who insured the property and paid the premium, leaving disbursement of the amount of the assessed loss, to the co-sharers.

Viewed thus there is no merit in the appeal. However there is substance in the ground taken up in appeal as regards the date with effect from which

the interest at the rate of 8% was directed to be paid by the Appellant Company. The Commission has directed interest on the amount of assessed loss to be payable with effect from 18-1-2005, i.e. the date the Surveyor and Loss Assessor submitted his report. There is merit in the argument advanced by the Learned Counsel for the Respondent, that the Commission ought to have taken note of the period the Appellant Company would require to take a decision on the claim, after the assessment report was received. In the circumstances without directing any change in the rate of interest awarded by the Commissioner, the interest is held to be payable with effect from 18-6-2005 i.e. six months after the assessment report was received by the Appellant Company from Surveyor and Loss Assessor. The appeal is accordingly disposed of.

The appeal shall go to records after due completion.