

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 29TH DAY OF OCTOBER 2021

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

ARBITRATION O.P. No. 174 of 2021

In the matter of Arbitration and Conciliation  
Act, 1996

AND

In the matter of Arbitral Award dated  
10.06.2019 under Policy No.  
171300/627/0/11/13/52270/98.

United India Insurance Co.Ltd.  
Regional Office,  
178, Dr.Nanjappa Road, Coimbatore.

. . . Petitioner

Versus

Tamilnadu Sizing & Weaving Mills Ltd.  
reptd.by Mr.K.Dhandapani, Managing Director,  
S.F.No.291/3 and 4, Kunnangalpalyam,  
Sevathngadu, Chinnakurai,  
Palladam Road,  
Tiruppur - 641 605.

. . . Respondent

**ARBITRATION O.P. No. 174 of 2021**

Original Petition praying that this Hon'ble Court be pleased to set aside the award dated 10.06.2019 passed by the Sole Arbitrator in favour of the Respondent.

This Arbitration Original Petition coming on this day before this court for hearing in the presence of Mr.M.B.Raghavan, Advocate for the petitioner herein and Mr.K.Sridhar, advocate for the respondent herein and

upon reading the petition and the award dated 10/06/2019 filed herein and this court having observed that the court cannot modify the award, considering the pendency of the matter for quite many years, and in order to give a quietus and the respondent is also not having any serious objection to reduce the interest rate, the same has been reduced, **it is ordered as follows:-**

1. That the interest rate is reduced from 9% to 7.5% from 2/6/1999 till the date of payment.
2. That the Insurance Company/the petitioner herein, be and is hereby directed to make the payment within a period of **\*six weeks** from the date of receipt of a copy of this order without any delay.

**(\*)Corrected as per order dated  
24.01.2022 made in Arb.O.P.No.174 of 2021**

**Sd./-**

**Asst. Registrar (O.S.II)**

WITNESS, THE HON'BLE MR.JUSTICE SANJIB BANERJEE,  
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE  
29TH DAY OF OCTOBER 2021.

**Sd/-**

**ASSISTANT REGISTRAR (O.S.II)**

**//Certified to be true copy//**

**Dated at Madras this the      day of      2021.**

**COURT OFFICER(O.S.)**

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

NS

23.11.2021

Arb.O.P.No.174 of 2021

ORDER  
DATED 29/10/2021

THE HON'BLE MR. JUSTICE  
N. SATHISH KUMAR

FOR APPROVAL: 06/12/2021

APPROVED ON: 06/12/2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated 29.10.2021**

**CORAM:**

**THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR**

**Arb.O.P.No.174 of 2021**

United India Insurance Co.Ltd.  
Regional Office,  
178, Dr.Nanjappa Road, Coimbatore.

. . . Petitioner

Versus

Tamilnadu Sizing & Weaving Mills Ltd.  
reptd.by Mr.K.Dhandapani, Managing Director,  
S.F.No.291/3 and 4, Kunnangalpalyam,  
Sevathngadu, Chinnakarai,  
Palladam Road,  
Tiruppur - 641 605.

. . . Respondent

**PRAYER** : Petition filed under Section 34 of Arbitration and Conciliation Act, to set aside the award dated 10.06.2019 passed by the Sole Arbitrator.

For Petitioner : Mr.M.B.Raghavan

For Respondent : Mr.K.Sridhar

- - - - -

**ORDER**

This Arbitration Original Petition has been filed to set aside the

award dated 10.06.2019 passed by the learned Sole Arbitrator.

2. The facts which are necessary for the disposal of the Arbitration Original Petition is as follows:-

As the fire broke up on 13.09.1998, in different places of the respondent's Mill, the respondent had alleged the claim for a sum of Rs.43,42,813.76/-, for building, Machinery, Stocks and other items. As per the procedure, applicant has appointed a Surveyor to file a report. Surveyor has filed a Status report, Ex R.2, dated 03.05.1999, assessing the damages to the tune of Rs.7,15,330/-(Ex.R5). As the Surveyor found discrepancies in regard to the cause and manner of fire and that claim was grossly exaggerated, Insurance company has appointed Investigator namely M/s.Vardhaman Insurance Services. Investigator, filed a report, Ex.C.9, dated 19.03.1999, wherein it is stated that the fire was only an accidental. He has also confirmed that the claim is a reasonable one.

3. After finding two contradictory reports, Insurance Company offered to settle the claim as per Surveyor's assessment of Rs.7,15,330/- on 02.06.1999, which was not accepted by the respondent. Hence, the respondent had filed a complaint before the National Consumer Disputes Redressal Commission, in O.P.No.230 of 1999.

4. Before the learned arbitrator, claim was made for a sum of Rs.44,09,578/- towards the damage and the sum of Rs.73,67,069/- towards compensation and a sum of Rs.1,17,76,646/- towards interest. Before the learned tribunal, C.W.1 was examined and Exs.C.1 to C.63 were filed on behalf of the claimant. On the side of the respondent, R.Ws.1 to 5 were examined and Exs.R1 to R.56 were filed.

5. After analysing both the oral and documentary evidence, the learned Arbitrator Tribunal has passed the following award:-

With the result the claimant is entitled to a total sum of Rs.43,80,815/- and after deducting a sum of Rs.7,15,000/- already paid by the respondent, the claimant is entitled for a sum of Rs.36,65,815/- to be rounded off at Rs.36,65,800/-.

6. Being aggrieved, the petitioner has come forward with the present Arbitration Original Petition, praying for the relief as stated therein.

7. Heard Mr.M.B.Raghavan, learned counsel for the petitioner and

Mr.K.Sridhar, learned counsel for the respondent.

8. The main contention of the learned counsel appearing for the petitioner insurance company is that the learned arbitrator has not taken note of the relevant documents in assessing the damages. The learned Arbitrator has relied upon Exs.C16, C44-51 (about alleged Export Orders); Ex C17 - Bills for purchase of Chemicals; Ex C29 - Balance Sheet, Profit and loss Accounts; Exs.C31-38 - Account Reports and EXs.C52, 60-63 - of alleged Yarn Supplier.

9. It is his further contention that the burden of proof on the part of the claimant to establish the damages on account of fire has not been discharged and the same has been ignored by the learned arbitrator. Therefore, on various heads, the learned arbitrator's findings in accepting the claim is against the fundamental principles of Evidence Act. The learned Arbitrator has brushed aside the crucial facts with regard to the production of yarn and infact, the respondent also disproved the contention of the claim by examining RW3 as well as the purchase of yarn, which has not been taken note of by the learned Arbitrator.

10. It is his further contention that despite absence of proof from the side of the claimant, the learned Arbitrator had allowed the claims in full merely by finding fault with the Surveyor. It is contention that the interest awarded by the learned Arbitrator is also not according to law. When the

amount of Rs.7,15,330/- has already been paid, the payment on interest will arise only from the date of report of the Surveyor, whereas the learned Arbitrator has awarded interest from the date of accident which is not correct.

11. It is his further contention that in the absence of any contractual rate, awarded the interest at the rate of 9% till the award and 18% post award is against the banking norms. Hence, submitted that award is liable to be set aside.

12. Whereas the learned counsel appearing for the respondent submitted that the award is passed on the factual matrix. The learned arbitrator has assessed and analysed both the oral and documentary evidence and passed the award. Hence the same cannot be reappreciated under Section 34 of the Arbitration and Conciliation Act, 1996. Moreover, the award does not suffer from any interference and prays for dismissal of this Arbitration Original Petition.

13. As far as the interest portion is concerned, it is his contention that Arbitrator has correctly awarded interest. However, if the Court is inclined to modify the interest, he has no objection.

14. The sum and substance of the dispute is with regard to the

claiming damages suffered with regard to the fire accident, which took place on 13.09.1998 in the respondent's business place. Immediately after the fire accident, insurance company appointed the Surveyor and assessed the damages to the tune of Rs.7,15,330/-. Having found some discrepancy with regard to cause and manner of fire accident, appointed the Investigator. Investigator, after thorough investigation has filed a report, indicating that the report of the Surveyor is not correct and in fact, the damages, caused by fire accident is a real one and the damages claimed by the petitioner shown that the respondent is reasonable. Thereafter, when the Investigator has taken a contrary view, Insurance Company offered to pay a sum of Rs.7,15,330/-, which triggered the dispute to the Arbitrator.

15. The learned arbitrator after considering both oral and documentary evidence came to the conclusion that the claim made by the claimant is proved and awarded damages as indicated above. It is to be noted that merely because C.W.1 alone was examined on the side of the applicant, it cannot be said that facts and documents placed by him is not proved. The very Investigation Officer appointed by the Insurance Company assessed the damages and filed a report and that was the reason why the Company has not prepared to examine him as witnesses before the Arbitral Tribunal. Learned Arbitrator in his entire discussion in each claim has discussed the evidences and finally come to the conclusion that the

claim made under each head has been proved by the documents.

16. It is well settled that the Arbitrator appointed by the parties is the final judge of the facts. The finding of facts recorded by him cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him. Therefore, this Court is of the considered view that merely because the award exceeds the report of the Surveyor cannot be a reason to challenge the award by the Insurance Company. When the facts otherwise really established that the claim made by the claimant is reasonable and in fact is proved in the manner known to law, in such being a position, this Court is unable to find any infirmity in the award passed by the learned Arbitrator. As far as interest portion is concerned, learned Arbitrator has granted interest at the rate of 9% from the date of accident.

17. In AIR 1997 SUPREME COURT 408, ***THE UNITED INDIA INSURANCE COMPANY LTD VS. M.K.J.CORPORATION***, the Hon'ble Supreme Court has held that three months time has to be given to the Insurance Company to settle the matter. Therefore, the question of payment of interest will be arisen from that date itself.

18. So far as this case is concerned, interest calculation was made on 2/6/2009. Therefore the payment of interest from the date of accident alone has to be interfered. Further, taking note of the economic reforms, many

changes has occurred in banking sectors. Rate of interest have drastically reduced to maintain proper banking business.

19. Though this Court is aware of the fact that the Court cannot modify the award, considering the pendency of the matter for quite many years, and in order to give a quietus and the respondent is also not having any serious objection to reduce the interest rate, the same has been reduced.

20. Accordingly, this **Arbitration Original Petition is disposed of**. Interest rate is reduced from 9% to 7.5% from 2/6/1999 till the date of payment. Insurance Company is directed to make the payment within a period of **\*six weeks** from the date of receipt of a copy of this order without any delay.

**(\*)Corrected as per order dated  
24.01.2022 made in Arb.O.P.No.174 of 2021**

**Sd./-**

**Asst. Registrar (O.S.II)**

Sd/- N.S.K.J.  
29.10.2021

//Certified to be true copy//

Dated at Madras this the        day of        2021.

**COURT OFFICER(O.S.)**

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.