

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

CJ Court

FAO(D) No.05/2019

New India Assurance Company & Anr. ...Petitioner(s)/Appellants.

Through: Mr Manzoor A. Dar, Advocate, with
Mr Javaid Ahmad, Advocate.

Vs.

Farooq Ahmad Magnoo and Ors.Respondent(s)

Through: Mr. Ateeb Kanth, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

ORDER
22.09.2021

01. Heard Mr Manzoor Ahmad Dar, learned counsel for the appellant-Insurance Company and Mr Ateeb Kanth, learned counsel for the respondent.

02. The appeal has been preferred against the judgment and order dated 24.09.2018 passed by the Jammu & Kashmir State Consumer Disputes Redressal Commission, Srinagar.

03. The claim of the respondents to the tune of Rs.21,30,399/- was accepted by the Insurance Company but not satisfied by the same, the respondent preferred a complaint before the Commission. The Commission, by the impugned order, partly allowed the complaint

holding that the deduction of 30% towards cost adjustment, estimation error disallowances is on the higher side and that it should only be up to 10%. Accordingly, the compensation awarded was enhanced.

04. In filing this appeal, the first and foremost argument of learned counsel for the appellant is that one of the arguments raised from the side of the appellant before the Commission was that the claimants/respondents had executed a discharge voucher in full and final settlement of the claim and, as such, their complaint was not maintainable and this aspect was not considered.

05. The State Commission in passing the impugned judgment has categorically stated that the controversy in the present case is confined to the quantum and later on records that the only question to be determined is whether the surveyor has made deductions in consonance with law. Accordingly, the matter of deduction alone was decided by the State Commission.

06. A reading of the entire judgment of the Commission would reveal that no such argument as to the execution of the discharge voucher and accepting the claim in full and final settlement was raised or argued before it. Even if it is assumed that such an argument was raised before the Commission and it was not considered, the appropriate remedy available to the appellant was to seek review of the judgment of the Commission. The appellant has filed a review but on a different ground which was decided vide order dated 15.03.2019. In that review also, the appellant has not taken any ground that claimants/respondents

had executed a discharge voucher. In such a situation, the contention of the appellant that any point with regard to execution of the discharge voucher was raised before the Commission and had not been considered, cannot be accepted.

07. Learned counsel for the appellant next argued that once the matter was contested, it was incumbent upon the Commission to have allowed the parties to have adduced evidence in terms of Sections 11 and 16 of the J&K Consumer Protection Act but in the present case parties were not given any opportunity to adduce evidence.

08. The submission is of no use inasmuch as the only question which arose for consideration before the Commission was whether the surveyor has made deductions in consonance with law. The said question was dependent upon the surveyors report which was accepted by both the parties and was a legal nature for which no evidence was necessary. Since no other point which required evidence was raised and argued, the Commission committed no error or illegality in passing the impugned judgment and the order.

09. Lastly a feeble attempt has been made to submit that the Commission is not justified in awarding litigation charges of Rs.20,000/- and 7% interest on the amount enhanced by it.

10. The interest has been awarded only on the amount payable in excess of the claim accepted by the Insurance Company. Since, the payment of the adequate compensation had been delayed, there is no illegality in awarding interest on the said amount.

11. As far as the litigation charges are concerned, it is a matter of discretion of the Commission and if it has been found that the claimants/ respondents are entitled to any litigation expenses, no error can be found with the same. It is not the case of the appellant that the litigation expenses are excessive or that the claimant/ respondents have not borne any litigation expenses to the above extent.

12. In view of the above, we do not find any merit in the appeal and the same is dismissed.

13. The appellant/ Insurance Company is directed to deposit the balance amount as per the award of the Commission after adjusting the amount already paid or deposited before the Registrar Judicial of this Court within one month and on deposit the said amount shall be released in favour of the claimants/ respondents. This direction has been necessitated as the Commission is not functional in the Union Territory.

(VINOD CHATTERJI KOUL)
JUDGE

(PANKAJ MITHAL)
CHIEF JUSTICE

Srinagar

22.09.2021

Abdul Qayoom, PS