

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on : 03.10.2024
Pronounced on:08.10.2024**

MA No.185/2018

Oriental Insurance Company
incorporated under Companies Act having its
registered office at Oriental House, A-25/27,
Asaf Ali Road, New Delhi and Divisional Office
at Town Hall, Jammu.

through its Sr. Divisional Manager
Sh. Dhuni Singh Mottan,
Divisional Office, DO-II, Channi Himmat,
Jammu. Age:58 years

.....Appellant(s)

Through: Mr. D.S. Chouhan, Advocate.

versus

1. M/S Shalimar Wine Shop
through its Proprietor Sh. Anil Kohli,
S/O Late Sh. Mela Ram Kohli,
R/O Ward No.5, Kathua.

2. J&K State Consumers Disputes Redressal
Commission, Jammu.

.....Respondent(s)

Through: Mr. Rajesh Kumar, Advocate.

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE M.A. CHOWDHARY, JUDGE**

JUDGMENT

Tashi Rabstan – CJ

1. This Civil 1st Miscellaneous Appeal has been filed against the award dated 15.03.2018 passed by the J&K State Consumer Disputes Redressal Commission, Jammu, in Complaint No. 3607 of 2014, whereby the learned Commission, while allowing the complaint of complainant-respondent No.1

herein, has held that the complainant is entitled to Rs.19,11,153.66/- along with interest @ 10% from the date of claim till its realization together with litigation charges of Rs.10,000/-.

2. The facts-in-brief are that the wine shop of respondent No.1 had suffered extensive damage on account of eruption of violence in Kishtwar in August, 2013. Respondent No.1 had obtained insurance cover against the said shop from appellant herein, i.e., Oriental Insurance Company, for the period of 11.01.2013 to 10.01.2014 and the sum insured was Rs.22.00 lacs. The surveyor appointed by the insurance company, though assessed the loss suffered by respondent No.1 to the tune of Rs.29,24,212.96/-, yet the surveyor in his report held respondent No.1 to be entitled to Rs.19,11,153.66 only, after making some deductions. Since respondent No.1 had been given an *ex gratia* amount of Rs.3.50 lacs from the Government, as such the insurance company held that respondent No.1 is entitled to an amount of Rs.19,11,153.66 less by Rs.3.50 lacs received as *ex gratia*. Thus, the Insurance Company held respondent No.1 to be entitled to an amount of Rs.15,61,153. Feeling aggrieved, respondent No.1 filed a complaint before the J&K State Consumer Disputes Redressal Commission, Jammu and the Commission vide order dated 15.03.2018 allowed the complaint and held that the complainant is entitled to Rs.19,11,153.66/- along with interest @ 10% from the date of claim till its realization together with litigation charges of Rs.10,000/-. Hence, the present appeal on behalf of Insurance Company.

3. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the appeal file.

4. Admittedly, the insurance company has neither disputed the factum of suffering extensive damage to the wine shop of respondent herein on account of eruption of violence in Kishtwar in August, 2013, nor the Insurance Company denied having insured the wine shop by respondent No.1. The first surveyor deputed by the insurance company, namely, Mahesh Badyal Surveyor and Loss Assessor specifically reported that the stocks lying in the shop of respondent herein were completely burnt, looted and damaged by the rioting mob. Another Surveyor deputed by the Insurance Company, namely, Consolidated Surveyors Pvt. Ltd. also reported that the entire stock was badly damaged and carried no salvage value. The total damage reported by it was to the tune of Rs.29,24,212.96 and after making certain deductions, the surveyor reported the net loss to the tune of Rs.19,11,153.66.

5. Admittedly, as per the report of surveyor, the total loss occurred was to the tune of Rs.29,24,212.96 and the Insurance Company has not disputed the said report, whereas the sum insured under the insurance policy was to the tune of Rs.22.00 lacs; meaning thereby the total damage suffered by respondent No.1 was much more than the total sum insured by the insurance company. However, the net loss assessed by the surveyor after making certain deductions was to the tune of Rs.19,11,153.66.

6. A perusal of the objections filed by the Insurance Company to the complaint of respondent No.1 herein reveals that the Insurance Company had approved the claim of respondent No.1 for an amount of Rs.15,61,153/- less by Rs.3,50,000/- on the ground that respondent No.1 had already been paid an amount of Rs.3,50,000/- as *ex gratia* relief by the Government; meaning thereby had the Government not paid the *ex gratia* relief of Rs.3,50,000/- to

respondent No.1, then, in that eventuality, the Insurance Company would have been ready to pay the total net assessed amount of Rs.19,11,153.66 to respondent No.1. Further, it is not the case of Insurance Company that respondent No.1 had suffered loss below the amount of Rs.19,11,153.66, rather it is the specific report of the surveyor deputed by the Insurance Company that respondent No.1 had suffered a total loss of Rs.29,24,212.96, which was much more than the sum insured. Therefore, even after getting an amount of Rs.19,11,153.66 from the Insurance Company plus the amount of Rs.3,50,000/-, already received by respondent No.1 from the Government as ex gratia relief, still the total of both would certainly be much below the actual loss suffered by respondent No.1 to the tune of amount of Rs.29,24,212.96. Otherwise too, the total sum insured was Rs.22.00 lacs for which respondent No.1 had certainly paid the premium. Therefore, it does not lie in the mouth of Insurance Company to deny the claim to the insured upto the sum insured once it has taken the premium. The Insurance Company is bound to pay the claim against the sum insured. It is not the business of Insurance Company to see whether the person suffering damages has been paid some sort of relief from other source or not.

7. The Apex Court in **Sudesh Dogra vs Union of India, (2014 (6) SCC 486)**, has held that “the petitioners who are widows of the victims of the unfortunate incidents of violence have received ex-gratia of Rs.1 lakh each both from the State of Jammu & Kashmir and State of Chhattisgarh. Ex-gratia is an act of gratis and has no connection with the liability of the State in law.”

8. Further, what is held by a Division Bench of this Court (Srinagar Wing) in National Insurance Co. Ltd. vs Kh. Gh. Mohd. Shah, CIA No.63/1975, decided on 10.07.1979, would be relevant to reproduce hereunder:

“10. The learned counsel for the appellant then submitted that the compensation which the plaintiff received from the Government be deducted from the amount that 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 the plot. The company claims that in case the plaintiff's suit was decreed it may be given the benefit of the amount already received by the plaintiff and the same 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 could not be said that it was because of that the said amount was given to the plaintiff by the State Govt. 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 help from other quarters, say, from his relatives and from others. Will such amounts also be claimed to be deducted from the amount of decree? The answer could be only in the negative. The fire Insurance Company was liable 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 insurance after proper survey and subject to 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 other sources.”

9. Similarly, what is held by a Division Bench of this Court (Srinagar Wing) in United India Insurance vs Gh. Mohd. Mir, CIMA No.246 of 1997 decided on 11.05.1998, would also be relevant to reproduce hereunder:

“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 v. Ghulam Mohd Shah, reported in 1979 KLJ page 430. We hold that an ex gratia relief is a relief granted by the Government, as a welfare state for rehabilitating those of its subjects upon whom a catastrophe has befallen whether by vis-major or by some uncontrollable human agency. The Government grant ex-gratia relief by way of grace only. They have

no legal obligation to grant 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 factors which owe their origin to unabated turbulences, the Government, when it comes forward with ex-gratia relief for sufferers, they want to come to the rescue of the sufferers alone and not to the rescue of their insurers unless 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 can 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 ex-gratia relief, the claim to entitlement under the condition is not maintainable.”

10. The judgments cited by the learned counsel for appellant has no direct bearing to the case in hand, thus are not applicable.

11. Viewed thus, we do not find any merit in the appeal and the same is, accordingly, dismissed. Thus, the award passed by the J&K State Consumer Disputes Redressal Commission is upheld along with interest and the costs.

Jammu
08.10.2024
(Anil Sanhotra)

(M. A. Chowdhary)
Judge

(Tashi Rabstan)
Chief Justice

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No