
(1971) 03 AHC CK 0003
In the Allahabad High Court
Case No : F.A.F.O. No. 375 of 1967

Ajodhya Prasad

APPELLANT

Vs

The Premier Insurance Co. Ltd.

RESPONDENT

Date of Decision : 22-03-1971

Acts Referred:

Arbitration Act, 1940 — Section 20

Citation : (1971) ACJ 363

Hon'ble Judges : Satish Chandra, J;A.K. Kirti, J

Bench : Division Bench

Advocate : R.C. Srivastava, for the Appellant; K.P. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—This appeal is directed against an order rejecting an application u/s 20, Arbitration Act.

2. On 23rd December, 1964, the Appellant submitted a proposal of insurance to the Respondent, the Premier Insurance Company Limited. The same day the Respondent company issued a certificate of insurance stating that the insurance for the purpose of the Motor Vehicles Act has commenced on 23rd December, 1964 and will continue till 22nd December, 1965 in relation to the vehicle owned by the Appellant. It appears that on 25th December, 1964 while the truck of the Appellant was in transit from Allahabad to Banda, it caught fire and was on the Allahabad-Banda Road, near Chiwlal. The Appellant claimed reimbursement of a sum of Rs. 28,317.30 P. The Respondent company, however denied its liability. The Appellant at first gave a notice to institute a suit. To that notice the company replied that in view of Clause 8 of the policy, the matter had first, to be raised by way of arbitration before a suit could validly be instituted. Thereupon the Appellants gave notice that the Appellant had appointed Mr. Krishna Nand as the arbitrator. The notice required the company either to agree to the appointment, or to nominate an arbitrator of its choice. At first the company intimated that it will appoint its own arbitrator but later it resiled from that statement and

intimated to the Appellant that since there was no completed contract between the parties, there was no occasion to enforce any arbitration clause thereof. In this situation the Appellant moved the learned civil Judge, Allahabad u/s 50 of the Arbitration Act praying that the company should be directed to file the original policy agreement dated 23rd December, 1964 and to refer the dispute to arbitration.

3. The Respondent company contested the application. It pleaded that the certificate of insurance was procured by the Appellant by practising fraud upon the company. In the next place it was urged that no concluded contract had ever come into existence. The last plea was that since under Clause 8 of the policy all the disputes arising out of the policy had to be settled at Madras, the courts at Allahabad had no jurisdiction in the matter.

4. The learned Civil Judge found that there was no evidence of any fraud having been practised upon the Respondent company. It held that there was no concluded contract between the parties in which an arbitration clause may have been provided. He also held that since arbitration was contemplated to be held at Madras, the courts at Allahabad would have no jurisdiction, because u/s 20 of the Arbitration Act, reference can be made to an arbitrator who can give his award within the jurisdiction of this Court and not beyond it.

5. In our opinion the learned Civil Judge misconceived the true legal position in this case.

6. The entries in the proposal of Insurance submitted by the Appellant contained a declaration that he desired to effect an insurance as described therein with the company. He agreed that the proposal and declaration should be the basis of contract between him and the company and he agreed to accept the policy subject to the conditions prescribed by the company. The certificate of insurance shows that this proposal was accepted by the company. It certified that the policy to which the certificate relates is issued in accordance with Chapter VIII of the Motor Vehicles Act. From all this it is clear that the company had accepted the proposal of the Appellant "and after acceptance had issued the certificate, pending the issuance of the "policy in the usual form, in due course. The proposal was to accept the policy subject to the conditions prescribed by the company well known. They were given on the printed form of policy. The proposal, therefore, implied acceptance by the Appellant of the various conditions given in the form of policy. The acceptance by the Respondent company of the proposal was in law an implied acceptance of the proposal in accordance with the various conditions imposed by the company and written in the form of insurance.

7. In *The General Assurance Society Ltd. Vs. Chandmull Jain and Another* referring to the commercial habits of insurer and insured, it was held that:

The reference to the policy and its terms and conditions may be expressed in the proposal or the cover note or even-in the letter of acceptance including the cover

note. The incorporation of the terms and conditions of the policy may also arise from a combination of reference in two or more documents passing between the parties. Documents like the proposal, cover note and the policy are commercial documents and to interpret them commercial habits and practice cannot altogether be ignored.

A little later it was observed:

A contract is formed when there is an unqualified acceptance of the proposal. Acceptance may be expressed in writing or it may even be implied if the insurer accepts premium and retains it.

In this case it is accepted that on 23rd December, 1964, the Appellant paid the entire premium due on the policy, the Respondent accepted it, retained the amount and issued the certificate of insurance. In these circumstances, it is clear that the transaction had passed out of the realm of negotiations, and had become a concluded contract of insurance.

8. For the Respondent it was urged that the certificate of insurance is a statutory document. It was issued because Section 95 (4) read with Section 93 of the Motor Vehicles Act requires an insurance company to issue it. The nature, character of the effect of the certificate of insurance or the rights or obligations if any arising on it is, however, not relevant or material for our purpose. We have to see whether the parties reached a concluded contract.

9. The observation of the Supreme Court in General Assurance Society Ltd. (Supra) shows that the detailed conditions of the policy impliedly become incorporated in the contract. In the present case the Appellant expressly stated in the proposal that he agreed to accept the policy along with the conditions prescribed by the company. The certificate of insurance or the receipt for the acceptance of premium did not suggest that the company while accepting the proposal, made any reservation in this regard. The proposal will be deemed to have been accepted along with the usual conditions prescribed by the company. It is not denied on behalf of the Respondent that the various conditions prescribed by the company are printed in the policy of insurance. The conditions mentioned in the printed form will be deemed to be incorporated in the contract. Condition No. 8 was that all disputes between the parties were to be decided by arbitration. Thus the contract between the parties did contain an arbitration clause.

10. The second point is whether the courts at Allahabad had jurisdiction to entertain an application u/s 20 of the Act. Section 20 provides that any person who has entered into an agreement of arbitration may apply to a court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in court. Learned Counsel for the Respondent urged that the court having jurisdiction in the matter will be the court within whose jurisdiction the arbitration can take place and the award filed. Under Clause 8, that would happen at Madras.

11. Section 20 does not specify the court where the application can be made. Section 2 (c) Arbitration Act defines "Court" to mean a civil court having jurisdiction to decide the questions forming the subject matter of the reference, if the same had been the subject matter of a suit, here, the contract of insurance was entered into at Allahabad. The premium was paid by the Appellant to the Respondent at Allahabad. It is thus clear that part of the cause of action for a suit arose within the jurisdiction of the Civil Courts at Allahabad. So the courts at Allahabad will have jurisdiction to entertain a suit to decide the questions forming the subject matter of the reference. In this view, the Civil Court at Allahabad validly entertained the present application u/s 20.

12. In Clause 8 of the policy it is provided that the umpire shall sit with the arbitrators and preside at their meetings which shall be held at Madras, and the making of an award shall be a condition precedent to any right of action against the company. There is nothing to indicate that the award was to be delivered at Madras. So this clause will not take away the jurisdiction of the Civil Courts at Allahabad.

13. In the result the appeal succeeds and is allowed. The impugned order of the Court below is set aside. The application u/s 20 of the Arbitration Act is allowed. The matter is sent back to the court below for passing an order in terms of Section 20 (4), Arbitration Act. The Appellant will be entitled to his costs here and below from the Respondent.