HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU

Reserved on 18.05.2023
Pronounced on 12.06.2023

OWP No.1546/2012
c/w
OWP No.1090/2012

New India Assurance Company Co. Ltd. …..Petitioner(s)

Through: Mr. Jugal Kishore Gupta, Advocate in OWP No.1546/2012
Mr. Jatinder Choudhary, Advocate, in OWP No.1090/2012

Vs.

Pritam Chand & others ….. Respondent(s)

Through: Mr. Jatinder Choudhary, Advocate, in OWP No.1546/2012
Mr. Jugal Kishore Gupta, Advocate, in OWP No.1090/2012

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

Tashi Rabstan – J

1. Both the petitions are directed against the judgment dated 08.06.2012 delivered by the learned J&K State Consumer Disputes Redressal Commission, Jammu, whereby, while setting aside the order of Divisional Forum Jammu, the learned Commission allowed the appeal filed by the claimant and directed the insurance company to pay rupees four lacs as compensation to the claimant.

2. Since both these petitions have arisen out of a common judgment, as such both are being disposed of by this common judgment.

3. The facts-in-brief are that the tractor of original claimant, namely, Mohan Lal was under insurance cover when, on 02.05.2007, the said tractor got damaged in a fire incident while employed on agricultural operation. The claimant lodged a claim before the insurance company. The surveyor deputed by the insurance company after conducting inspection of the damaged vehicle and collecting other relevant documents assessed the net loss to the tune of Rs.3,49,500/-. The insurance company, however, repudiated the claim of claimant on the ground that at the time of incident the tractor-in-question was being used for threshing the wheat of one Mr. Sagar Singh son of Vakil Singh, resident of Village Amli, Tehsil and District Samba on hire and reward purposes, which was against and in violation of the terms and conditions of the insurance policy. Feeling aggrieved, claimant-Mohan Lal filed a complaint before the Divisional Forum, Jammu. However, the Divisional Forum too dismissed the same holding that the tractor along with its thresher was being used by claimant-Mohan Lal on hire and reward purposes outside his own premises for which the insurance company cannot be held responsible for the damages caused to the tractor and thresher. Feeling aggrieved, claimant-Mohan Lal filed an appeal before the J&K State Consumer Disputes Redressal Commission, Jammu and the learned Commission vide its judgment dated 08.06.2012, while setting aside the order of Divisional Forum, Jammu, allowed the appeal and directed the insurance company to pay an amount of rupees four lacs as compensation to the claimant. Hence, the present petitions on behalf of claimant-Mohan Lal as well as the Insurance Company.

4. In OWP No.1546/2012 the insurance company is seeking quashing and setting aside of the judgment/order dated 08.06.2012 passed by the learned Commission, whereas in OWP No.1090/2012 the claimant is seeking enhancement of the award with interest. However, during the pendency of both the petitions, original claimant, namely, Mohan Lal expired and in his place his legal representatives came to be brought on record vide order dated 06.07.2022.

5. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the appeal file as well as the record so produced.

6. Admittedly, there is no dispute that when the tractor-in-question got completely damaged in fire incident on 02.05.2007 it was insured with the New India Assurance Co. Ltd. It is also not disputed by the insurance company that when the tractor-in-question got damaged in the fire incident it was employed in agricultural pursuits. The only ground taken by the insurance company in repudiating the claim of claimant-Mohan Lal is that at the time of fire incident the tractor-in-question was being used outside the purchaser's premises that too on hire and reward purposes.

7. As regards the contention of learned counsel for insurance company that in terms of the policy the tractor-in-question was to be used within the purchaser's premises only, we are in full agreement with the learned State Commission that the tractor, purchased by spending huge amount, cannot be restricted in its use only within the purchaser's premises and that this plea of insurance company is nothing but only a sugar coated argument. The fact of the matter is that when the tractor-in-question got damaged in a fire incident it was actually employed in agricultural pursuits for which the tractor was

actually meant for and the insurance company has not disputed this very fact. The insurance cover specifically provides that the policy does not cover use of tractor for organized racing, pace making, reliability trails and speed testing. And, admittedly, the tractor-in-question was not being used for any such thing at the time of incident. Further, the insurance certificate specifically covers the fire allied perils; therefore, the insurance company cannot be absolved of its liability to indemnify the insured.

8. As regards the contention of learned counsel for insurance company that at the time of incident the tractor-in-question was being used for threshing the wheat of one Mr. Sagar Singh son of Vakil Singh, resident of Village Amli, Tehsil and District Samba on hire and reward purposes, which was against and in violation of the terms and conditions of the insurance policy; the wife of said Sagar Singh, namely, Raj Kumari had sworn an affidavit before the Divisional Consumer Forum specifically deposing that his deceased husband had sold the standing wheat crop to claimant-Mohan Lal and said Mohan Lal was threshing the same being his personal property when the incident of fire had taken place. Not only the wife of Sagar Singh, even nine more witnesses have deposed the same thing. Thus, it cannot be said that claimant-Mohan Lal was using his tractor for hire and reward purposes in absence of any concrete evidence on record. Further, it is settled position of law that when two views are possible, one favourable to the sufferer has to be preferred.

9. It seems the insurance company is escaping of its liability to indemnify the insured least bothering that the incident is of 02.05.2007 and today is 12.06.2023; meaning thereby more than sixteen years have elapsed and the claim has still not been settled, and, in the melee the original claimant, namely,

Mohan Lal lost his life in November, 2021. Further, this Court cannot lose sight of the fact that the award of rupees four lacs came to be awarded on 08.06.2012 and till now more than eleven years have elapsed and during this period the value of rupee has raised many folds.

10. The judgments relied upon by the insurance company are clearly distinguishable and are of no help to the insurance company.

11. Therefore, in view of what has been discussed above, we are not inclined to take a view other than the one taken by the learned State Commission except that the awarded amount shall carry 6% interest from the date of filing of the complaint before the learned Divisional Forum, Jammu till its actual realization. The judgment/award of learned State Commission is, accordingly, modified. It is made clear that after calculation, the insurance company to deposit the excess amount in the Registry within a period of two months from today. On deposit, the amount, minus the amount, if any already released, shall be released in favour of legal representatives of claimant-Mohan Lal in equal proportion after proper verification and identification. Thus, OWP No.1546/2012 filed by the insurance company is dismissed and OWP No.1090/2012 filed by the claimant(s) is allowed in the aforesaid terms. Connected CMAs, accordingly, stand disposed of.

12. Registry to return the record against proper receipt.

Jammu **(Puneet Gupta)** **(Tashi Rabstan)**
12.06.2023 **Judge** **Judge**
(Anil Sanhotra)

Whether the order is reportable ? Yes.
Whether the order is speaking ? Yes.

Pronounced by me in terms of Rule 138(4) of J&K High Court Rules, 1999.

Jammu **(Puneet Gupta)**
12.06.2023 **Judge**