

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.M.A.No.2038 of 2008  
and  
MP.Nos.1 & 2 of 2008

M/s.United India Insurance Co., Ltd.,  
A Government of India undertaking and  
Subsidiary of M/s. General Insurance  
Corporation of India,  
having its registered office at  
No.24, Whites Road, Chennai - 600 001,  
Divisional Office at Bank of  
Baroda Building,  
4<sup>th</sup> Floor, State Bank Road,  
Coimbatore. ...Appellant/Respondent

vs.

1.R.K.K.Veenakumari  
rep. by her power of Attorney  
agent R.K.K. Indira ... 1st respondent/Claimant

2.C.Srivatsan ... 2nd Respondents/Arbitrator

Civil Miscellaneous Appeal is filed under section 37(1-B) of  
the Arbitration & Conciliation Act, 1996 against the order  
dated 27.09.2007 on the file of the Additional District Judge  
at Coimbatore in Arbitration Original Petition No.374 of 2005.  
preferred against the Arbitration award dated 25.1.2002 on the  
file of the Arbitration Tribunal.

For Appellant : Mr.R.Ravichandran  
for Ms.R.Sreevidhya  
For Respondent No.1 : Mr.C.P.Palanisamy

J U D G M E N T

This appeal is against the dismissal of the Original  
Petition filed by the appellant under Section 34 of  
Arbitration Act, Challenging the award of the sole arbitrator.

2. The facts are not in dispute. The 1<sup>st</sup> respondent had  
insured her building with the appellant Insurance Company for  
a declared value of Rs.40,00,000/- on 22.03.1993. The said

insurance was periodically renewed for the same value upto 21.03.1998. On 30.11.1997, on account of riot that happened in Coimbatore, the entire building was damaged by fire, so the claimant lodged a claim with the Insurance Company for a value of Rs.40,00,000/-, the value of the insurance policy.

3. The Insurance Company appointed a surveyor, who, assessed the loss at Rs.18,00,000/-. Therefore, the insurance Company offered Rs.18,00,000/- to the 1<sup>st</sup> respondent/ claimant. Since the 1<sup>st</sup> respondent/ claimant was not ready to accept the said amount, she approached the National Consumer Disputes Redressal Commission, by filing an application in OP.No.193 of 1998. Before the Commission, the Insurance Company offered to pay a further sum of Rs.1,40,000/-. The National Consumer Disputes Redressal Commission directed the 1<sup>st</sup> respondent to receive the said sum of Rs.1,40,000/- without prejudice and directed the parties to go for arbitration as per clause 11 of the Insurance Policy.

4. This order of the National Consumer Disputes Redressal Commission came to be passed on 14.07.2000. Soon thereafter, by a notice dated 29.08.2000, the respondent herein nominated a sole Arbitrator and requested the Insurance Company to either agree for arbitration by the nominated Arbitrator or nominate its own Arbitrator. The Insurance Company took a stand that the dispute is not arbitrable.

Clause 11 of the policy of Insurance Company which provides for arbitration read as follows:

"If any difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) 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 of whom one shall be appointed in writing by each of the parties within two calendar months after having been required so to do in writing by the other party in accordance with the provisions of the Arbitration Act 1940 as amended from time to time and for the time being in force. In case either party shall refuse or fail to appoint arbitrator within two calendar months after receipt of notice in writing requiring an appointment, the other party shall be at liberty to appoint sole arbitrator and in case of disagreement between the arbitrators, the difference shall be referred to the decision of an umpire who shall have been appointed by them in writing before entering

on the reference and who shall sit with the arbitrators and preside at their meeting.

It is clearly agreed and understood that of difference or dispute shall be referable to arbitration as hereinbefore provide, if the Company has disputed or not accepted liability under or in respect of this policy.

It is hereby expressly stipulated and declared that it shall be condition precedent to any right of action or suit upon this policy that the award by such arbitrator, arbitrators or umpire of the amount of the loss or damage shall be first obtained. "

5. Since the Insurance Company has not come forward to nominate its Arbitrator as per clause 11 extracted above, the sole Arbitrator appointed by the claimant entered upon arbitration and sent notice to the Insurance Company for the arbitration proceedings. However, the Insurance Company took hyper-technical stand and refused to appear before the Arbitrator.

6. In fact, the Insurance Company by its letter dated 18.12.2001 addressed to the sole Arbitrator nominated by the insurer claimed that the insurer had no power to appoint the Arbitrator.

7. Left without any other option, the learned Arbitrator appointed by the claimant proceeded with the arbitration and passed an ex-parte award on 25.01.2002. From the award, it could be found that the Arbitrator has taken into account the entire materials placed before him and he has passed the Award after analyzing the entire facts of the case.

8. The Arbitrator found that the Insurance Company is liable to pay a sum of Rs.20,60,000/- apart from the Rs.19,40,000/- which has already been paid by the Insurance Company. The Arbitrator also awarded interest at 10% p.a. from 12.12.1997 till date of payment.

9. This award was challenged before the District Court, Coimbatore in Arbitration O.P.No.374 of 2005. The I Additional District Judge, Coimbatore, who heard the Arbitration O.P concluded that the Insurance Company has not made out any ground for interference with the award of the Arbitrator within the scope under Section 34 of the Arbitration and Conciliation Act, 1996. On such finding made by the learned Additional District Judge in OP.No.374 of 2005, the Insurance Company has come forward with this appeal.

10. Heard Mr.R.Ravichandran, learned counsel for Ms.R.Sreevidhya for appellant and Mr.C.P.Palanisamy, learned counsel appearing for the respondent.

11. Alive to the scope of the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, Mr.R.Ravichandran, learned counsel appearing for the Insurance Company would submit that the Arbitrator must have taken into account that the building was insured for the first time with the Insurance Company in the year 1993 valued at Rs.40,00,000/- and the accident occurred in the year 1997. Therefore, the Arbitrator must have taken into account the lapse of 4 years and deducted a certain amount towards depreciation in value of the period. Though other grounds have been raised, I do not find any merits in the other grounds raised in the appeal, in view of restricted scope of the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996. Clause 11 of the policy provides the manner in which the Arbitrator has to be appointed. The appellant Insurance Company has missed the bus. They have not nominated an Arbitrator. Thus, the claimant nominated an Arbitrator and called upon the Insurance Company to either agree with the Arbitrator or nominate their own arbitrator.

12. Therefore, the Insurance Company cannot be heard to complain that Arbitrator has no jurisdiction. Infact it had conceded for a reference to the Arbitrator before National Consumer Disputes Redressal Commission. However, I find some substance in the submission of the learned counsel that the Arbitrator should have taken into account the lapse of 4 years between the insurance and the accident, and deducted certain amount as depreciation. The policy was first taken in the year 1993. It was issued on 22.03.1993 and the value of the building assessed at Rs.40,00,000/-, accident took place on 30.01.1997 nearly after a period of 4 years. There should be some depreciation value of the building during the said period of 4 years, no doubt, it is true that the Insurance Company had collected the premium for the insurance at the insured value of building at Rs.40,00,000/- on 21.03.1998.

13. However, the depreciation in the value of the insured building should be taken into account while determining the compensation payable to the claimant. The next question that arises is what will be the rate of depreciation. Admittedly, the building is type 1 building and the Tamil Nadu Buildings (Lease and Rent Control) Act have provides a guidance as regards the depreciation for the value of the building. For a type 1 building the depreciation under the Act is 1% p.a.

14. If worked out as per the formula provided for fixing of fair rent under Tamil Nadu Buildings (Lease and Rent Control) Act, the depreciation for a period of 4 years for the building works out to Rs.38,039/- and the same can be rounded off to Rs.38,000/-. This amount will have to be deducted from the total value of the building that has been insured, that is Rs.40,00,000/-. After deducting the sum of Rs.38,000/- the amount payable by the Insurance Company arrives to Rs.39,62,000/- instead of Rs.40,00,000/-. Out of

Rs.39,62,000/- the Insurance Company has already paid Rs.19,40,000/- so the balance amount payable by the Insurance Company arrives to be Rs.20,22,000/- instead of Rs.20,60,000/- as arrived at by the Arbitrator to this accident. I find that the Award of the Arbitrator is against the law relating to compensation in respect of not allowing depreciation alone. So the award of the Arbitrator is modified only to the extent indicated above.

15. Thus the appeal is partly allowed, award of the Arbitrator will stand modified as follows :

There will be an award against the Insurance Company that payment of Rs.20,22,000/- with interest and costs as awarded by the Arbitrator.

16. It is stated that pending execution proceedings the Insurance Company has deposited a sum of Rs.42,57,410/- to the credit of EP.No.16 of 2008.

17. Mr.C.P.Palanisamy, learned counsel would submit that the said sum of Rs.42,00,000/- is lying in deposit to the credit of the EP.No.16 of 2008. In view of the disposal of the appeal the respondent/claimant would be entitled to withdraw the sum of Rs.20,22,000/- with interest at 10% p.a. from 12.12.1997 till the date of deposit and the cost awarded in the proceedings. The remaining amount shall be paid to the Insurance Company. No costs.

Sd/-  
Assistant Registrar (CS )

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

dsa

To

1. The Additional District Judge,  
Coimbatore
2. Mr.C.Srivatsan,  
Sole Arbitrator,  
No.2, Ramar Koil Street,  
Ram Nagar, Coimbatore.

+ 1 cc to Ms. A. Mathumathi, Advocate SR.58098

C.M.A.No.2038 of 2008  
and  
MP.Nos.1 & 2 of 2008

KGK (CO)  
EU (04/10/2017)

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