(2018) 05 DEL CK 0477

In the Delhi High Court

Case No : FAO(OS) 95 OF 2018 & CM No. 24021 OF 2018

M/S ETERNITY FOOTWEAR LTD (FORMERLY KNOWN AS DIAMOND PRODUCT LTD) APPELLANT

Vs

M/S THE ORIENTAL INSURANCE CO. LTD. RESPONDENT

Date of Decision : 31-05-2018

Acts Referred:
Arbitration & Conciliation Act, 1996 — Section 34

Citation : (2018) 05 DEL CK 0477

Hon'ble Judges : Gita Mittal, J;C.Hari Shankar, J

Bench : Division Bench

Advocate : Vineet Kumar, Dhruv Gupta

Final Decision : Dismissed

Judgement

Item of Loss,"Loss as per

claimant (☐)","Loss as per the

respondent

(☐)","Loss

difference payable

to the

claimant

(☐)

Building,"4,96,94,012","15,82,704","3,11,11,308

Stocks,"5,00,39,094","2,33,59637","2,66,79,458

Claim No.,,"Amount

Claimed (☐)","Amount

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awarded (☐)

1.,Building,"3,11,11,308",Nil

2.,Stocks,"2,66,79,458","2,08,76,700

3.,"Plant & Machinery including fire

fighting equipments","6,04,343",Nil

4.,"Furniture/fixtures/Fittings/C

omputers and Peripherals/ ACs","5,29,027",Nil

5.,"Architects/Surveyors/Consu lting

Engineers Fees","9,33,339",Nil

6.,Debris Removal Expenses,"1,38,652",Nil

thereof, it would be reasonable to award interest @ 15% per year. On account payment of ☐ 2.50 crores was released about a year prior to the",,,

receipt of final survey report by the insurance company. Claimant is, therefore, entitled to interest on said balance amount of ☐ 2,96,59,810/- from",,,

5.5.2010 on which date it first gave consent to receive that amount till 12.12.2010 as the balance amount was released on 13.12.2010. Amount of,,,

interest on the said amount for the said period at the said rate will work out at ☐ 27,05,950/-. Both the issues are answered accordingly.â??",,,

20. Claim No. 4, which was for damages towards mental harassment and agony, was rejected, whereas, against Claim No.5, the learned Arbitral",,,

Tribunal awarded an amount of ☐ 75,000/- to the appellant.",,,

21. As a result, the award dated 3rd November, 2017, passed by the learned Arbitral Tribunal, awarded a total amount of ☐ 2,35,82,650/-, to the",,,

appellant, with interest thereon @ 9 % p.a. from the date of award till realisation.",,,

22. While the respondent accepted the said award, the appellant chose to challenge it, before the learned Single Judge by way of OMP (Comm)",,,

138/2018.,,,

23. Having set out the facts of the case, aforesaid OMP urged the following grounds:",,,

â??5. GROUNDS OF APPEAL:-,,,

That the impugned award is wrong, erroneous in regard to allowance of interest and violates the well settled principles of law and deserves to be set",,,

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aside on the following amongst the other grounds:-,,,

A. Because the Ld. Arbitral Tribunal failed to appreciate that in the matter of claim of the claimant the respondent shall within a period of 30 days,,,

after receipt of surveyorâ??s report, settlement of the claim and upon acceptance of an offer of settlement by the insured the payment of the amount",,,

due shall be made within 7 days from the date of acceptance of the offer by the insured as per IRDA (Protection of Policyholdersâ?? Interest),,,

Regulations, 2002.",,,

B. Because the Ld. Arbitral Tribunal erred in not appreciating that the failure to make payment within the stipulated period by the respondent,,,

Insurance Company attracts requisite interest in terms of the IRDA Rules which are binding on the respondent.,,,

C. Because the Ld. Arbitral Tribunal failed to notice that the respondent has acted in complete violation of the IRDA (Protection of Policyholdersâ??,,,

Interests) Regulations, 2002 which is mandatory to follow by the respondent Insurance company.",,,

D. Because the Ld. Arbitral Tribunal ignored the well settled fundamental furistic principle of laws and without considering the petitionerâ??s claim,,,

of interest @ 18% as prayed for by the petitioner in their complaint before the arbitral tribunal with correct period of years when the Arbitral Tribunal,,,

should have allowed interest for the period when the arbitral proceedings were going on.,,,

E. Because the Ld. Arbitral Tribunal ignored the basic tenets of law by not applying its mind to the attendant facts and circumstances while taking a,,,

view of awarding an interest which ought to have been after one month from receipt of the surveyorâ??s report by the respondent @ 18% till,,,

realization.â??,,,

24. Thereafter, para 7.1 of the OMP further stated thus:",,,

â??7.1 It is further declared that no petition filed and pending in any other Court/ Tribunal in India and abroad.,,,

The petitioner made a claim of loss on account of fire in the unit for ☐ 12,02,31,749/- against which the respondent Insurance Company allowed and",,,

offered ☐ 5,46,72,292/- out of which interim payment of ☐ ",,,

2,50,00,000/- was made on 30.3.2009 and balance ☐ 2,96,72,292/- paid on 13.12.2010. Interest was allowed @ 15% by the Arbitral Tribunal on ☐ ",,,

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2,96,27,292/- from 5.5.2010 i.e. the date of consent to 12.12.2010, i.e. prior to date of payment on 13.12.2010.",,,

The claim is prayed for interest @15% (as allowed by the Arbitral, Tribunal) from 18.4.2010 (30 days after the receipt of surveyorâ??s report) till",,,

realization at the date of filing the petition which comes, to ☐ 2,25,17,665/-. â??",,,

25. It is clear, therefore, that the claims, as ventilated in the aforementioned OMP (Comm) 138/2018, were for (i) grant of interest on ☐ 2,96,27,292/-",,,

from 18th April, 2010 rather than from 5th May, 2010 and (ii) increase in the rate of interest from 9% p.a. (as awarded by the learned Arbitral",,,

Tribunal) to 15% p.a.,,,

26. We may mention, here, that, that the reference to the amount paid, by the respondent, to the appellant, on 13th December, 2010, as ☐ 2,96,72,292/-,",,,

in the OMP, was apparently incorrect as the amount actually paid by the respondent to the appellant on 13th December, 2010, was ☐ 2,96,59,810/-, as",,,

is correctly noted in the award passed by the learned Arbitral Tribunal.,,,

27. The impugned judgment, dated 3rd April, 2018, of the learned Single Judge, dismisses the said OMP (Comm) 138/2018. The precise contours of",,,

the challenge, by the appellant, to the Award dated 3rd Nov, 2017, stands thus delineated in the opening paras of the judgment:",,,

â??1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996",,,

(hereafter â??the Actâ??), inter alia, impugning the arbitral award dated 03.11.2017 (hereafter â??the impugned awardâ??) to the limited extent that",,,

the Arbitral Tribunal has awarded interest at the rate of 15% per annum on the sum of ☐ 2,96,59,810/- from 05.05.2010 till 12.12.2010.",,,

2. According to the petitioner, the said interest ought to have been awarded from 18.04.2010, that is, 30 days after the receipt of the Surveyorâ??s",,,

report. The petitioner also challenges the rate of post award interest. The Arbitral Tribunal has awarded post award interest at the rate of 9% p.a.,",,,

which, according to the petitioner, is inadequate. It is contended that once the Arbitral Tribunal has found it fair to award interest at the rate of 15% in",,,

case of the delay in payment of the amount found due to the petitioner, the Arbitral Tribunal could not have whimsically reduced the same to 9% in",,,

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case of post award interest.â??,,,

28. Having thus set out the dispute before him, the learned Single Judge proceeded to reject both the contentions advanced by the appellant.",,,

29. Regarding the contention that interest ought to have been paid from 18th April, 2010 instead of 5th May, 2010, the learned Single Judge held that",,,

Regulation 9 (6) of the Insurance Regulatory & Development Authority (Protection of Policy Holdersâ?? Interest) Regulations, 2002 (hereinafter",,,

referred to as â??The IRDA Regulationsâ?), which governed the transactions between the appellant and the respondent, specifically provided for the",,,

payment of the amount, due to the insured, by the insurer, within seven days from the date of acceptance of the offer by the insured, in default",,,

whereof interest would be payable, by the insurer, at the rate of 2% above the prevailing bank rates. As such, it was held that the terminus a quo, for",,,

the purpose of interest, would be the date of communication, by the insured, of its acceptance of the offer of the insured. In the present case, such",,,

acceptance having been communicated, by the appellant to the respondent, on 5th May, 2010, the learned Single Judge found no infirmity in the",,,

learned Arbitral Tribunal having computed interest payable to the appellant, by the respondent, w.e.f. the said date, i.e. 5th May 2010. The appellant",,,

having submitted its consent, to the respondent, on 5th May, 2010, the learned Arbitral Tribunal had correctly awarded interest @ 15% p.a. from the",,,

said date.,,,

30. Consequently, it was held that the appellantâ??s submission that it was entitled to interest from 18th April, 2010 was entirely without merit.",,,

31. As regards the rate of interest awarded by the learned Arbitral Tribunal, the learned Single Judge held that no interference, therewith, was",,,

justified, as the matter lay within the discretion of the Tribunal. Reliance was placed, for so holding, on the limited confines within which this Court",,,

could tinker with arbitral awards, under Section 34 of the Arbitration & Conciliation Act, 1996.",,,

32. The appellant is in appeal, before us, thereagainst.",,,

33. The main ground, canvassed in the appeal, and urged orally before us, by Mr. Vineet Kumar, learned counsel appearing for the appellant, is that",,,

the learned Single Judge decided a controversy which the appellant had never raised, and left the actual grievance of the appellant unadjudicated.",,,

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34. Mr. Vineet Kumar submits that his clientâ??s claim, before the learned Single Judge, was actually for grant of pre-award interest, on the amount",,,

actually awarded by the learned Arbitral Tribunal i.e. ☐ 2,35,82,650/- He submits that there could be no question of his claiming any interest on ☐ ",,,

2,96,59,810/-, as the said amount had already been paid to him before the arbitral proceedings commenced, with interest.",,,

35. At the same time, Mr. Vineet Kumar is forthright in admitting that the impugned judgment was dictated and pronounced, in court, by the learned",,,

Single Judge, and that he did not, at the said time, raise any objection regarding the nature of his claim having been wrongly noted therein. He further",,,

seeks to submit that the pleadings, in OMP (Comm) 138/2018, may not have been â??very happily wordedâ?; that, however, in his submission, could",,,

not detract from the fact that the learned Single Judge had adjudicated a claim which he never raised.,,,

36. We are unable to comprehend, far less appreciate the submission of Mr. Vineet Kumar, learned counsel for appellant.",,,

37. We have set out, hereinabove, the relevant paragraphs from OMP (Comm) 138/2018, which, in our view, clearly indicate that the claim of the",,,

appellant was for interest, on the amount paid to him on 13th December, 2010, i.e. ☐ 2,96,59,810/- from 18th April, 2010 instead of 5th May, 2010. This",,,

is the precise dispute that the learned Single Judge delineates, in the opening two paras of the impugned judgment, and proceeds to adjudicate",,,

thereafter. Besides, we are sanguine that, had the learned Single Judge wrongly recorded the submissions of the appellant, it would have been pointed",,,

out, by the appellant, at that stage itself. The appellant not having chosen to do so, and the recording, regarding the dispute before him, in paras 1 and 2",,,

of the impugned judgment of the learned Single Judge, being entirely in tune with the challenge as postulated by the appellant itself in the OMP, we are",,,

unable to accept the submission, fervently urged by Mr. Vineet Kumar, that the learned Single Judge erred in deciding a dispute at variance to that",,,

which was actually raised before him. Ex facie, it appears that this submission occurred, to the appellant, as a brain wave, after the passing of the",,,

impugned judgment. Had the appellant actually felt that the learned Single Judge did not appreciate the precise grievance vouched by the appellant,,,

before him, the appellant would invariably have moved the learned Single Judge for review. That the appellant did not choose to do so, additionally",,,

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convinces us that the appellantâ??s case, as raised in the present appeal and argued before us, is an ingenious afterthought, which, needless to say,",,,

merits no serious consideration at this stage.,,,

38. We are also unable to follow the logic behind the submission, of Mr. Vineet Kumar, learned counsel for the appellant that, inasmuch as the amount",,,

of ☐ 2,96,59,810/- had been paid to him prior to the passing of the impugned award, a claim such as that noted by the learned Single Judge in para 1 of",,,

the impugned judgment could not have arisen at all. It appears that the case of the appellant, throughout, i.e., till the filing of the present appeal, was",,,

that, on the amount which was paid to it by the respondent on 13th December, 2010 i.e. ☐ 2,96,59,810/-, it was entitled to interest from 18th April,",,,

2010. The awarding of such interest, by the learned Arbitral Tribunal, only from 5th May, 2010, apparently aggrieved the appellant, resulting in the",,,

filing of OMP (Comm) 138/2018.,,,

39. Sub-Rules (5) & (6) of Rule 9 of the IRDA Regulations read thus:-,,,

â??9. Claim procedure in respect of a general insurance policy.,,,

(5) On receipt of the survey report or the additional survey report, as the case may be, an insurer shall within a period of 30 days offer a settlement of",,,

the claim to the insured. If the insurer, for any reasons to be recorded in writing and communicated to the insured, decides to reject a claim under the",,,

policy, it shall do so within a period of 30 days from the receipt of the survey report or the additional survey report, as the case may be.",,,

(6) Upon acceptance of an offer of settlement as stated in sub-regulation (5) by the insured, the payment of the amount due shall be made within 7",,,

days from the date of acceptance of the offer by the insured. In the cases of delay in the payment, the insurer shall be liable to pay interest at a rate",,,

which is 2% above the bank rate prevalent at the beginning of the financial year in which the claim in reviewed by it.â??,,,

40. We entirely agree with the learned Single Judge that Regulation 9 (6) of the IRDA Regulations (supra) clearly stipulates that interest would start,,,

running only from the date of communication of consent, by the insured, to the offer made by the insurer, and would arise in the event of failure on the",,,

part of the insurer, to make payment, to the insured, within seven days of such communication. As such, no fault can be found with the Award passed",,,

by the learned Arbitral Tribunal in granting interest w.e.f. 5th May, 2010, or with

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the impugned judgment of the learned Single Judge, upholding the",,,

said decision.,,,

41. We reiterate that we are not prepared to address, at this stage, a claim by the appellant for pre-award interest on the amount awarded by the",,,

learned Arbitral Tribunal, no such claim having been agitated in the OMP filed by the appellant, or argued by it before the learned Single Judge. The",,,

legislative intent, behind replacing the Arbitration Act, 1940, by the Arbitration and Conciliation Act, 1996, was to expedite arbitral proceedings and,",,,

thereby ensure a speedy resolution of â??arbitrableâ? disputes, and we can ill afford to allow this purpose to be frustrated by permitting protracted",,,

and repeated challenges to arbitral awards, least of all by allowing fresh challenges to be thrown up at each successive stage. We are constrained to",,,

observe that, in practice, we are finding no difference between the manner in which challenges are laid, to arbitral awards, under the Arbitration and",,,

Conciliation Act, 1996, as compared to the situation that prevailed during the currency of the Arbitration Act, 1940. The distinction between the two",,,

Acts is, thereby fast getting obliterated. Thus, we are convinced, cannot be allowed to happen.",,,

42. For all these reasons, we dismiss this appeal.",,,

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