

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

MA No. 09/2018 [FAO (D) No. 02/2019]

Dated: 6th of August, 2021.

Bajaj Allianz General Insurance Company Limited

..... Petitioner(s)

Through: -

Mr N. A. Dendroo, Advocate.

V/s

G. M. Motors & Anr.

..... Respondent(s)

Through: -

Mr Wajid Haseeb, Advocate for R-1; and

Mr A. Hanan, Advocate vice

Mr Z. A. Shah, Senior Advocate for R-2.

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge

Hon'ble Mr Justice Sanjay Dhar, Judge

(JUDGMENT)

Per Magrey; J (Oral):

01. The instant appeal is filed by the Bajaj Allianz General Insurance Company Limited against the award dated 7th of December, 2018 passed by the Jammu and Kashmir State Consumer Disputes Redressal Commission, Srinagar [(now wound up) and (hereinafter referred to as the Commission)] in the complaint filed by the Respondent No.1.

02. The brief facts leading to the filing of the appeal in hand, as come to fore from the perusal of the award impugned, are that the complainant/ Respondent No.1 herein was running an Automobile Service

Center at Beerwah, Budgam and that the stocks in trade were insured with the appellant Insurance Company on 17th of November, 2017 with the validity thereof being from 17th of June, 2011 to 16th of June, 2012 for insured sum of Rs.5.00 lacs. On the intervening night of 4th/ 5th of March, 2012, when the policy was in force, there was a heavy and incessant rainfall which caused inundation to the walls of the building housing the workshop of the complainant/ Respondent No.1, as a result thereof, the rear wall and one side wall of the building collapsed and fell down on the stocks in trade. Thereafter, intimation was, accordingly, given to the Police Station, Beerwah as also to the appellant Insurance Company who deputed their Surveyor. As per the complainant/ Respondent No.1 herein, he suffered loss to the tune of Rs.3.00 lac to the stocks in trade and Rs.2.96 lac to the building which was not insured. On rejection of the claim on part of the appellant Insurance Company, the complainant/ Respondent No.1 filed complaint before the Commission, wherein the Insurance Company repudiated the claim of the complainant/ Respondent No.1 on the ground that there was no loss caused to the stocks in trade. The Commission, in terms of award dated 7th of December, 2018, allowed the complaint and awarded compensation of Rs.2.00 lacs in favour of the complainant/ Respondent No.1, besides holding the complainant/ Respondent No.1 entitled to litigation costs of Rs.10,000/- as well. This award is assailed by the appellant Insurance Company, *inter alia*, on the following grounds:

- A. *That at the very outset the appellant denies its liability to indemnify a concern namely G.M. Motors as the said concern does not stand*

insured with the appellant. Hence the award impugned has been passed in favour of a concern which is not at all insured with the appellant;

- B. That the loss is reportedly suffered by the respondent No.1 due to subsidence of the land caused due to heavy rains on the intervening night of 4th/5th March, 2012. The said loss is not covered under the policy of insurance bearing No. OG-12-1205-4001-00005845 a Standard Fire and Special Peril Policy.*

The said policy specifically excludes the loss caused to the insured items due to incessant rains. The Hon'ble Commission has altogether ignored the relevance of terms of contract of insurance which has no nexus with the relief that has been granted in the impugned award;

- C. That the subject policy insures only the stocks and no building is covered therein. Thus, the appellant was not liable for any loss of &/ or damages to the un-insured building. The policy of insurance specifically mentions the sum insured for Rs. 5.00 lacs only for stocks. The plinth, foundation, superstructure, P&M and furniture fixtures of building etc. have been specifically excluded from the coverage of policy of insurances;*
- D. That after processing the clam of respondent No. 1 the appellant found the claim not payable and the respondent was accordingly informed vide letter dated 24.05.2012 that the claim lodged by him for the loss caused to his building has been closed as no-claim on the ground that the building was not covered under the policy of insurance. The policy of insurance was covering the stocks lying in the workshop. It was further made clear in the letter of no-claim that the loss to the stocks claimed due to incessant rain was not covered under the policy of insurances;*
- E. That the appellant submits that the appellant had deputed a surveyor namely Abdul Irfan to conduct the survey and assessment of loss. The said surveyor did not found any loss caused to the stocks. The said surveyor also prepared an inventory of sound stock found in the workshop amounting to Rs.1,93,156. However, for purpose of assessment the said surveyor has quantified the loss caused to the structure at Rs. 44,883,012. Since the structure of workshop was not covered under the policy of insurance as such the loss was not found payable to the respondent No.1 and accordingly turned down by the appellant. The report of the surveyor also demonstrate that the estimate of loss that has been made by the insured couldn't withstand with actuality, and that the insured had kept some old items above the debris in damaged condition, as well as some new parts and some empty lubricant bottles. Thus, the insured has been trying to get undue advantage from the insurers. Also, in the picture it is quite evident that lubricant cans that could have been opened manually and cardboard boxes over the debris could not have been able to withstand the fury of the rains. These intricate details portray how the respondent No.1 had tried to manipulate the loss to the stocks;*
- F. That the appellant submits that the claim of the respondent was closed as no claim by the appellants on the ground that the policy does not*

insure the claimant's assets except for the stocks, in accordance to the terms and conditions of insurance policy;

- G. That the Hon'ble Commission has landed into error by not scanning the terms and conditions of policy of insurance in proper perspective. Had the policy terms and conditions been scanned in proper way the actual terms of contract would have come to surface which exonerate the appellant from any liability arisen in respect of the loss caused to the workshop;*
- H. That the law is settled on the point that the courts cannot make new contract for parties. The contract of insurance has to be read in the same way in which it has been written/made leaving no scope for the courts to add something to it. The Hon'ble commission has not appreciated the terms and conditions of the insurance policy, coverage granted under the policy of insurances and has erroneously held the appellant liable for compensation and litigation costs;*
- I. That the appellant had not rendered its services under the policy of insurance in a deficient manner. The decision of appellant in closing the claim of respondent as no claim on genuine grounds would not amount to deficiency of service on the part of the appellant. The Hon'ble Commission has committed an error in allowing the complaint. The impugned award as such is bad in law; and*
- J. That the complaint filed by the respondent No.1 was liable to be dismissed. Contrary to this, the same has been allowed erroneously.*

03. We have heard learned counsel for the parties, perused the pleadings on record and considered the matter.

04. The main and primary contention raised in this appeal seeking setting aside of the impugned award passed by the Commission has reference to the fact that the loss suffered by the complainant/ Respondent No.1 was due to subsiding of the land caused due to heavy and incessant rainfall which, as per the appellant Insurance Company, is not covered under the insurance policy governing the relationship of the parties. The contention so raised, we are afraid, has no substance as perusal of the condition of the insurance policy placed on record by the appellant Insurance Company makes it abundantly clear that the insurance is extended to cover the loss or

damage (including loss or damage by fire) to any of the property insured by the policy occasioned by or through or in consequence of earthquake including flood or overflow of the sea, lakes, reservoirs and rivers and/ or landslides/ rockslides resulting thereto. The relevant extract of the policy is extracted hereinbelow, *verbatim*:

“Extension cover shall be granted only if the entire property in one Complex/ Compound/ location covered under the policy is extended to cover this risk and sum insured for this extension is identical to the sum insured against the risk covered under main policy except for the value of the plinth and foundation of the building(s). If option to delete STFI peril is not exercised “in consideration of the payment by the Insured Company of the sum of _____ additional premium, it is hereby agreed and declared that notwithstanding anything stated in the printed exclusions of this policy to the contrary this insurance is extended to cover loss or damage (including loss or damage by fire) to any of the property Insured by this policy occasioned by or through or in consequence of earthquake including flood or overflow of the sea, lakes, reservoirs and rivers and/or Landslide/Rockslide resulting therefrom.”

In view of the aforesaid clear mandate of the policy governing the relationship between the parties, there, thus is no substance in the aforesaid contention raised on behalf of the appellant Insurance Company that the complainant/ Respondent No.1 has no claim on the ground that the loss suffered was not covered by the insurance cover.

05. Apart from the above, the aforesaid contention, though raised, was not, at all, established before the Commission with the support of evidence constraining the Commission to allow the complaint. The appellant Insurance Company has also not produced any document before this Court substantiating this contention which would have necessitated interference from this Court with the impugned award.

06. In the above background, we do not find any merit in this appeal, which is, accordingly, *dismissed*. Interim directions, if any, subsisting as on date, shall stand vacated.

07. Pending applications, if any, shall also stand *disposed* of accordingly.

(Sanjay Dhar)
Judge

(Ali Mohammad Magrey)
Judge

SRINAGAR

August 6th, 2021

"TAHIR"

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| i. | Whether the Judgment is reportable? | Yes/ No. |
| ii. | Whether the Judgment is speaking? | Yes/ No. |

