

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No. 1298/2015
 IA No. 1/2015

Reserved on: 23.11.2022
Pronounced on: 31.01.2023

The New India Assurance Co. Ltd. Through Its Divisional Incharge (Officiating) Sh. Kapil Sharma Age 50 Years Divisional Office –II Aquaf Market Gandhi Nagar Jammu.Petitioner(s)

Through:- Sh. S. Rupinder Singh, Advocate

Versus

1. **Dwarka Nath** S/O Late Sh. Chajju Ram R/O 3/116 Indira Vihar Old Janipur Jammu (deceased left by LRs (i) Smt. Chintpurni Khajuria (wife) (ii) Sanjay Khajuria (Son) & (iii) Sonia Sharma (W/o Sanjay Sharma);
2. District Consumer Redressal Forum Through Its President District Court Complex Janipur Jammu;
3. J&K State Consumer Dispute Redressal Commission Through Its President National Highway Manda JammuRespondent(s)

Through:- Sh. Govind Raina, Advocate for R-1.

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

J U D G M E N T

Per Mohan Lal-J

1. Writ petition under Article 226/227 of the Constitution of India r/w Sections 103 & 104 of the Constitution of State of Jammu and Kashmir has been preferred by the petitioner against respondents in the nature of certiorari against the judgment and award dated 13-11-2014 rendered by respondent No.3 whereby the judgment/order passed by respondent No.2 dated 01.10.2012 in File No.441 dismissing the complaint of respondent No.1 against petitioner's company has been overruled, and by allowing the appeal the award of Rs. 2.00 lacs alongwith consolidated amount of Rs. 10000/- as compensation for litigation charges totaling the liability of Rs. 2.10 lacs has been ordered to be paid by petitioner's company to indemnify the admitted policy of the insurance in favour of Respondent No.1.
2. Aggrieved of and dissatisfied with the impugned judgment/award dated 13-11-2014 passed by respondent No.3, petitioner has assailed it's legality,

proprietary and correctness, and has sought its setting aside/quashment on the following counts:-

- (i) that respondent-1 claimed himself to be the driver-cum-owner of vehicle bearing registration No. JKN/8366 (Tata-1210-Make) which was under insurance coverage with the branch of petitioner's company at Bari Brahmana Jammu **vide Policy No. 352501/31/04/00531 covering the period w.e.f 28.06.2004 to 27.06.2005** against the payment of premium of Rs.3605/- which included the **Compulsory Personal Accident Cover to owner and driver for an amount of Rs.2.00 lacs**;
- (ii) that during the currency of the insurance policy, the vehicle is alleged to have met with an accident on 31.12.2004 regarding which FIR No. 2/2005 came to be registered in Police Station Domana (Jammu) respondent No.1 being the driver-cum-owner of the insured vehicle sustained injuries on his persons and suffered permanent disablement;
- (iii) that the complaint was filed by respondent No.1 with respondent No.2-District Consumer Forum Jammu on 27.11.2007 which was registered as case file No.441 claiming therein that respondent No.1 has suffered permanent disablement during accident and became entitled on account of the insurance coverage of having suffered permanent disablement, the act of the insurance company in not settling the claim of the respondent No.1 amounted to unfair trade practice and deficiency in service;
- (iv) that the petitioner's company defended its case and filed detailed objections in the complaint which was resisted on the grounds, that the complaint does not fall within the purview of Consumer Protection Act and the disablement of 22% which was alleged to have been suffered by the complainant/respondent No.1 does not fall within the purview of policy conditions issued by the branch office of the petitioner's company under standard format of the Commercial Vehicle Package Policy Personal Accident Cover for the owner and driver which specified that the insured/injured is entitled to the claim in case there is death or loss of two limbs or sight of two eyes or one limb and sight or one eye (100%) or loss of one limb or sight of one eye (50%) or permanent total disablement from injuries other than named above provided always that (100%), but in the present case the insured/respondent No.1 has only suffered permanent physical disability of 22% therefore he is not entitled to the claim, that the complaint was hopelessly time barred, complainant/respondent No.1 never approached to the petitioner's company for settlement of his claim and had he approached the company would have passed a reasonable order, the injuries suffered by R-1 do not fall within the four corners of the policy clause of the insurance policy obtained by him therefore R-1 is not entitled to compensation of Rs.2.00 lacs, complaint is not maintainable as was hit by delay and latches having been filed beyond the period of limitation of two (2) years as provided under Section 18-A of The Consumer Protection Act 1987, respondent No.1 took up the matter in an appeal filed before respondent No.3 (J&K State Consumer Disputes Redressal Commission) which was registered as Appeal No. 3439 of 2012 *inter-alia* on the ground that respondent No.2

(District Consumer Forum Jammu) has wrongly dismissed the complaint being time barred and not covered under the policy moreso R-2 failed to appreciate the fact of disability suffered by respondent No.1 and wrongly concluded the claim to be time barred whereas the plea of limitation ought to have been liberally construed by the respondent No.2 as the delay if any caused was only due to unavoidable circumstances beyond the control of the complainant/respondent No.1 which could have been condoned.

3. Sh. S. Rupinder Singh, learned counsel for the petitioner, while recapitulating the grounds averred in the memo of petition for setting aside the impugned judgment/order dated 13-11-2014 rendered by respondent No.3 has vehemently canvassed arguments, that the injuries suffered by complainant/respondent No.1 do not fall within the purview of policy conditions issued by the branch office of petitioner's company under standard format of the Commercial Vehicle Package Policy Personal Accident Cover for the owner and driver which specifies that the insured/injured is entitled to the claim in case there is death or loss of two limbs or sight of two eyes or one limb and sight of one eye (100%) or loss of one limb or sight of one eye (50%) or permanent total disablement from injuries other than named above provided always that (100%), but in the present case the insured/respondent No.1 has only suffered permanent physical disability of 22% therefore is not entitled to the claim. It is argued, that the complaint filed by R-1 before R-2 was hopelessly time barred, the injuries suffered by R-1 do not fall within the four corners of the policy clause of the insurance policy obtained by him therefore R-1 is not entitled to compensation of Rs.2.00 lacs, complaint is not maintainable as was hit by delay and latches having been filed beyond the period of limitation of two (2) years as provided under Section 18-A of The Consumer Protection Act 1987. It is moreso argued, that respondent No.3 has totally overlooked the policy conditions covering Personal Accident Cover for owner/driver, the law of limitation has not been correctly applied and without any legal justification R-3 has set aside the order of respondent No.2 District Consumer Forum Jammu thereby allowing the complaint of respondent No.1 and awarding him claim of Rs. 2.10 lacs to be indemnified by the petitioner's company. In support of his arguments, learned counsel for the petitioner has relied upon the judgment of Madras High Court rendered in "**New India Assurance Co. Ltd.—Appellant versus M. Subramanian—Respondent**", **[2012 (22) R.C.R (Civil) 841]**.

4. Sh. Govind Raina, learned counsel for respondent No.1, Per Contra, has strenuously argued, that the claim preferred by complainant/respondent No.1 before R-2 is covered under the provisions of Personal Accident Cover Policy as respondent No.1 has suffered 100% disability which is covered under Section III of the Standard Forum For Commercial Vehicle Package Policy on account of Personal Accident Cover for owner/driver as per schedule of the policy. It is argued, that complainant/ R-1 has met with an accident on 31-12-2014 which was covered by policy of insurance covering the period w.e.f. 28-06-2004 to 27-06-2005, the limitation of two (2) years as mandated u/s 18-A of Consumer Protection Act 1987 has to be applied liberally and therefore complainant/R-1 is entitled to the claim of Rs. 2.10 lacs as awarded by R-3 and to be indemnified by petitioner's company.
5. We have heard learned counsel for the parties, perused the impugned judgment/order passed by respondent No.3 and the order of R-2 (Divisional Consumer Redressal Forum). We have also gone through the case law referred by learned counsel for the petitioner.
6. In "**New India Assurance Co. Ltd.—Appellant versus M. Subramanian—Respondent**", [2012 (22) R.C.R (Civil) 841] relied by Ld. Counsel for petitioner, Madras High Court while appreciating the insurance claim policy in regard to Personal Accident Cover For Owner-Driver and observing that the insurance company is not liable to pay compensation if injury suffered by the injured does not fall within the four corners of the policy, in para 9 of the judgment held as under:-
 9. The learned counsel for the appellant contended that the injuries sustained by the claimant are not covered under any of the injuries specified under the policy and therefore he is not entitled to make any claim for compensation; and in support of their contention the following decisions are relied upon:-
 - i) **Rakesh kumar vs. United India Insurance Company (FAO 3469 of 2008)**
The contention raised was that the claimant himself was the owner-cum-driver of the vehicle and as such, as he is not a 3rd party, the insurance company is not liable.
The injury suffered resulted in physical disability only to the extent of 10.7 % whereas, he did not suffer any injury to the extent of (ii) loss of two limbs or sight of two eyes or one limb and sight of one eye; (iii) loss of one limb or sight of one eye; (iv) permanent total disablement from injuries other than named above. **Thus the claimant is not covered by any of the categories of injuries as mentioned in the conditions of the policy** i.e. under the

Private car package policy in which the claimant had paid premium of Rs.100/- for compulsory personal accident cover to the owner /driver up to the amount of Rs.2,00,000/-.

ii) United India Insurance vs. J.K.Raju @ Sakthi 2009 STPL (CL) 3747 NC

In this case, the complainant had been covered by Janatha Personal Accident Insurance Policy. His knee was fractured resulting in shortening of lower limb by 0.7 inches. The contention was that the disability alleged was not permanent, total and absolute disability. The state commission held that the disability can be termed as 100% with reference to his employment opportunity but the national commission did not agree with the state commission. **The national commission held that the claimant had not proved that he had been rendered permanently disabled from carrying out any other profession. It was further held that policy condition was not proved.**

Ratio of the judgments (Supra) relied by Ld. Counsel for the petitioner makes the legal proposition abundantly clear, that if the injuries sustained by the claimant are not covered under any of the injuries specified under the policy, the claimant is not entitled for any compensation. In the case laws (Supra) the claimant had only suffered injury/physical disability to the extent of 10.7% and not 100% as is specified in the policy, therefore, the claimant was held not entitled for any compensation. Ratios of the judgments (Supra) squarely apply to the fact of the case in hand. It is admitted case of the parties that claimant/respondent No.1 driver-cum-owner of vehicle bearing registration No. JKN 8366 (Tata-1210-Make) obtained insurance coverage from branch office of petitioner's company vide police No. 352501/31/04/0053 covering the period w.e.f. 28.06.2004 to 27.06.2005 against payment of premium of Rs. 3605 which included the compulsory personal accident cover to the owner-cum-driver for an amount of Rs. 2.00 lacs for which the insurance premium of Rs. 100 was paid by R-1 in favour of petitioner's company. Section-III of the Standard Form for Commercial Vehicle Package Policy on Account of Personal Accident Cover for owner-driver for the sake of reference is referred as under:-

“Subject otherwise to the terms, exceptions, conditions and limitations of this policy, the Company undertakes to pay compensation as per the following scale for bodily injury/death sustained by the Owner-Driver of the vehicle in direct connect with the vehicle insured whilst or mounting into/dismounting from or traveling in the insured vehicle as a co-driver, caused by violent accidental external and visible means which independent of any other cause shall within six calendar months of such injury result in:

Nature of Injury	Scale of compensation
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i)	Death	100.00%
ii)	Loss of two limbs or sight of two eyes or one limb and sight of one eye	100.00%
iii)	Loss of one limb or sight of one eye	50.00%
iv)	Permanent total disablement from injuries other than named above	100.00%

The aforesaid table regarding the nature of injury and scale of compensation makes it abundantly clear, that in case of injuries from S. No. (i) to (iv) in the table, the corresponding scale of compensation is clearly specified. In the case in hand, respondent No.1/claimant took the policy from the petitioner's company for an amount of Rs. 2.00 lacs having insurance cover w.e.f 28.06.2004 to 27.06.2005. Vehicle bearing registration No. JKN/8366 (Tata-1210-Make) of respondent No.1 was under insurance cover with petitioner's company at the relevant time of accident on 31.12.2004 in which accident respondent No1 suffered injuries to the extent of 22%. Dr. V.K.Sharma, Registrar Ortho IIIrd to the Medical Superintendent Government Medical College Hospital Jammu, has furnished his opinion in the certificate issued by him regarding the %age of injury suffered by R-1. The said medical certificate (Annexure-C) to the record of respondent No.2-District Consumer Forum reads as under:

“Govt. Medical College Hospital, Jammu
Medical Records Department

Medical report submitted by Dr. V. K. Sharma Registrar Ortho IIIrd to the Medical Superintendent Govt. Medical College Hospital, Jammu.

Certified that Mr. Dwarka Nath S/o Late Sh. Chajju Ram R/o 3/116 Indira Vihar Old Janipur Jammu remained admitted under OU-IIIrd via MRD No. 375411 and MLC No. 7338 w.e.f 01.01.05 as a case of injury spine following RTA he was treated conservatively by complete rest and discharged on 10.01.05 and advised regular follow up in Ortho OPD. Presently on examination vide OPD No. 755, he is having low backache (traumatic disc) with restricted range of movements of lumbosacral spine with painful movements with Sec. degenerative changes in lumbosacral spine radiologically. He is unable to squat and cannot perform any strenuous work. **He is permanently physically disabled and his overall permanent physically disability amounts to 22% approximately (twenty two percent).** Sd/-Dr. V.K.Sharma, Registrar Ortho IIIrd.”

The opinion rendered by Dr. V.K.Sharma, Registrar Ortho, IIIrd, Medical College Jammu clearly depicts, that respondent No.1/claimant has suffered permanently physically disablement upto 22%. As per the table appended aforesaid in regard to Personal Accident Cover for owner-driver, in terms of

the column of scale of compensation, R-1/claimant has not suffered 100% or 50% of disablement, but only 22%, therefore, in view of the ratios of the judgments (Supra) R-1/claimant is not entitled any compensation. Moreso, in terms of section 18-A of the J&K Consumer Protection Act 1987 District Forum or the State Commission may not admit a complaint unless it is filed within two years from the date on which the cause of action arises. The occurrence/cause of action had accrued to respondent No.1/claimant on the date of accident on 31-12-2004 but he has filed the complaint before respondent No.2 on 27-11-2007 after the expiry of period of limitation of 2 years, therefore, the complaint before respondent No.2 is time barred. Respondent No.2 (District Consumer Redressal Forum Jammu) therefore has rightly rejected the claim of complainant/respondent No.2 as found not maintainable and time barred. Respondent No.3 (J&K State Consumer Disputes Redressal Commission Jammu) in appeal has wrongly and incorrectly applied the proposition of law and has incorrectly assumed on factual position that R-1/claimant has suffered 100% disablement instead of 22% as opined by the expert doctor and is entitled to compensation for 2 lacs alongwith consolidated amount of Rs. 10000/- as compensation and litigation charges bringing the total liability of Rs. 2.10 lacs to be paid by petitioner's company in favour of respondent no.1.

7. For the foregoing reasons and discussion, we are of the opinion, that respondent No.1/claimant is not entitled to any compensation from petitioner's company. Respondent No.2 has rightly held by its order dated 01-10-2012 that the complaint of respondent No.1 is not maintainable. The impugned judgment/order dated 13-11-2014 rendered by R-3 is held illegal and unsustainable in the eyes of law. In the net result, we hold that the instant appeal succeeds and the order of R-2 (District Consumer Redressal Forum Jammu) dated 01-10-2012 is affirmed, whereas, impugned order of R-3 (J&K State Consumer Disputes Redressal Commission Jammu) is hereby set aside/quashed.
8. Disposed off accordingly.

Jammu
31.01.2023
Vijay

(Mohan Lal)
Judge

(Sanjeev Kumar)
Judge

Whether the order is speaking: Yes
 Whether the order is reportable: Yes