

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **OMP No. 294/2003**

15th March, 2010

NATIONAL INSURANCE CO. LTD.

...Petitioner

Through: Mr. Vishnu Mehra, Advocate.

VERSUS

M/S. PRAGATI PAPER MILLS LTD. & ANR.

....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

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JUDGMENT (ORAL)

VALMIKI J.MEHTA, J

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996, challenges the ex-parte Award dated 15.3.2003 passed by the sole Arbitrator awarding the insured/respondent the amount with respect to the breakdown caused of a diesel generator set and which was insured with the petitioner. The present petitioner in spite of various notices issued to it, failed to appear in the arbitration proceedings. The Arbitrator, therefore, was forced to proceed ex-parte against the petitioner.

2. The facts of the case are that the respondent took a Machinery Breakdown Insurance Policy from the petitioner for a sum of Rs.70 lacs for the period from 16.9.1999 to 15.9.2000. The respondent paid a premium of Rs.1,11,720/- as per cover note dated 10.6.1999. The diesel engine of the DG set suffered a mechanical breakdown on 21.3.2000. The petitioner was informed of the breakdown and the estimate for repair charges by M/s Uttar Pradesh Tractors Pvt. Ltd. at Rs.29,71,150/- (Ex.C-3). The petitioner, however, sought to pay only an amount of Rs.9,90,937/- to the respondent and who therefore initiated the arbitration proceedings. The petitioner failed to appoint its own Arbitrator and the Arbitrator appointed by the respondent in law became the sole Arbitrator.

3. In the arbitration proceedings, the respondent appeared and proved its claim. The relevant portions of the Award are paras 3 and 4 which read as under:

“3. I have heard Shri R.K. Aggarwal, the Attorney of the Claimant and perused the documents produced on record and after giving my careful consideration, I find that the engine of the DG Set during the period when it broke down stands duly proved and there cannot be any denial to that effect since the respondent company itself offered to pay a sum of Rs.9,90,937/- as settlement of the claim. Consequently the break down of the DG SET within the insurance period also cannot be disputed. The only dispute which remains to be resolved is with regard to the quantum of loss which is to be compensated to the claimant. It is also duly proved that after dismantling the DG Set the same was sent to M/s. U.P. Tractors Pvt. Ltd. who gave the estimates of repairs of the said diesel engine at Rs.29,71,158-(Ex.C-3) and the said estimate was further revised to Rs.29,86,060/- (Ex.C-14) on account of revision of import prices of the spares etc.

4. That as per terms of the Policy, if the repairs charges exceeds market value of the machine in question at the time of loss, the claim will be settled on total loss basis i.e. the value of the new machine less depreciation.

The estimate of repairs of the DG Set in the present case, was given by the authorised dealer at Rs.29,86,060/-. The cost of the new diesel engine as per the quotations submitted to the respondent company was Rs.36,78,070/-. It is therefore necessary to know whether the claim can be settled on repairs basis or on total loss basis. The DG Set in the present case was purchased on 31.3.95 and was damaged/broke down on 31.3.2000. The DG set was therefore five years old, and it is therefore necessary that the actual value thereof as on the date of loss should be taken for the purpose of determination of the claim of the claimant, whether “on repairs basis” or “on total loss basis”.

That as per page 19 of the booklet “Fixing of sum insured under Fire Insurance Policies” published by Delhi Insurance Institute, it has been provided that depreciation should be deducted @ 5% per year. Taking into account the depreciation of the said DG set @ 5% annually, the “market value” of the DG Set in question after five years i.e. as on date of breakdown/loss shall work out to be at Rs.27,58,552/- (Rupees twenty seven lakhs fifty eight thousand five hundred and fifty two only). As against this, the actual cost of repair charges as estimated by the authorised dealer is Rs.29,96,990/-. Thus, the cost of repairs is much more than “the actual value” of the DG SET and the respondent therefore should pay the depreciated value of the DG set as on the date of damage, which comes to Rs.27,58,552/-.

That since the respondent has not placed on record any contrary view before me, I am therefore inclined to accept the contention of the claimant and award a sum of Rs.27,58,552/- (Rupees twenty seven lakhs fifty eight thousand five hundred and fifty two only) in favour of the claimant and against the respondent towards loss of the diesel engine of the DG Set.

That the claimant has further proved on record the actual expenses amounting to Rs.15920/- incurred on account of transportation charges and inspection of crankshaft, which were paid. The claimant is therefore entitled to the reimbursement of the said amount also.

In view of the above discussion, I therefore pass the following Award in favour of the claimant and against the respondent:

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|----|---|----------------|
| a) | Depreciated value of the Diesel Engine as on date of Breakdown/loss/damage | Rs.27,58,552/- |
| b) | Expenses incurred on account of transportation, and the Fee paid for inspection | Rs.15,920/- |
| | | ----- |
| | Total: | Rs.27,74,472/- |
| | | ----- |

(Rupees twenty seven lakhs seventy four thousand four hundred and seventy two only)”

4. The scope for interference by this Court with an Award under Section 34 is now well-settled. This Court does not sit as an Appellate Court over the Arbitrator's Award. Merely because two views are possible, this Court will not interfere if the Arbitrator has taken one plausible view. The aforesaid principles apply in the facts of the present case as it is only the respondent who appeared in the arbitration proceedings and proved its case but the petitioner failed to appear in the arbitration proceedings and therefore did not avail the opportunity to prove its case, if its case assuming was correct. The aforesaid portion of the Award reproduced by me shows that the respondent proved the cost which had to be incurred by it with respect to the repair of the DG set. The Arbitrator, thereafter, has arrived at the amount of the cost of repair and has also relied on the relevant booklet for fixing of the sum insured under fire insurance policy and has applying the same taken the depreciation @ 5% annually. The value of the machine as per depreciation came to Rs.27,58,552/-and the repair charges came to Rs.29,96,990/-. As per the policy when the repair charges exceed the cost of the machinery then it is the cost of machinery and not the repair charges which have to be awarded to the insured. The Arbitrator, therefore, has given the depreciated value of the diesel engine as on the date of the breakdown to the respondent herein.

5. Mr. Mehra, who appeared for the petitioner, very vehemently contended that the Arbitrator has acted illegally and perversely in not

referring to the letter dated 28.5.2001 as per which the petitioner offered a sum of Rs.9,90,337/- to the respondent and which was of course subject to production of repair bills/replacement invoices. I fail to understand what can be the argument on the basis of this letter because the facts of the case make it more than clear that the respondent was not satisfied with the amount of Rs.9,90,337/- and therefore did not arise any question of submitting anything to the petitioner with respect to this amount of Rs.9,90,337/-.

Mr. Mehra, thereafter, relied upon a clause in the policy that the insurance company will only award such amounts as per its satisfaction on production of necessary bills and documents that the repairs have been effected. I am in fact amazed at the tenacity of the petitioner/insurance company not only because as per the paras of the Award reproduced above show that the respondent duly proved its case so that it could succeed in its claim, but also that if the petitioner insurance company had at all any valid case then it had no reason not to appear in the arbitration proceedings and contest the claim on merits. Insurance company cannot come up for the first time in the objections before this Court and take up all these arguments, more so because the scope for hearing under Section 34 in any case is circumscribed that unless the decision of the Arbitrator is wholly illegal or perverse or violative of the contractual provisions, this Court does not interfere and surely the Award cannot be faulted on these counts.

6. In view of the above, I do not find any merits whatsoever in these objections of insurance company, which is most contumaciously refusing to pay the claim of the respondent. The objections are therefore dismissed with costs of Rs.15,000/- payable by the petitioner to the Registrar General of this Court for being utilized towards Juvenile Justice.

With the aforesaid observations, the objection petition stands disposed of.

VALMIKI J.MEHTA, J

March 15, 2010

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