(1994) 06 NCDRC CK 0069

In the National Consumer Disputes Redressal Commission

GIVE And TAKE PRODUCTS — APPELLANT

Vs

New India Assurance Co. Ltd — RESPONDENT

Date of Decision : 15-06-1994

Acts Referred:

Citation : 1994 2 CPJ 81

Hon'ble Judges : V.Balakrishna Eradi , Y.Krishan , B.S.Yadav J.

Advocate : M.N.Krishna Mani , K.P.Sunder Rao , P.K.Seth

Final Decision : Disposed Of

Judgement

1. BY consent of the parties on either side the dispute involved in this Original Petition was referred for consensual adjudication to Mr. Justice G. Ramanujam, former Judge of the Madras High Court as per the order dated 20.10.1993 passed by this Commission. In the said order it was mentioned that the Original Petition will be finally disposed of after receipt of the report of Justice Shri Ramanujam. Mr. Justice Ramanujam has now concluded the adjudication and made his report dated 10.3.1994.

2. IT is submitted before us by Mr. P.K. Seth, Advocate appearing on behalf of the New India Assurance Company that since Justice Ramanujam has treated the reference made to him as a reference to arbitration and purported to pass an award under the Arbitration Act, further proceedings in the matter can be taken only before a competent Civil Court before whom the award is to be filed. We are unable to agree with the said contention. The intention of this Commission while passing the order dated 20.10.1993 was to get the factual issues arising in the case examined by a competent Adjudicator by the process of a consensual adjudication so that thereafter the Original Petition may be finally disposed of by this Commission after duly considering the report of the Adjudicator. This position will be clear from the penultimate paragraph of our order dated 20th October, 1993, where it has been categorically stated that the conclusions reached by the adjudicating authority should be incorporated in his report and the report along with the records forwarded to this Commission which will ultimately pass final

orders in the matter. We have considered the objections raised by the Opposite Party as against the conclusions recorded by the adjudicating authority. We find no merit in any of those contentions, except in the objection raised by him that the direction incorporated in the report of the Adjudicator that the entire costs of the adjudication be borne by the Opposite Party herein is contrary to the express stipulation contained in the order passed by this Commission that the costs of the arbitration ought to have been confirmed to by the Adjudicator while concluding his adjudication and incorporating his findings. The report of the Adjudicator is accepted by this Commission subject to the modification that the costs of adjudication are to be borne in equal shares by both the parties.

Though a contention was advanced that in paragraph 16 of the report of the Adjudicator he has committed a manifest error while calculating interest and that what has been done by him amounts to compound interest, we do not see any substance in this contention. We find that due credit has been given to the amount of Rs. 6,99,603/- which had been paid by the Insurance Company in compliance with the interim order passed by this Commission. Interest has been calculated by the Adjudicator on the total amount only upto 20.11.1993 on which date the aforesaid sum was paid and thereafter interest has been calculated only on the balance amount then outstanding. Hence the objections raised by the Opposite Party except the one relating to the wrong casting of the entire burden regarding costs of adjudication on the Opposite Party herein are hereby overruled. In regard to the costs of proceedings before the Adjudicator, the costs shall be borne equally by both the contesting parties.

3. WE have to take serious notice of certain highly objectionable averments contained in the application filed by the New India Assurance Company while putting forward its objection against the report of the Adjudicator wherein the Insurance Company which is a Public Sector Organisation has gone to the extent of attributing oblique motives and partiality to the Adjudicator. What is even more regrettable is that despite its having been pointed out by us to the Counsel appearing for the Insurance Company when the matter came up before us on the last occasion that such averments came with ill grace from a Public Sector Organisation, strangely the Insurance Company has not thought it fit or proper to withdraw these allegations. It is also a matter for regret to us that the said application containing the highly objectionable averments has been settled by an experienced Counsel who should not, we fell, have been a consenting party to the filing of such an application. Before we part with this case, we must condemn in the strongest terms the highly reprehensible and wholly irresponsible conduct of the Insurance Company in making such reckless and totally unfounded allegations against a distinguished retired Judge who conducted the consensual adjudication pursuant to the reference made by this Commission. No self-respecting former Judge will hereafter agree to undertake such a task of consensual adjudication on the suggestion of this Commission if he runs the risk of being exposed to such reckless and scurrilous imputations by doing so. We have carefully examined the report of the Adjudicator and we find absolutely no

basis whatever for the charges of partiality etc. levelled against him. We have no hesitation to reject those charges as totally devoid of any basis or truth. If a private party had made these allegations it might be excusable as due to his ignorance but there is absolutely no room for such exculpation when the objectionable allegations have been made by a Public Sector Insurance Company.

4. A copy of this order shall be communicated by the Registrar to the Chairman of the New India Assurance Company and the General Insurance Company and we expect that they would conduct an enquiry and take early deterrent action against the official concerned who is found to have been responsible for incorporating such highly objectionable statements in the application filed before this Commission on behalf of the Insurance Company. The action so taken in the matter should be reported to this Commission within two months from today. Order accordingly.