

(2002) 01 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

A.V.COTTEX LTD.

APPELLANT

Vs

NATIONAL INSURANCE COMPANY LTD.

RESPONDENT

Date of Decision : 16-01-2002

Acts Referred:

Citation : 2002 0 NCDRC 58 : 2002 1 CLT 503 : 2002 1 CPR 82 : 2002 3 CPJ 202

Hon'ble Judges : B.K.TAIMNI , D.P.WADHWA , RAJYALAKSHMI RAO J.

Advocate : ANURAG AGRAWAL

Judgement

1. IN this complaint, complainant has claimed compensation of a sum of Rs. 41,11,000/- and various other amounts totalling about Rs. 1.00 crore. Claim pertains to insurance claim which has been repudiated by the opposite party insurance company. It is the contention of the opposite-party. Insurance Co. that a sum of Rs. 4,35,246/- has already been paid to the complainant in complete settlement of its insurance claim. It is submitted that it is a term of the insurance policy that if any difference arose on the quantum to be paid, such difference shall be referred to arbitration and the matter stand concluded as per the decision of the arbitrator. Relevant arbitration clause has also been set out. This allegation as such has not been denied by the complainant except to contend that as per judgment of the Supreme Court in Fair Air Engineers Pvt. Ltd. & Anr. v. N. K. Modi (III (1996) CPJ 1 (SC)), this commission will have jurisdiction and is it is not necessary to relegate the parties to arbitration. To this contention of the complainant there cannot be two opinions. However, the fact remains that the complainant will have to prove the loss and for that it will have to lead evidence both oral and documentary to give the market value of the properties lost as there are number of machinery items. Numerous documents are already on record. It would be difficult to decide such a matter on the basis of the affidavits. It would require cross-examination of both the parties. Such type of complaint cannot be decided in our summary jurisdiction where Commission is expected to decide a matter within 90 days.

2. ACCORDINGLY , we will not entertain this complaint and would require the

complainant to seek its remedy, if any, before Civil Court or any other Forum as may be permitted under the law. This complaint is therefore returned.