

AP/315/2021
IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION

MR. RANJAN DEB
VERSUS
THE ORIENTAL INSURANCE COMPANY LIMITED

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
Date: 6th December, 2021.

[Via Video Conference]

APPEARANCE:

Mr. Rishad Medora, Advocate
.....for the applicant
Mr. Shuvasish Sengupta, Advocate
Mr. Rajesh Singh, Advocate
.....for the respondent

The Court:- This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of Arbitrator to resolve the disputes between the parties.

The arbitration agreement in the form of mediclaim insurance policy, Annexure-A, is not disputed between the parties. The said agreement contains 5.13 as arbitration clause which reads as under:-

“5.13 ARBITRATION CLAUSE : If any dispute or difference shall arise as to the quantum to be paid under the policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of a sole arbitrator to be appointed in writing by the parties or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration, the same shall be referred to a panel of three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

It is clearly agreed and understood that no difference and dispute shall be referable to arbitration as herein before provided, 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 a condition precedent to any right of action or suit upon this policy that award by such arbitrator/arbitrators of the amount of the loss or damage shall be first obtained.”

It is pointed out by learned counsel for the applicant that the applicant was entitled to receive the mediclaim in terms of the said policy but the full amount was not paid by the respondent-insurance company. Therefore, the applicant had sent the notice dated 8th June, 2021 invoking the arbitration clause and suggesting the name of the arbitrator but the same was not accepted by the respondent in their reply dated 5th July, 2021.

Though the learned counsel for the respondent has orally opposed the application but he has not disputed the arbitration agreement nor has he disputed the fact that the applicant is not satisfied with the mediclaim which has been given to the applicant and the dispute exists. He has orally denied the allegations made in AP.

Having regard to the aforesaid, I am of the opinion that the arbitration agreement exists and considering the nature of dispute, an independent arbitrator is required to be appointed in terms of Section 11(6) of the Act. Hence, AP No.315 of 2021 is disposed of by appointing Mr. Sabyasachi Chowdhury, Advocate, Bar Library Club as Arbitrator to resolve the disputes between the parties.

(PRAKASH SHRIVASTAVA, C.J.)