

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

Reserved on : 17.08.2023.

Pronounced on : 15.12.2023.

Case:- OWP No. 348/2010
IA No. 477/2010

**New India Assurance Company Limited,
Divisional Office No. II, Aquaf Market Gandhi Nagar, Jammu
through its Sr. Divisional Manager Mrs. Suman Gupta, aged 53 years.**

.....Petitioner

Through: Mr. Jugal Kishore Gupta, Advocate

Vs

1. **M/s Lekh Raj & Sons 38-C, Ware House, Jammu.**
2. **Mr. Ravinder Aggarwal S/o Lt. Sh. Lekh Raj Aggarwal, C/o 38-C, Ware House, Jammu.**
3. **Jagdish Kumar Aggarwal S/o Lt. Sh. Lekh Raj Aggarwal, C/o 38-C, Ware House, Jammu.**
4. **J&K State Consumer Disputes Redressal Commission, Jammu, Through its President, Manda Jammu.**
5. **Divisional Forum, Jammu, Through its President, District Court Complex, Janipur, Jammu.**

..... Respondents

Through: Mr. Rahul Pant, Sr. Advocate with
Ms. Arushi Shukla, Advocate

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

JUDGEMENT

01. Heard learned counsel for the parties and perused the pleadings and record attending therewith.

02. Through this writ petition under article 226 of the Constitution of India, the petitioner herein is seeking to assail an adjudication made under the Jammu & Kashmir Consumer Protection Act, 1987, whereby the Divisional Forum, Jammu came to allow the consumer complaint of the respondent no. 1 against the petitioner herein thereby holding deficiency of services on the part of the petitioner in the matter of insurance claim of the respondent no. 1 for the loss of insured goods suffered in transit by it and for which the respondent no. 1 came to be awarded an amount of Rs. 3,75,000/- + Rs. 17,000/- = Rs. 3,92,000/- alongwith interest @ 6% per annum with effect from 11.02.2005 till realization along with the costs of complaint of Rs. 3,000/- which verdict of the Divisional Forum, Jammu to be upheld in an appeal by the J&K State Consumer Disputes Redressal Commission, Jammu against which the matter is now subjudiced before us in the present writ petition.

03. Since both the consumer forums below i.e. the Divisional Forum, Jammu and the J&K State Consumer Disputes Redressal Commission, Jammu have arrived at a concurrent findings of fact, as such, we need only to deal with the legal aspect of the matter upon which the petitioner is purportedly seeking to undo the adjudications of the said two forums.

04. The legal aspect is as to whether in the Marine Insurance Policy (Cargo) bearing no. 2135250100207 dated 25.04.2001 for the insurance period 25.04.2001 to 24.04.2002 issued by the petitioner

in favour of the respondent no. 1 with respect to covering the risk during the course of transportation of consignment from anywhere in India to anywhere in J&K State covered the consignment which the respondent no. 1 had procured from Nepal through a dealer to be transported by road journey in India and which consignment was being transported through Truck no. HR-37/3219 having entered India for its onward journey, was to be reckoned as an insured consignment on the clause of “anywhere in India to anywhere in the J&K State.”

05. For the sake of reference, the subject matter clause as incorporated in the said policy, we reproduce the contents as it is:-

“On consignment said to contain goods like edible oil, vanaspati, rice and pulses, milk products, ghee, butter, tinned goods, provision, mixture & namkeen, hard ware spare parts machinery, cattle feed, cigarette, bidies, tobacco and all kiryana and manyari items to be dispatched from time to time from anywhere in India to anywhere in the J&K State.”

06. The admitted facts in the case is that the consignment from point of its origin in Nepal entered India after having suffered the custom check and thereafter the consignment while it was in course of its transit within India was lost and failed to reach the destination i.e. in State of Jammu & Kashmir to be in the hands of the respondent no. 1 for which the respondent no. 1 made a claim for payment of the insured amount which came to be declined by the respondent no. 1 purportedly on the plea that the origin point of

the transportation of the consignment was from Nepal and that was to be reckoned as not covered under the scope of the said policy. Both the forums below have not acceded to the said plea of the petitioner for the respective reasons as given in the respective judgments.

07. Both the consumer forums below have kept in mind the principle settled by the Hon'ble Supreme Court of India in the case of "United India Insurance Co. Ltd. Vs M/s Pushpalaya Printers, AIR 2004 SC 1700 pertaining to the matter of interpretation of insurance contract obtaining between an insurer and insured in the context of two possible interpretations one beneficial to the insured and the other contrary to the benefit of the insured. The mandate of the judgment is that in such like eventuality, the interpretation beneficial to the insured to be accepted consistent with the purpose for which the policy is taken, namely, to cover the risk on the happening of certain event.

08. Bearing in mind the said principle, when we examine the facts and circumstances of the present case, the petitioner has nowhere set up a case as to how the particular purpose for which the insurance cover was taken to secure the transit of the consignment from anywhere in India to anywhere in the State of Jammu & Kashmir was in conflict with the origin point of despatch of the consignment being in Nepal but transit taking place upon entry into India. Now, the consignment which started its original

journey from outside India was in a state of non-insurance but upon entering India to resume its onward transit as being anywhere in India so as to reach anywhere in J&K is very obvious risk which was assured to be covered by the petitioner in favour of the respondent no. 1. In case, if the petitioner, as being the author of the insurance policy, was of a thought process that no consignment, which would originate in terms of its despatch beyond borders of India but upon entry in India would resume its transit, is to be covered under a given policy, then it was for the petitioner to have expressly stated the position as a condition in its policy for the better understanding of the consumer i.e. the respondent no. 1 herein, otherwise the respondent no.1 was well within its right to stay under a valid and legitimate assurance and impression that the consignment immediately upon reaching within the territorial limits of India for the purpose of its transit to come to J&K is fully secured under the policy cover taken, and, therefore, was entitled to reckon the loss of goods in consignment as an insured loss of goods in consignment for the petitioner to make good the loss.

09. In the case of ***“New India Assurance Co. Ltd Vs M/s Hira Lal Ramesh Chand & others,” 2008 AIR(SC) 2620***, the expression *“warehouse to warehouse”* in an insurance policy referable to insurance cover duration that is when the insurance cover commences and when it comes to an end. In this case, after making a thorough understanding and analysis of the subject attending the marine insurance, the Hon’ble Supreme Court of India

came to hold in para 17 that in view of the insurance cover extending “warehouse to warehouse” the consignments were covered by insurance not only during the sea journey, but beyond as stated in the policy and did not agree with the contention of the insurance company that the insurance cover was available only in regard to maritime perils that is perils relating to or incidental to the navigation of the sea.

10. In the present case, the expression “anywhere in India to anywhere in J&K” would mean the duration of insurance cover extended to the insured consignment of the respondents having no relation with the point of despatch of said consignment.

11. In view of the aforesaid, we do not see anything legal and factual to take a counter view to the one taken by the two forums below and, therefore, this writ petition deserves dismissal. Accordingly, this writ petition is **dismissed** along with connected application.

(RAHUL BHARTI)
JUDGE

(TASHI RABSTAN)
JUDGE

JAMMU
15.12.2023
Muneesh

Whether the order is speaking : **Yes**

Whether the order is reportable : **Yes**