

(1940) 12 CAL CK 0001
In the Calcutta High Court

Happy India Insurance Co. Ltd.

APPELLANT

Vs

Kumud Bandhu Chakravarty

RESPONDENT

Date of Decision : 09-12-1940

Acts Referred:

Arbitration Act, 1940 — Section 34

Citation : AIR 1941 Cal 503

Hon'ble Judges : Panckridge, J

Bench : Division Bench

Judgement

Panckridge, J.—This is an application u/s 34 of the recently enacted Arbitration Act. The section is in terms identical with Section 19 of the Act of 1899. The facts are that the plaintiff was the medical referee of the defendant company which carries on business as a life insurance company. He was appointed under an agreement in writing dated 16th May 1939. Among other things the agreement provided that the plaintiff should act as medical referee upto 30th April 1947. There was also a clause by which it is provided that the plaintiff shall diligently and faithfully and to the best of his ability and skill examine all medical reports submitted to him by the company, and duly submit his opinion and report on each case sent to him by the company or the general manager thereof. By another clause the company became entitled to terminate the agreement on three months notice in certain cases, one of which is gross negligence of work on the part of the plaintiff. Lastly, there is an arbitration clause which provides that if any dispute shall hereafter arise between the parties concerning their rights, liabilities or duties under the agreement, the same shall be referred to two arbitrators, one to be nominated by each of the parties or his or their representatives or successors in accordance with the provisions of the Arbitration Act. On 11th July the plaintiff submitted a bill for his remuneration for the year ending with 30th April 1940. On 29th July 1940, the defendants wrote to the plaintiff charging him with negligence in respect of a medical report on the life of a deceased policy-holder on whose policy it appears that the company had had to pay a considerable claim. The letter, after mentioning the claim, goes on as

follows:

This is entirely due to the gross negligence of duty on your part as a medical referee. As such we regret we are unable to retain you on the most responsible post of a medical referee of the company. Please, therefore, take notice that your services as medical referee of this company was terminated on 31st October 1940, and the agreement entered into by and between you and this company, dated 16th May 1938, which has already been surrendered by you to us for certain modifications, regarding which negotiations were going on since February 1940, shall be deemed to have terminated on the aforesaid date.

2. On 18th November 1940, the plaintiff filed his suit and pleaded the agreement of 16th May 1939. He claimed a certain sum as a remuneration thereunder and another sum as damages for what he describes as the "wrongful conduct" of the defendant company. His material allegation is as follows:

On 31st October 1940, the defendant wrongfully discharged the plaintiff and refused to permit him to serve as aforesaid or to pay him for his services.

3. "To serve as aforesaid" must mean under the agreement which is referred to in para. 2 of the plaint. On 28th November this notice of motion was taken out and I now have to deal with it. The plaintiff frankly admits that he is suing for his rights under the agreement and for the damage he has suffered owing to the wrongful termination of it before its expiry. Therefore, *prima facie*, the defendants have the right to have the suit stayed u/s 34, but the plaintiff's reply to that is that the defendants have disintegrated themselves to the order they seek by repudiating the agreement and taking up the position that it had come to an end when the notice terminating it was served. The leading case on this aspect of arbitration law is *Jureidini v. The National British & Irish Millers Insurance Co. Ltd.* 1915 AC 499. That was a claim brought on a policy of fire insurance, and the policy-holder obtained a decree, and the House of Lords reversing the Court of appeal held that the defence put forward by the insurance company failed. The insurance company relied on the well known case in *Scott. v. Avery* (1856) 5 HLC 811 and pointed to a clause in the policy that if any difference arose as to the amount of any loss, such difference should, independently of all other questions, be referred to arbitration, and that it should be a condition precedent to any right of action upon the policy that the award of the arbitrator or umpire of the amount of the loss, if disputed, should be first obtained.

4. There was however also a clause that if the claim were fraudulent or if the loss were occasioned by the wilful act or with the connivance of the assured, all benefit of the policy should be forfeited. The company relied on this clause and alleged that the assured had been guilty of fraud and arson, and therefore the policy was avoided. The House of Lords held that in these circumstances the doctrine in *Scott. v. Avery* (1856) 5 HLC 811 was not applicable. The law is very concisely stated, if I may say so with respect, by Lord Atkinson, who observes:

I think that Article 17 refers to existing disputes and differences about the

amount of loss sustained, and in a contract such as this I do not think that article has any application whatever when the persons to indemnify say: "You yourself brought about the destruction of the goods which were insured for the loss of which you claim to be indemnified, and we rely upon an article which provides that in that state of circumstances all benefit under the policy is forfeited.

5. The facts in this case are totally different, and I am of opinion that the company have never taken up the position that the agreement of May 1939 has come to an end,. It appears that some time before July 1940 they had come to the conclusion that the agreement as to remuneration was unduly favourable to the plaintiff, for they say in a letter of 15th July protesting against his bill:

We, are therefore at a loss to understand how you could submit a bill for the aforesaid amount of Rs. 1000 in view of the fact that you had already previously agreed to a modification of your terms for a fresh arrangement to be entered into by and between you and the company with retrospective effect from 1st January 1940.

6. The new agreement is referred to later in the letter as being in the course of preparation. I have read the manager's letter of 29th July and in my opinion the attitude of the insurance company was that the old agreement was still existing, and that the plaintiff had consented to negotiate for a new agreement, which, possibly, when concluded would have retrospective effect and would necessitate an abandonment of some of his claims for remuneration under the former agreement; but it is nowhere suggested that the new agreement had come into operation or that the rights of the parties were governed by it. If the attitude of the insurance company had been that the old agreement had been rescinded I think they would probably not have purported to discharge the plaintiff under the old agreement, but would have said that that agreement had come to an end, and although it was true there were negotiations proceeding for a fresh agreement, in view of the plaintiff's conduct in the matter of the medical report, to which reference has been made, they did not propose to carry the negotiations any further. This being so, I make the order and stay the suit. The costs of this application will be reserved pending the decision of the arbitrators.