J&K STATE CONSUMER DISPUTES REDRESSAL COMMISSION JAMMU

C.C. 3619 OF 2014, DT. OF INSTITUTION:25/09/2014, DT OF DISPOSAL 12/08/2026

CASE TITLE:

M/S LAKHAN PAL FABRICATORS, DIGIANA JAMMU, THROUGH RAGHUNATH LAKHANPAL, S/O LT. SH. VIDYA PRAKASH, R/O 97-B, SANJAY NAGAR TEHSIL & DISTRICT JAMMU, PARTNER M/S LAKHAN PAL FABRICATORS, DIGIANA JAMMU.

---COMPLAINANT

VERSUS

1. BRANCH MANAGER, NEW INDIA ASSURANCE CO. LTD., BARI BRAHMNA, JAMMU (J&K).
2. JAGJEET SINGH, DEVELOPMENT OFFICER, NEW INDIA ASSURANCE CO. LTD., BARI BRAHMNA, JAMMU (J&K).

---OPPOSITE PARTIES

CORAM:
SMT. NIGHAT SULTANA, PRESIDENT (O)
SH. MAHEEP GUPTA, MEMBER

PARTIES REPRESENTED BY:
Ms. DEEPALI ARORA, LD. COUNSEL FOR THE COMPLAINANT.
SH. JUGAL KISHORE GUPTA, LD. COUNSEL FOR O.P. 1.
NONE FOR O.P. 2

ORDER DT. 12/08/2026 – PER SH. MAHEEP GUPTA, MEMBER

1. The Complainant is before us being aggrieved of the non-settlement of his insurance claim in respect of loss suffered by him on 03/07/2009.
2. Heard the counsels, perused the records.
3. Ld. Counsel for the O.P. Insurance Company inter-alia argued that the loss occurred on 03/07/2009 whereas the complaint was filed on 25/09/2014, i.e., after a period of more than five years and two months as against the statutory period of two years as such the complaint is not maintainable and needs to be dismissed.

mg

4. Hon'ble Supreme Court vide its judgment in the case titled, "**State Bank of India vs M/S. B.S. Agricultural Industries(I) on 20 March, 2009"** [C.A. NO. 2067 OF 2002, DT. of Decision: 20/03/2009] held that if the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside.
5. Since the O.P. raised the ground of limitation/maintainability of the complaint, it becomes imperative for us to decide the question of maintainability first before going into the merits of the case.
6. We would like to refer to the averments made by the Complainant vide para number 10 to 14 of his complaint and the reply thereto as provided by the O.P. Insurance Company through its written statement:

<u>Para 10 to 14 of the Complaint</u>

10. That when despite repeated requests respondent failed to reimburse the insurance claim of the complainant, complainant through his advocate served a legal notice dated 19.7.2012 on the respondent for reimbursement of compensation. That copy of the legal notice dated 19.7.2012 is annexed herewith as Annexure D.

11. That on 10.8.2012, respondent telephonically contacted the complainant and assured the complainant that his claim is being looked into and further requested the complainant to furnish the photocopies of documents which complainant had already furnished to the respondent.

12. That in compliance to the request of the respondent, complainant vide letter dated 15.8.12 ref no. LPF/New India /B.B/Bhutan/718, resubmitted the photocopies of the required documents to the respondent. That copy of the letter and receipt are annexed herewith as Annexure E. 13.

That however even after resubmission of the documents and despite assurances given by the respondent from time to time, claim has not been settled. Complainant even served legal notice dated 19.7.2012 and legal notice dated 15.5.2013 to the respondent, but still the request of the complainant was not paid any heed. Copy of the legal notices are annexed herewith as Annexure F. 14. That on 5.6.2013, the complainant again approached the opposite party to finalize their claim and also to intimate to them regarding their decision taken to satisfy the claim of the complainant. That further since the opposite party is not settling the claim of the complainant due to which huge

loss is being incurred by the complainant. Copy of this letter along with the receipt is annexed herewith as Annexure G.

<u>Reply to Para 10 to 14 by the O.P. Insurance Company</u>

5. That the contents of paras no. 10 to 14 of the complaint are not denied. However, it is submitted that the complainant had two more claims pending with the answering respondent and the same have been settled and the payment in respect thereof stands made to the complainant. Inadvertently the file pertaining to the present claim was also tagged with the other two claims of the complainant and the same remained unprocessed. The respondent company after the receipt of the notice from this Hon'ble Commission has recalled the claim file and the same shall be processed strictly as per the policy terms and Conditions.

A combined reading of the averments made by the Complaint and the reply thereto made by the O.P. Insurance Company would reveal that the Insurance Claim lodged by the Complainant was under the active consideration of the O.P. Insurance Company at least till 15/06/2013.

7. From the perusal of the written statement filed by the Insurance Company, it is further observed that the Insurance Company claims to have filed the Claim of the complainant as “No Claim” in the year 2009, however, there is nothing on records that would substantiate the stand of the Insurance Company.

   Otherwise also the statement made by the O.P. Insurance Company of having filed the claim as “No Claim” in the year 2009 looses its relevance once the O.P. Insurance Company had itself undertaken to reconsider & settle the claim of the complainant.

8. **Since the insurance claim of the Complainant as per Insurance Co.’s own admission was under its active consideration even at the time of filing its written statement, the cause of action takes the shape of a continuing cause and the instant Complaint cannot be construed having filed belatedly.**

   It is, therefore, held that the <u>complaint was filed well within the time</u> and neither a separate application for Condonation of Delay was required to be filed nor is there any requirement to condone the Delay.

9. Coming to the merits of the case, it is observed as under:

mg

i. That the Complainant had prayed for a relief of Rs.49 Lakhs on account of his insurance claim along with interest @18% p.a. besides a compensation for Rs.1,000/- on account of mental harassment.

ii. Perusal of the legal notice dated 19/07/2012 & 15/05/2013 would, however, reveal that an amount of Rs. 76.00 Lakhs has been claimed by him from the Insurance Company.

iii. At the same time Mr. Raman Lakhanpal had, along with his evidence affidavit, annexed a claim bill amounting to Rs.73,64,392/- (Marked as Annexure R 2).

iv. The Surveyor has assessed the loss to the tune of Rs.4,36,050/-

10. Admittedly, there is a huge variation between the loss as claimed by the Complainant and the loss as assessed by the Surveyor and it was for the Complainant to either establish his loss by examining some independent witness of some expert in the area.

No such independent expert witness was produced/examined by the Complainant.

Under these circumstances, we are left with no other option but to evaluate the survey report to arrive at a fair adjudication of the case.

From the perusal of the Survey Report, we find that the Surveyor has made the assessment on the basis of his physical inspection/ observation of the site, and in the absence of any material to the contrary, we have no reasons to disbelieve the Surveyor who is an independent professional duly authorized by IRDA for assessing the loss.

11. We direct the Insurance Company to pay Rs.9,95,194/- to the complainant, calculated as under:

Particulars	**Amount**
Loss as assessed by the Surveyor	4,36,050/-
Compensation for delay in settlement of claim – calculated @8% p.a. from 14/10/2010 (two months from the date of Survey Report dt. 14/08/2010) to the date of instant order, i.e., 12/08/2026 – Total 16 years.	5,58,144/-
Compensation for mental agony & harassment	1,000/-
Compensation for litigation expenses	NIL
Total	**9,95,194/-**

mg

It will be apt to mention here that the Consumer Commissions are not empowered to award any relief beyond what has been sought and as such we have consciously restricted the compensation on account of mental agony & harassment and litigation to Rs.1,000/- & Nil respectively in line with the prayer clause of the Complaint.

JUDGMENT

1. Complaint is partially allowed and the O.P. Insurance Company is directed to pay Rs.9,95,194/- to the complainant within thirty days of this order failing which it shall be further liable to pay interest @8% p.a. on the entire amount of Rs.9,95,194/- to be calculated from 15/08/2026 till the final deposition of the amount.
2. Office is directed to provide a Certified Copy of this order to all the stakeholders & consign the file to records after due compilation.

Announced on 12/08/2026.

(Maheep Gupta)
Member

(Nighat Sultana)
President (O)

mg