
(1974) 05 CAL CK 0027
In the Calcutta High Court

Assam Bengal Roadways (P) Ltd.

APPELLANT

Vs

New India Assurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 20-05-1974

Acts Referred:

Arbitration Act, 1940 — Section 20

Citation : AIR 1975 Cal 322

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mr. Justice Sabyasachi Mukharji

1. This is an application u/s 20 of the Arbitration Act, 1940. The Plaintiff claims reference to arbitration in respect of a marine policy for the loss suffered to the goods. According to the Plaintiff the goods suffered loss or damage due to cyclonic weather while in transit. The insurance policy covered loss by pilferage, theft and water damage. When the claim was made, the insurance company completely repudiated the liability contending that loss, if any, was not covered by the policy of insurance. The said policy of insurance contains the following clause: -

If any dispute arising out of this policy relates to the quantum of claim the same shall be referred to the decision of an arbitrator to be appointed in writing by the parties in difference or if they cannot agree upon a single arbitrator to the decision of two arbitrators, one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties or in case the arbitrators do not agree, by an umpire appointed in writing by the arbitrators before entering upon the reference. The umpire shall sit with the arbitrators and preside at their meetings and the making of an award shall be a condition precedent to any right of action against the company. If the company shall disclaim liability to the insured for any claim

hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provision herein contained, then the claim shall for all purposes be deemed to have been abandoned and shall not after be recoverable hereunder. The venue of such arbitration shall be the place of issue of the policy.

2. The question, is, whether in the circumstances of the case the Plaintiff is entitled to have the arbitration agreement filed u/s 20 of the Arbitration Act and reference made. Clauses like the one noted above generally receive strict construction as was observed by S. B. Sinha, J. in the case of (1) Ganapatrai Gupta v. Moody Bros Ltd. (1949) 84 Cal LJ 136. The question is, whether in the circumstances that have happened, i.e. when the insurance company is contending that loss, if any, was not covered by the policy risk undertaken by the insurance, the arbitration clause is wide enough to include such a dispute. I am of the opinion that it clearly not covered. If the dispute is regarding quantum then and then only can there be a reference under the clause in the agreement as referred to hereinbefore. But if, as in this case, the dispute is whether loss is at all covered by the policy of insurance, then in my opinion, in view of the limited jurisdiction conferred upon the arbitrator by the clause referred to above, the clause cannot be attracted. Support for this view may be obtained from the decisions in the case of (2) Juredini v. National British and Irish Millers Insurance Co. Ltd., 1915 AC 499, decision of the Bombay High Court in the case of (3) The Eagle Star and British Dominions Insurance Company Vs. Dinanath and Hemraj, and the decision of this Court in the case of (4) Nityananda Dutta v. Caledonian Insurance Co., (1968) 72 CWN 733. My attention was drawn by counsel for the Respondent to the decision of the Delhi High Court in the case of (5) Maharaj Singh Vs. Vulcan Insurance Co. Ltd and Another, . There the Clause 18 of the agreement was in the following terms: "If any differences arises as to the amount of any loss or damage such difference shall independently of all other clauses be referred to the decision of an arbitrator". The Court held that the contention that this clause would not apply when the insurance company had repudiated the claim in toto could not be accepted. There the court was concerned with the question whether there was any loss at all. The Court was not concerned with the dispute whether the loss was covered by the policy of insurance or not as in this case. Repudiation of claim can be on various grounds. Repudiation on the ground that no loss has been suffered or about the quantum of loss suffered can certainly be the subject matter of adjudication in a clause of the present type. Where, however, the repudiation is on the ground that loss, if any, to the goods is not covered by the policy, then such a dispute in view of the terms of the arbitration clause cannot, in my opinion, be the subject-matter for reference to the arbitration. In any case, no dispute has yet arisen as to the quantum of loss.

3. In the aforesaid view of the matter, this application fails and is, accordingly, dismissed.

4. In the facts and circumstances of this case, however, I make no order as to cost.
5. The Plaintiff is permitted to file a copy of Insurance Policy.