IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.582 OF 2007

United India Insurance Co. Ltd.
A Body Corporate incorporated in India
under the Companies Act, having
its registered office and Head Office
at United India House, 24, Whites Road,
Chennai and the Regional Office at 19, Dharampeth
Extension, Shankar Nagpur Square, Nagpur … Appellant

-vs-

M/s Jaiswals Ashoka Infra-Structure Pvt. Ltd.
A Private Ltd. Company incorporated in
India, under the Companies Act, 1956, having
its office at 1-2, River View, Ashok Stambha,
Nashik 02. … Respondent

WITH

FIRST APPEAL NO.594 OF 2007

Abhijeet Ashok Infra-Structure Pvt. Ltd.
A Company duly Incorporated under the
Provisions of the Companies Act, 1956,
having its office at Ashoka House, Wadala Road,
Nashik. … Appellant

-vs-

United India Insurance Company Limited,
a Body Corporate in corporate under the
provisions of Companies Act 1956 having
its regional office at 19, Dharampeth
Extensions, Shankar Nagar, Nagpur … Respondent

Shri P. K. Sathianathan, Advocate with Shri D. R. Vyas, Advocate and Shri Dev M. Mehta, Advocate, for appellant in FA/582/2007 and for respondent in FA/594/2007.
Shri Chetan S. Dhore, Advocate for the respondent in FA/582/2007 and for appellant in FA/594/2007.

CORAM : ABHAY J. MANTRI, J.
DATE : August 25, 2025

Common Judgment :

The original claimant, i.e. appellant in First Appeal No.594/2007 being aggrieved by the judgment and order dated

25/06/2007 passed by the learned Principal District Judge, Nagpur in M.C.A. No.839/2006 thereby quashed and set aside the Award passed by majority (two members of the Arbitral Panel) and confirmed the award passed by one member of the Arbitral Panel have preferred this appeal.

2. Similarly, the respondent/Insurance Company has challenged the same judgment and award by filing First Appeal No.582/2007, whereby they have prayed for setting aside the impugned judgment and order wherein the minority award was confirmed.

3. As both these appeals arise out of the judgment and order dated 25/06/2007 passed by the learned District Judge in M.C.A. No.839/2006, they are heard together and being disposed of by this common judgment.

4. Facts of the case (FA/594/2007) in a nutshell are as under :

The appellant is a company registered under the Companies Act, 1956. Pursuant to the advertisement issued by the Government of Maharashtra for the construction of the bridge and its approaches across the Wainganga river on the Nagpur-Raipur section of National Highway No.6 in Bhandara district, the appellants had participated, and accordingly, the work was allotted to them. The project was to be undertaken on a Build Operate and Transfer Scheme (BOT), and the construction was to commence from 16/11/1998.

5. The respondent, i.e. United India Insurance Company Ltd., is a Government of India enterprise incorporated by the Government of India and is in the business of General Insurance cases other than life insurance. Accordingly, the appellant-claimant approached the respondent for the issuance of an insurance policy. After due negotiations, the respondent-Insurance Company confirmed a Contractor's All Risk insurance Policy (C.A.R. Policy No.161600/44/03/11/1038/99) [for short, '***the policy'***] for the erection of the bridge from the period, i.e. 16/11/1998 to 15/11/2000, with an extension of a 12-month maintenance period.

6. On 19/05/2000 at about 8.30 am box Girder, span resting on Pier Nos. 8 and 9 of the bridge, broke at the centre and it collapsed. Due to the said incident, the claimants suffered substantial loss. Therefore, the claimants informed the respondent-Insurance Company about the said incident.

7. The respondent-Company appointed surveyor Shri K. B. Chandak to conduct a preliminary survey of the said incident/accident. Pursuant to the directions of the respondent-Company, he had conducted the preliminary survey and submitted a report on 25/05/2000. The said report, being preliminary in nature, the same was silent about various aspects of the incident and therefore, the respondent- Company appointed a Senior surveyor, namely M/s Standards Surveyors Pvt. Ltd. from Pune, to assess the loss caused to the claimants. Accordingly, M/s Standards Surveyors conducted a detailed survey about the incident dated 19/05/2000

with the assistance of a Structural Expert and submitted a final loss assessment report to the respondent-Company on 17/10/2000. In terms of the said report, Rs. 90 lakhs towards interim relief and Rs. 44,00,296/- towards repair works were proposed to be released in favour of the claimants. Thus, the total compensation amount determined by M/s Standard Surveyors was of Rs. 1 Crore 34 lakhs. In response, the respondent-Insurance Company gave an offer of Rs. 54.98 lakhs towards full and final settlement of the claim.

8. Being aggrieved by the said offer, the claimants submitted their claim to the Arbitral Tribunal consisting of three members, i.e. Shri. B. R. Mehta, Shri. V. P. Shah and Shri. A. Shankaran as the members of the said Panel. According to the claim statement of the claimants, the claim was divided into three heads. The Insurance Company resisted the claim and contended that the offer of Rs. 54.98 was given inadvertently and due to oversight.

9. It further appears that claimants had invoked the Arbitration clauses and appointed Shri V. P. Shah as their Arbitrator, and the respondent-Insurance Company had appointed Shri A. Shankaran as their Arbitrator. Both these Arbitrators, after due consultation, appointed Shri B. R. Mehta as the Presiding Arbitrator vide their letter dated 23/10/2002.

10. After considering the rival claim of the parties, the two members of the Arbitral Tribunal (jointly) assessed the net financial loss/damage to the tune of Rs. 2,12,49,336/-. Accordingly, they both

have awarded the said amount in favour of the claimant. The said amount was awarded with 18% interest per annum, and also awarded Rs. 15 lakhs towards expenses of the arbitration. "*Similarly, the Third Arbitrator, Shri A. Shankaran, has passed the Separate Award on 10/10/2003. Who has taken a different view from the two Arbitrators as stated above. After considering the various aspects, Shri A. Shankaran finally awarded an amount of Rs. 1,70,65,170/- in favour of the claimants with a rate of interest @ 15% pa and directed the respondent-Insurance Company to pay the said amount towards full and final settlement of the claim of the claimants till the date of payment"*.

11. Being aggrieved by the said Award, the respondent-Insurance Company has preferred application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "***the Act of 1996***") before the Principal Bench of this Court at Bombay where the objection regarding jurisdiction was raised by the claimants and upon said objection, the matter was transferred to the learned Principal District Judge, Nagpur.

12. The learned Principal District Judge, after hearing the parties, partly allowed the application and quashed and set aside the Award passed by the majority panel (Two Arbitrator members of the panel) of the Arbitrator and confirmed the Award passed by the Single Arbitrator. Feeling aggrieved by the said judgment and order, the original claimants, as well as the respondent-Insurance Company, have preferred the above separate appeals. As such, both

appeals are taken together for consideration and final hearing.

13. Heard the learned counsel for both the parties and have gone through the impugned judgment and order as well as the Awards passed by the Arbitrators and record and proceedings as pointed out by the learned counsel for the respective parties. I have also gone through the judgment relied upon by the learned Advocate for the claimant/appellant in ***Hindustan Construction Company Ltd. vs. National Highways Authority of India (2024) 2 SCC 613.***

13. Having considered the above, the following points arise for determination:

(i) Whether the impugned judgment is just and proper?

(ii) Whether interference is required in the impugned judgment and order in the appellate jurisdiction ?

14. **Point Nos.(i) and (ii)**

Learned Advocate Shri. Dhore for the appellant-original claimants has emphasised that the learned District Judge has erred in setting aside the Majority Award, delivered by two members of the Arbitral Tribunal and confirmed the order passed by one member of the Arbitral Tribunal. He further vehemently argued that in view of the mandate in ***Hindustan Construction Company Ltd.*** (supra), the dissenting opinion of the minority Award would not receive the level and standard of scrutiny which the majority Award is subjected to. Therefore, he submitted that the learned District Judge has committed an error while setting aside the majority award passed by the two members of the Arbitral Tribunal. During the arguments, he has taken me through the judgments passed by the learned District Judge as well as the Arbitral Tribunal.

15. He further canvassed that both the surveyors were appointed by the respondent-Insurance Company for conducting a preliminary and detailed survey, and therefore, the reports submitted by the Surveyors have to be taken into consideration while passing the Award. As per the report of M/s Standard Surveyors Pvt. Ltd., the liability has been fastened on the Insurance Company to pay an amount of Rs. 1.34 lakhs to the claimants. He further propounded that the respondent does not dispute that the appellant was not at fault and the insurance policy covers the damages sustained by the claimants, and therefore, he submitted as per the Majority Award, the claimants are entitled to get the compensation of the amount of Rs. 2,12,49,336/-.

16. To buttress his submission, he has relied on the judgment in ***Hindustan Construction Company Ltd.*** (supra) and pointed out paragraph Nos.**24 to 30 and 32** and argued that the view taken by the majority of Arbitrators cannot be set aside by upholding the view taken by the minority Arbitrator and therefore contended that majority award cannot be set aside based on the finding recorded by the minority award and hence he urged for quashing and setting aside the impugned judgment and award.

17. It is pertinent to note that learned Advocate Shri Sathianathan for the respondent-Insurance Company does not

dispute that the appellant was not at fault for the occurrence of the incident, and the insurance policy was in force at the time of the occurrence of the incident. During his argument, he tried to point out paragraph **35** of the impugned judgment and canvass that the claimants produced a fabricated document to get the compensation and therefore claimants are not entitled to the compensation.

18. He further submitted that in view of the law laid down in ***Gayatri Balasamy vs. M/s ISG Novasoft Technologies Ltd., 2025 NSC 605,*** Court can interfere in the impugned judgment and award passed by the Arbitral Tribunal on the point of computation of compensation amount and therefore the judgment and award passed by the Arbitral Tribunal as well as the District Judge have to be set aside.

19. Having heard the rival submissions of the learned Advocate for both the parties and having gone through the record, I would like to reproduce the conclusion drawn by the Hon'ble Constitutional Bench of the Apex Court in ***Gayatri Balasamy*** (supra) in paragraph 85, which reads thus as under :

> *85. … The questions of law referred to by **Gayatri Balasamy** (supra) are answered by stating that **the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the Arbitral Award**. This limited power may be exercised under the following circumstances:*
>
> *I. When **the award is severable**, by severing the "**invalid" portion** from the "valid" portion of the award, as held in Part II of our Analysis.*
>
> *II. **by correcting any clerical, computational or typographical errors** which appear erroneous on the face of the record, as held*

> *in* ***Parts IV and V of our Analysis***
>
> *III. Post award interest may be modified in some circumstances,* ***as held in Part IX of our Analysis****; and/or*
>
> *IV. Article 142 of the Constitution applies, albeit the power must be exercised with great care and caution and within the limits of the constitutional power as outlined in* ***Part XII of our Analysis.***

20. Upon bare perusal of the above conclusion, it is evident that the Hon'ble Apex Court categorically held that under Sections 34 and 37 of the Act of 1996, the learned District Judge as well as this Court has a limited power to modify the Award passed by the Arbitral Tribunal and laid down the four categories where such power can be exercised.

21. It is pertinent to note that the learned Advocate Shri Sathianathan failed to point out under which category, as laid down by the Hon'ble Apex Court, his case falls to modify the Arbitral Award. He only argued that the claimants had committed fraud upon them and tried to point to Clause 8 of the policy. That being so, I would like to reproduce Clause 8 of the insurance policy, which reads thus as under:

> *" **8**. If a claim is in any respect fraudulent, or if any false declaration is made or used in support thereof or if any fraudulent means or devices are used by the Insured or any one action on his behalf to obtain any benefit under this Policy, or if a claim is made and rejected and no action or suit is commenced within three months after such rejection or, in case of arbitration taking place as provided therein, within three months after the Arbitrator or Arbitrators or Umpire have made their award all benefits under this Policy shall be forfeited."*

22. On bare perusal of Clause 8, it appears that the same is in respect when fraud has been committed or a false declaration is made by the claimant, then the claimant is not entitled to claim compensation. However, in paragraph **35** of the judgment, the learned District Judge has considered the grievance about the fraud played by the claimants and has observed thus :

> *" 35. …. Though* ***these circumstances would not be proved and C-131 appears to be false****,* ***this circumstance is not sufficient to prove that the insured had played fraud to get the claim*** *or there was negligence on the part of the insured. On the contrary, the aforesaid record shows that there is a clear probability of the cause, like "changes in groundwater level". It is already observed that, insurance Company could have succeeded only by proving the negligence of the insured.* ***Aforesaid record is not at all supporting this defence of the Insurance Company****."*

23. Upon scrutiny of the above observations, it is apparent that the learned District Judge categorically held that the respondent-Insurance Company failed to prove that document C-131 produced by the claimants was false. On the contrary observed that, the record shows that there was clear "*changes in groundwater level*", and therefore it was held that the record does not support the defence of the Insurance Company, and therefore I do not find substance in the argument of the learned Advocate for the Insurance Company that the claimants played fraud upon the Insurance Company while claiming the compensation.

24. The next point contended is that there was a change in the mode of casting, and therefore, the claimants are not entitled to claim any compensation. However, in view of the mandate in ***Gayatri***

Balasamy (supra), the District Judge or this Court cannot look into the factual aspects of the matter while determining the claim of the parties, and as such, I do not find substance in his contention.

25. The upshot of the above discussion, as well as the mandate laid down by the Hon'ble Apex Court in the case of ***Gayatri Balasamy*** and ***Hindustan Constructions Company Ltd.*** (supra), I do not find substance in the contention of learned Advocate Shri. Sathianathan. On the contrary, I find substance in the argument made by the learned Advocate for the claimants that the learned District Judge has erred in confirming the finding in the award passed by the one member of the Arbitral Tribunal on the factual aspects. As per Section 34 of the Act of 1996, the Court has very limited power to modify the Arbitral Award. The learned Advocate for the Insurance Company failed to point out the circumstances/categories under which the learned District Judge, as well as this Court, can interfere in the Award passed by the Arbitral Tribunal as contemplated in the judgment of ***Gayatri Balasamy*** (supra) and in such an eventuality, in my view, the original claimants have made out a case for interference in the impugned judgment.

26. Consequently, it is evident that the judgment and award passed by the learned District Judge in M.C.A. No.839/2006 is contrary to the settled position of law and cannot be sustained in the eyes of law and therefore, interference is required in the appellate jurisdiction. Hence, ***I answer point No. (i) in the negative and point No. (ii) in the affirmative.***

27. As a result, First Appeal No.594/2007 filed by the original claimants is allowed, and the impugned judgment and order dated 25/06/2007 passed by the learned Principal District Judge, Nagpur, in M.C.A. No.839/2006 is quashed and set aside, and the Award passed by the Majority Arbitral Tribunal (two members of the Arbitral Panel) is hereby confirmed.

28. First Appeal No.582/2007 filed by the Insurance Company, being devoid of merit, is dismissed.

29. It appears that pursuant to the order of this Court dated 17/08/2007, the Insurance Company has deposited an amount of Rs. 1,70,65,170/- with interest before the learned District Court.

At this stage, the learned Advocate for the claimants submitted that the claimants have withdrawn the amount of Rs. 1,70,65,170/-; hence, the same be adjusted in the final amount. However, execution proceedings are pending for the recovery of the remaining amount. As a sequel, claimants are entitled to recover the balance amount.

(ABHAY J. MANTRI, J.)

Asmita