



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 15TH DAY OF JULY 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P. No.973 of 2019

In the matter of Arbitration and
Conciliation Act 1996
and

In the matter of disputes and differences
between M/s. Kumar Transports and
M/s. Southern Railways in respect of the
LOA No. M/TRD/29/IO/T2014-15/5,
dated 24.11.2014.

M/s. Kumar Transports
Rep. by its Partner Mr.M.Sugumar
No.18, First Street,
Thillaipuram,
Namakkal – 637 001.

... Petitioner

Versus

The Senior Divisional Electrical Engineer
Traction Distribution/Works
Southern Railway
Chennai Division,
Chennai – 600 003.

.. . Respondent

O.P. No.973 of 2019

The Original Petition praying that this Hon'ble Court be pleased
to allow this petition and to set aside the part of the award dated 12.02.2019
passed by the Sole Arbitrator with regard to the rejection of the claims



the claim Nos.4,5 and 6 made by the petitioner before the Arbitral Tribunal with the cost of this proceedings.

This Original Petition coming on this day before this court for hearing in the presence of Mr.N.Premkumar, Advocate for the Petitioner herein and Mr.P.T.Ramkumar, Standing Counsel for Railways appearing for the respondent herein and upon reading the petition and the award dated 12/02/2019 filed herein and this court is of the view that when a claim is made claiming damages, the party has to establish actual loss, admittedly, in the contract, there is no estimated damages agreed upon as estimated damages hence this court do not find any merits in this petition and **it is ordered as follows:-**

That the O.P. No.973 of 2019 be and is hereby dismissed

2.That there shall be no costs of this petition.

WITNESS, THE HON'BLE MR.JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
15TH DAY OF JULY 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.



WEB COPY NS

04.10.2021

O.P. No.973 of 2019

ORDER
DATED 15/07/2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 20/10/2021

APPROVED ON: 20/10/2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.973 of 2019

M/s. Kumar Transports
Rep. by its Partner Mr.M.Sugumar
Bo.18, First Street,
Thillaipuram, Namakkal – 637 001.

.. Petitioner

Vs.

The Senior Divisional Electrical Engineer
Traction Distribution/Works
Southern Railway
Chennai Division,
Chennai – 600 003.

.. Respondent

* * *

Prayer: Petition filed under Section 34 (1) of the Arbitration and Conciliation Act, 1996 praying to set aside the part of the award dated 12.02.2019 passed by the Sole Arbitrator with regard to the rejection of the claims No.4,5 and 6 made by the petitioner before the Arbitral Tribunal and allow the claim Nos.4,5 and 6 made by the petitioner before the Arbitral Tribunal with the cost of this proceedings.

* * *

For Petitioner : Mr.N.Premkumar

For Respondent : Mr.P.T.Ramkumar

ORDER

This Petition has been filed challenging the Award dated



petitioner, as far as the claim Nos.4, 5 and 6 are concerned.

WEB COPY

2. Brief facts leading to the filing of this application is as follows:

By a letter of acceptance dated 24.11.2014 and Tender No.M/TRD/29/I/OT/2014-15/5 for “Hiring of diesel driven LMV breakdown vehicle having 6 ton capacity 4 Nos for 24 months at 4 OHE depots located at ACK, CGL, AB & AJJ in Chennai Division” was assigned to the claimant. As dispute arose between the petitioner and the respondent, the respondent has issued seven days notice and termination notice stated that 48 hours failing which terminated the contract which resulted in referring dispute to the learned Sole Arbitrator. The sole Arbitrator entered into the reference, originally the claimant has claimed a return of bill amount and Earnest Money Deposit and performance guarantee. However, he has raised additional claim in the claim statement towards interest a sum of Rs.7,00,000/- as compensation and interest in the performance guarantee. The learned Arbitrator passed an award, in which claim Nos.4,5 and 6 have been negated. Claim No.4 is in respect of claiming interest relying upon the General Conditions of the Contract. Clause 16 (3) and 64.5 of the Contract clearly indicates that interest portion was disallowed. Similarly, claim No.5 is disallowed relying upon the same condition. Claim 7 is disallowed relying upon the General Conditions of the Contract and the same has been rejected. Aggrieved over the same, the present petition has



been filed.

WEB COPY

3. It is the contention of the learned counsel for the petitioner that he has preferred this petition claiming interest. He relied on the judgment of the Division Bench of this Court wherein it has been held that claim of interest has not disputed by the Railways. Despite the specific Clause in the General Condition of Contract which restricts the interest, still interest is payable in this regard. He also relied upon the judgment of the Division Bench of this Court in O.S.A.No.279 of 2018 and order passed by this Court in O.P.No.290 of 2018 to that effect that the loss towards anticipated profits ought to have been awarded by the learned Arbitrator. The learned Arbitrator infact while allowing the claim for payment of bill amounts, Earnest Money Deposit and return of performance of guarantee and disallowed the interest portion alone.

4. At the outset the Judgment relied upon by the learned counsel for the petitioner in O.S.A.279 of 2018 is not applicable to the facts of the case. In the above case, the issue of interest was never disputed and in fact, even no argument was raised during the appeal stage. In such circumstances, this Court has held that when the same has not been raised during the appeal stage, it amounts to admission for payment of interest.

Whereas in this case, the learned Arbitrator invoked the provision in payment of interest as per General Condition of Contract.



Clause 61(2) and 61 (3) of the General Conditions of the Contract

reads as follows :

61 (2) *Payment on Determination of Contract: Should the contract be determined under Sub Clause (1) of this Clause and the Contractor claims payment for expenditure incurred by him in the expectation of completing the whole of the work, the Railways shall admit and consider such claims as are deemed reasonable and are supported by vouchers to the satisfaction of the Engineer. The Railway's decision on the necessity and propriety of such expenditure shall be final and conclusive.*

61 (3) *The Contractor shall have no claim to any payment of compensation or otherwise, howsoever on account of any profit or advantage which he might have derived from the execution of the work in full but which he did not derive in consequence of determination of contract.*

5. The above Clauses makes it very clear that the parties have agreed not to claim any interest for compensation. When the Clause itself is specifically barred, the parties from claiming interest which has been agreed upon by the parties. Now, it cannot be said that as far as interest for compensation is concerned, the conditions of the contract is not applicable



to the parties. A perusal of the award passed by the learned Arbitrator and claim petition, it is seen that no documents whatsoever have been filed to substantiate the so-called expenditure, as a result, it suffered loss. Therefore, in view of the above, when a claim is made claiming damages, the party has to establish actual loss. Admittedly, in the contract, there is no estimated damages agreed upon as estimated damages. Hence, I do not find any merits in this petition and this petition is liable to be dismissed.

Accordingly, this Original Petition is dismissed. No costs.

Sd/- N.S.K.J.
15/07/2021

//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.