

CASE NO.:
Appeal (civil) 2431 of 2000

PETITIONER:
National Insurance Co. Ltd..

RESPONDENT:
Harjeet Rice Mills

DATE OF JUDGMENT: 25/07/2005

BENCH:
CJI R.C. LAHOTI & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T

P.K. BALASUBRAMANYAN, J.

1. The National Insurance Company, the respondent in a claim before the State Commission under the Jammu & Kashmir Consumer Protection Act, is the appellant before us. M/s Harjeet Rice Mills, the respondent herein, had insured its stocks with the appellant for the period September 1991 to September 1992. The respondent herein approached the State Consumer Commission with a claim that there was an accidental fire in its godown in the night intervening the first and second January 1992; that the goods stocked were lost in the fire; that the surveyor appointed had estimated the loss at Rs. 8,96,500/- on finding that the loss was due to a fire caused by a short circuit; that the appellant had repudiated the claim unjustly; that there was thus deficiency in service and that the respondent was entitled to a sum of Rs. 9 lakhs as the value of the goods lost, to a sum of Rs. 1 lakh as damages for mental agony and for interest at 24% per annum on the entire amount, from the date of the incident of fire. The appellant resisted the claim by contending, inter alia, that the State Commission had no jurisdiction to entertain the claim; that on a further investigation, it was revealed that the fire was not caused by short-circuit; that it was a deliberate act of causing a fire with a view to make a claim on the insurance policy; that the loss was highly exaggerated since the godown concerned did not have the capacity to take in the quantity allegedly stored and lost; that it was a case of an attempted insurance fraud; that the claim was closed as a no claim; that there was no deficiency in service and that the claim was liable to be rejected.

2. The State Commission did not consider the objection to its jurisdiction on merits. It held that the Surveyor's report relied on by the claimant has to be accepted and an order for payment out of that amount with interest thereon at the rate of 18% per annum from the date of the loss till the date of payment had to be made. It also held that the claim for compensation had to be denied, since, if granted, the amount awarded would have exceeded its jurisdiction. Thus, the appellant was directed to pay a sum of Rs. 8,96,500/- with interest thereon at the rate of 18% per annum from 2.1.1992, till the date of payment. The appellant filed an appeal before the High Court of Jammu & Kashmir. The High Court declined to interfere, essentially stating that the finding of fact arrived at by the State Commission, could not be interfered with in the circumstances of the case. Thus, the appeal was dismissed.

3. Learned Senior Counsel for the appellant first submitted that the High Court was in error in not setting aside the decision of the State Commission on the ground that the State Commission lacked

pecuniary jurisdiction to entertain the claim. He pointed out that the pecuniary jurisdiction was limited to entertaining claims for Rs. 10 lakhs or less and that in the present case, the claim was for Rs. 10 lakhs plus interest thereon, taking the claim out of the purview of the Commission. Learned counsel for the respondent submitted that the claim was for Rs. 10 lakhs and the claim for interest cannot take the claim beyond the jurisdiction of the State Commission. He also pointed out that the Act has since been amended and now the Commission has been conferred jurisdiction to entertain a claim for a sum above Rs. 10 lakhs. He also submitted that the objection to pecuniary jurisdiction was not taken at the threshold and the High Court was justified in overruling the contention in that regard.

4. We do not think it necessary to go into this question on merits in view of the course we propose to adopt and in view of the amendment to the Act enhancing the pecuniary jurisdiction of the State Commission and the present claim being within that enhanced jurisdiction.

5. One of the main defences attempted by the appellant was that the fire was not accidental and hence the appellant had no liability under the policy. The respondent- claimant met this plea by pointing out that the surveyor had reported that the fire was caused by a short-circuit as pleaded by it. It is true that the Surveyor's report supported the claim of the respondent herein. But the said report was also based on an investigation by the police, supporting a conclusion that the fire was caused by short-circuit of electricity. It is seen that there was a further police investigation and the Deputy Superintendent of Police R.S. Pura had reported that the earlier investigation was perfunctory, that the cause of the fire has to be properly investigated and in the circumstances a fresh investigation was called for. The appellant had engaged a private investigator to investigate and that agency had reported that the fire might not have been caused by short-circuit; that it could have been arson or a deliberate attempt to make an insurance claim; that the loss estimated could not have occurred considering the capacity of the godown and that the available materials in the custody of the police indicated that what was burned was paddy husk and not rice or paddy itself as claimed. The appellant argued before the Commission that in the light of this report, the Commission should decline jurisdiction and direct the claimant to go to a Civil Court to establish its claim. It was also argued that the report of the Surveyor could not be accepted in the circumstances, especially in view of the report of the Deputy Superintendent of Police. The claimant argued that the report of the private investigator could not be looked into in the light of Section 64 UM(c) of the Insurance Act, since there was nothing to show that the private investigator was licensed. The State Commission accepted the position canvassed for by the claimant and refused to look into the report of the private investigator. The High Court in appeal, also endorsed that position.

6. We are of the view that the State Commission should have given an opportunity to the appellant before us to prove the investigation report. Section 64UM of the Insurance Act cannot stand in the way of the insurance company in establishing that the claim was a fraud on the company, or that it was a case of deliberately causing a fire so as to lay the foundation for an insurance claim. Similarly, the Commission did not apply its mind to the aspect highlighted that the first police investigation was reported to be perfunctory and a fresh, proper investigation had been recommended. Similarly, the discrepancy in the capacity of the godown and the possibility that what was lost was only or mainly paddy husk, should have persuaded the Commission to make a proper enquiry before deciding to accept the Surveyor's report in this

case. The High Court, in our view, has failed to exercise its appellate jurisdiction properly. It failed to see that it had the duty as the Appellate Authority to satisfy itself that no fraud was involved and that the claim was genuine and sustainable. We are of the view that adequate prima facie material was available to warrant a proper enquiry on that question. In this situation, we are satisfied that interference is called for in this appeal.

7. We are satisfied that the proper course to adopt is to set aside the decisions of the High Court and the State Commission and to remand the claim for a fresh enquiry and decision by the Commission. Since, we are of the view that a proper enquiry and a fresh decision by the initial authority itself is called for, we refrain from discussing the relevant aspects argued before us, so as to ensure that no prejudice is caused to either side. Now that the claim comes within the limit of the pecuniary jurisdiction of the State Commission, we are satisfied that the proceedings can be remanded to the State Commission itself for a proper decision on all the questions involved including the question of the cause of fire. We, therefore, allow this appeal and setting aside the decisions of the High Court and that of the State Commission, remand the claim of the respondent herein to the State Commission for an investigation de novo. The State Commission will give the parties effective opportunity to lead whatever evidence they may want and decide the claim afresh, including its sustainability, on the basis of the evidence that may be adduced. The parties will appear before the State Commission on 19.9.2005. We make no order as to costs.