(1968) 11 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 981 of 1966

The Jupiter General Insurance Company Ltd. — APPELLANT

Vs

Messrs Pahadi Forest Lessees and Another — RESPONDENT

Date of Decision : 08-11-1968

Acts Referred:
Arbitration Act, 1940 — Section 33

Citation : (1968) 11 P&H CK 0022

Hon'ble Judges : Mehar Singh, C.J

Bench : Single Bench

Advocate : Y.P. Gandhi, for the Appellant; Bahadur Singh, for the Respondent

Final Decision : Dismissed

Judgement

Mehar Singh, C.J.—The arbitration clause between the parties provides that "If any difference arises as to the amount of any loss or damage, such difference shall independently of all other questions be referred to the decision of an arbitrator, to be appointed in writing by the parties in difference,

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And it is hereby expressly stipulated and declared that it shall be condition precedent to any right of action or suit upon the policy that the award by such arbitrator, arbitrators or the umpire, of the amount of the loss or damage if disputed, shall be first obtained". On this arbitration clause it is obvious that before recourse can be had to an ordinary civil Court in a claim arising under a policy of insurance, as in this case, award of the arbitrator in regard to the amount of loss or damage is a condition precedent.

2. Of the Respondents, Respondent No. 1 having suffered loss under a policy of insurance with the Applicant on account of fire and destruction of insured''s timber, it appointed an arbitrator, Respondent No. 2, under the arbitration clause,

to arbitrate on the loss or damage suffered by it. The Applicant then applied u/s 33 of the Arbitration Act, 1940, for an order that the matter was not for arbitration because the Applicant was completely denying the liability under the policy of insurance in regard to the claim by Respondent No. 1. This application was dismissed by the learned trial Judge on July 28, 1966, basing himself on The Great American Insurance Co. Ltd. Vs. Bodh Raj, , in which, though the insurance company had not specifically rejected the claim, the learned Judges having considered Jureidini v. National British and Irish Millers Insurance Company Ltd. 1915 A.C. 499 . and The Eagle Star and British Dominions Insurance Company Vs. Dinanath and Hemraj, , observed:

In the concluding sentence of the arbitration clause it is stated that it shall be a condition precedent to any right of action or suit upon the policy that the award by such arbitrator, arbitrators or umpire of the amount of the loss or damage if disputed shall be first obtained. In plain English the concluding sentence of the arbitration clause provides that no suit upon the policy shall be instituted unless the arbitrator has ascertained the amount of the loss or damage, if disputed. In case it is found that the arbitration clause only applies to a difference as to amount of loss or damage, and, therefore, not to a claim which the company rejected altogether, whatever the loss might he, the condition stated in the concluding sentence of the arbitration clause will not be satisfied when the company decides to deny its liability under the Policy. Clearly, this was not the result contemplated by the arbitration clause.

The observation of the learned Judges supports the decision of the learned trial Judge.

3. What was urged before the learned trial Judge was that the Applicant insurance company having completely rejected the claim of Respondent No. 1 and denied liability outright, the arbitration clause was not attracted, because it was only attracted with regard to the quantum of damage or loss and not in a case of complete denial of liability. It is this argument which is reiterated in this revision application on the side of the Applicant insurance company. Now, obviously the observation of the learned Judges in Bodh Raj''s case goes against the argument. But the Learned Counsel for the Applicant refers to Jureidini''s and Dina Nath''s cases and contends that where there is a total rejection of the claim and denial of liability, the arbitration clause, as in this case, and in those cases the clause was exactly the same, is not attracted. However, the Jearned Judges explained away those cases as not relevant in Bodh Raj''s case and the same consideration applies in the present case. I consider, however, that the correct statement of law in this respect has been given by Falshaw, J. (as he then was) in The Great American Insurance Co. Ltd. Vs. Bodh Raj, , which was a case of, word for word, a similar clause of arbitration as in the.present case, and it was a case in which this very argument was urged. The learned Judge, while repelling the argument, held that it did not make any difference whether the Company said that no damage or loss at all had been caused, or whether it said that some

damage had been caused, but not as much as was claimed by the insured. In either case it was quite obvious that there was a dispute between them as to the amount of loss or damage and therefore the present dispute between the parties fell within the scope of the arbitration clause in the policy. So on this observation of the learned Judge, there is no substance in this revision application, which is dismissed, but, in the circumstances of the case, there is no order in regard to costs.