**(2003) 11 NCDRC CK 0002**

**In the National Consumer Disputes Redressal Commission**

Premier Plantation Ltd APPELLANT

Vs

NATIONAL INSURANCE CO LTD RESPONDENT

**Date of Decision :** 12-11-2003

**Acts Referred:**

**Citation :** 2006 2 CPJ 243

**Hon'ble Judges :** M.B.SHAH , B.K.TAIMNI J.

## Judgement

1. HEARD the learned Counsel for the parties in O.P. No. 299/94, for determining the damages payable to the complainant by the Insurance Co. by the consent of the parties this Commission by order dated...............Nambiar, former Judge of the High Court of Kerala for consensual adjudication. The relevant part of the order is quoted by the Arbitrator at page 7 which read as follows: " Without prejudice to the contention of the parties we direct that out of the amount assessed by the Insurance Company as payable to the complainant mainly Rs. 19,50,149 sum of Rs. 12,17,416 shall be paid to the custodian being Receiver appointed in respect of the Fair Growth Financial Services Ltd., III Floor, Bank of Baroda Building, 16, Parliament Street, New Delhi, in discharge of the liability of the complainant to the said company and the balance amount shall be paid by the insurer to the complainant. As already indicated the receipt of such amount by the complainant will be without prejudice to his contentions as regards the balance of the claim. The dispute raised by the complainant in respect of the balance amount claimed by the complainant from the insurer is hereby referred by consent of the parties for consensual adjudication by Justice V. Bhaskaran Nambiar, former Judge of the High Court of Kerala. A lumpsum payment of Rs. 12,000 shall be made by the insurer to Justice V. Bhaskaran Nambiar within three weeks to meet the preliminary expenses, etc., and the balance, if any, left, being appropriated towards his remuneration. We fix the remuneration payable to Mr. justice V. Bhaskaran Nambiar at Rs. 2,500 per day for each effective hearing. The expenses of the consensual adjudication will be ultimately shared in equal portions by both the sides. On completion of the adjudication, Mr. Justice V. Bhaskaran Nambiar is requested to forward his award to this Commission so that

 

it may be incorporated in the final order of this Commission. It is made clear that the claim advanced by the complainant for payment of interest on the amount of compensation for the loss said to have been sustained by the company shall be from subject -matter of the adjudication by consensual adjudication authority.

2. THEREAFTER the arbitrator had passed the award on 16.5.1996 after considering the contentions and evidence in detail. Against that award, the Insurance Company has filed objections. The Objections filed by the Insurance Company were rejected by the Commission by observing that the said objections were not sustainable and also by holding there was none within the filed objections raised. That order was challenged by the Insurance Company before the Apex Court by filing Civil Appeal No. 171, 1997. The Supreme Court by its judgment and order dated 12.5.2000 directed that Commission shall decide the objections on merits.

3. AT the time of hearing of this matter, Counsel for the Insurance Company raised the following objections - (1) that the arbitration committed error in granting interest on interest. (2) that assessment for damages for the generator is on the face of it illegal and erroneous. (3) that similar assessment of the damages @ 25 kg for the tea is also erroneous.

4. IN our opinion the first contention is without any merit. The arbitrator has not awarded interest on interest. This would be clear from the following directions given by the arbitrator. Interest is calculated at 12% per annum from 13.10.1993 to 15.5.1996 Total amount payable Rs. 12,33.883.00 Interest on 13,33,883 at 12% from 15.10.1993 to 5.12.1995 Rs. 3,42,497.00 Total Rs. 16,76,380.00 Paid on 5.12.1995 Rs. 12,17,416.00 Balance Rs. 4,58,964.00 Interest from 5.12.1995 to 15.5.1996 at 12% per annum Rs. 24,445.00 Rs. 4,83,409.00"

Counsel for the Insurance Company submitted that the Insurance Company has paid Rs. 12,17,416 on 5.12.1995 and therefore that amount ought to have been credited towards principal amount of Rs. 13,33,883.

5. IN our view, this submission is totally without any substance because the amount paid by the Insurrance Company is deducted from the total amount payable with interest as on 5.12.1995 and this is in conformity with the normal practice of crediting the amount towards the total amount payable which includes interest thereon. Admittedly the fire broke out in the complainant''s factory and its premises on 29.7.1992 and destroyed the building and machinery and tea stock. For this, complainant was having insurance coverage. As the amount was not paid O.P. No. 299, 1991 was filed before this Commission. Thereafter the insurers paid a total sum of Rs. 19,50,149 on 6.12.1995. Out of this, a total sum of Rs. 12,17,416 was paid to the Custodian. Receiver appointed in respect of Fair Growth Financial Services Ltd. and the dispute before arbitrator was confined to the balance amount if any payable by the insurer to the complainant above Rs. 12,17,416. That amount was determined by the arbitrator at Rs. 13,33,883 on which Insurance Company was directed to pay interest at the rate of 12%. This

 

cannot be said in any way erroneous.

6. FOR the assessment of loss to the generator and tea the arbitrator has awarded the compensation after referring to the evidence of the Surveyor and that of the parties. It cannot, be that appreciation of evidence by the arbitrator is in any way erroneous on the face of the record. For the purpose of assessing the loss to the generator, the arbitrator has specifically referred to the Surveyor''s Report which is at Exb. R -38 which in turn states that: D.G. SET 380 KVA : Its central panel board completely burnt. Engine oil filter, diesel filter having charred marks. Air cleaner top side silencer burnt and charred. Alternator eastern end had charred marks and cables burnt. Its Excide -make battery (sic.) burnt and damaged." From the above and other observations made by the Surveyor, the arbitrator arrived at the conclusion that the generator was totally damaged.

7. SIMILARLY for arriving at the price of the tea per kg., the arbitrator has taken into consideration various factors which are stated in the award and that cannot be said to be illegal or erroneous on the fact of it which would call for any interference.

8. LASTLY it was contended that arbitrator has not properly fixed the value of the salvage. For this purpose, arbitrator arrived at the conclusion that considering the extent of havoc by fire there can be in fact no salvage value for the machinery totally destroyed. He also arrived at the conclusion that there was no basis for the Surveyor to value it at 18% of the generator in question. Considering all these aspects, he reduced the salvage value at 1% of the depreciation of all the machinery totally destroyed. Further, this Commission by its order dated 3.10.1996 has permitted the Insurance Company to take salvage in respect of all the three policies atleast opening the procedure as required under the law since the property in question was in the custody of the Court Receiver. In this view of the matter on the question of value for salvage no further consideration is required because it is open to the Insurance Company to clear the salvage and dispose of the same if they can fetch more value. In the result, the objections raised by the Insurance Company are rejected and the following order dated 3.10.1996 is reiterated: "Accordingly the Insurance Company is directed to pay a sum of Rs. 4,83,409 including interest as specified in the award to M/s. Fair Growth Services Ltd., represented by the Custodian, namely, the Court Receiver appointed by the High Court of Bombay. The balance amount of Rs. 17,42,085 directed to be paid under Policy No. 2 and Rs. 5,20,364 under Policy No, 3 along with interest as directed in the order shall be paid by the Insurance Company to the complainant within two months from today. The Insurance Company shall be entitled to take over the salvage in respect of all the three policies after adopting the procedure as is required under the law since it is represented that the properties in question are in the custody of the Court Receiver. The complainant shall render all assistance to the Insurance Company in the matter of securing the salvage."

The complaint stands disposed of accordingly. There shall be no order as to costs. Complaint disposed of.

 