
(1984) 08 AHC CK 0052

In the Allahabad High Court

Case No : First Appeal from Order No. 560 of 1977

United India Fire and General Insurance Co. Ltd.

APPELLANT

Vs

Ram Gopal Garodia and Another

RESPONDENT

Date of Decision : 31-08-1984

Acts Referred:

Citation : (1986) 60 CompCas 74

Hon'ble Judges : R.K. Shukla, J;A. Banerjee, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A. Banerji, J.—This first appeal from order arises out of judgment dated September 13, 1977, passed by the 1st Civil Judge, Kanpur, on an application by the appellant for restraining the opposite parties to proceed with the arbitration proceedings before respondent No. 2. The application was rejected and against that order, the present first appeal from order has been filled.

2. Although the respondents were duly served and Mr. B. R. Tripathi, advocate, filed his vakalatnama on behalf of respondent No. 1, no one has appeared to contest this appeal. Respondent No. 2 was named as arbitrator. He is not represented In this court. The Bench secretary has informed us that Mr. B. R. Tripathi has indicated that he has no instructions in this case.

3. We have heard Mr. S. M. Dayal, learned counsel for the appellant. The principal contention of the learned counsel was that since the appellant-company had repudiated the agreement, there was no jurisdiction in the arbitrator to proceed with the arbitration proceedings. Reference was made to Clause 10 of the conditions of the policy to say that if the company disputes or does not accept the liability under or in respect of the policy, then the matter could not be referred to arbitration at all. In other words, the principal question depends on the interpretation of Clause 10 of the conditions of the policy. We may, therefore, refer to the said clause, which reads as under ;

" 10. Arbitration.--If any difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall be referred to arbitration in accordance with the provisions of the Indian Arbitration Act, 1940, as amended from time to time and for the time being in force. It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinbefore provided, if the company has disputed or not accepted liability under or in respect of this policy.

It is also hereby further expressly agreed and declared that if the company shall disclaim liability to the insured for any claim hereunder and such claim shall not, within 12 calendar months from the date of such disclaimer have been made the subject matter of a suit in a court of law, then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder. "

4. It is apparent from the above that a reference could be made if there was any difference between the parties as to the quantum of compensation to be paid under the policy, but no reference could be made where the insurer repudiated the claim. In other words, where the parties have a difference regarding the amount or quantum to be paid, then only the matter can be referred to arbitration in accordance with the provisions of the Indian Arbitration Act, 1940. The second sentence of the clause makes it clear that in case the company disputes or does not accept the liability under or in respect of the policy, the matter shall not be referable to arbitration. The above sentence commences with the phrase, " it is clearly agreed and understood ". It qualifies the subsequent expression, " that no difference or dispute shall be referable to arbitration as hereinbefore provided ". Therefore, where the company disputes or does not accept the liability under or in respect of the policy, the dispute between the parties cannot be sent for arbitration. In our opinion, the second sentence of Clause 10 limits the jurisdiction of the court to refer the matter to arbitration while the first sentence permits the court to refer the matter to arbitration, if there is dispute between the parties only as regards the quantum to be paid. However, no reference is permissible where the company refutes its liability as a whole under or in respect of the policy. The company may repudiate the claim on the grounds that the policy has been cancelled or had lapsed or the policy has become void or that the claim is not maintainable at all. In all these cases, the second sentence of Clause 10 of the conditions will be applicable and the dispute will not be referable to arbitration.

5. We are fortified in our view by the decision of the Supreme Court in *The Vulcan Insurance Co. Ltd. Vs. Maharaj Singh and Another*, . In this case, Clause 18 of the policy was as under :

" If any difference arises as to the amount of any loss or damages, 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, or, if they cannot agree upon a single arbitrator, to the decision of two disinterested

persons as arbitrators....."

6. Their Lordships held that according to Clause 13, the claim could be rejected by the company and, thereupon, the remedy of the aggrieved party would be pursued by a legal action, i.e., by filing a suit. Their Lordships ordered as under (p. 116 of 46 Comp Cas):

" But as soon as there is a rejection of the claim and not the raising of a dispute as to the amount of any loss or damage, the only remedy open to the claimant is to commence a legal proceeding, namely, a suit for establishment of the company's liability. It may well be that after the liability of the company is established in such a suit, for determination of the quantum of the loss or damage, reference to arbitration will have to be resorted to in accordance with Clause 18. But the arbitration clause, restricted as it is by the use of the words " if any difference arises as to the amount of any loss or damage," cannot take within its sweep a dispute as to the liability of the company when it refuses to pay any damage at all."

7. On the question as to what dispute will be referred to arbitration, their Lordships have answered as under (pp. 46 Comp Cas 116):

" The dispute raised is not within the purview of arbitration. Reading Clauses 13 and 18 together, it must be held that on the rejection or repudiation of the claim by the insurer, the insured is under an obligation to start a legal proceeding within three months of such rejection, and hence obtaining of an award in such a case cannot be a condition precedent. It is not possible to go to arbitration for determination of the said dispute. "

8. The same position exists in the present case. The question whether the matter could be agitated in the arbitration proceeding is limited by a provision of Clause 10 of the policy. Since the company was repudiating the claim and the dispute was not in regard to the quantum to be paid, the matter could not be referred to arbitration and, strictly speaking, was out of the purview of the arbitration proceeding.

9. For the reasons mentioned above, we are satisfied that the view- taken by the court below is erroneous and respondent No. 2, the arbitrator, has no jurisdiction to proceed with the arbitration proceeding.

10. In the result, the appeal succeeds and is allowed. The order of the 1st Civil Judge, Kanpur, dated September 13, 1977, is set aside. Since no one appeared to contest this appeal, there is no order as to costs.