



C.R.P.(MD)Nos.2041 and 2596 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.10.2024

PRONOUNCED ON : 06.02.2025

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)Nos.2041 and 2596 of 2024

and

C.M.P.(MD)No.11632 of 2024

C.R.P.(MD)No.2041 of 2024:

1.National Insurance Company Limited,
Represented by its Branch Manager,
1st Floor, Angu Vilas Building,
North Car Street,
Nagercoil-629 001.

2.National Insurance Company Limited,
Divisional Office,
1st Floor, Angu Vilas Building,
North Car Street,
Nagercoil-629 001.

... Petitioners

Vs.

M/s.Vaam Industries,
Represented by its Proprietrix,
K.Reji,
No.16/61B, Vasanth Bhavan,
Simon Nagar, Nagercoil – 629 004.

... Respondent



C.R.P.(MD)Nos.2041 and 2596 of 2024

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PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., against the order and decree, dated 01.08.2024, passed in E.P.No.51 of 2018 on the file of the Principal District Court, Kanyakumari District @ Nagercoil.

For Petitioners	: Mr.D.Sivaraman
For Respondent	: Mr.M.Suresh

C.R.P.(MD)No.2596 of 2024:

Vaam Industries,
Represented by its Proprietrix,
K.Reji,
Door No.16/61-B, Vasanth Bhavan,
Simon Nagar,
Nagercoil – 629 004,
Kanyakumari District.

... Petitioner

Vs.

1.National Insurance Company Limited,
Nagercoil Branch,
Represented by its Branch Manager,
1st Floor, Angu Vilas Building,
North Car Street,
Nagercoil-629 001.

2.National Insurance Company Limited,
Divisional Office,
1st Floor, Angu Vilas Building,
North Car Street,
Nagercoil-629 001.

... Respondents



C.R.P.(MD)Nos.2041 and 2596 of 2024

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PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., against the order and decree, dated 01.08.2024, passed in E.P.No.51 of 2018 in Arb.OP.No.1 of 2015 on the file of the Principal District Court, Kanyakumari at Nagercoil, in so far as excluding the period for interest from 16.03.2019 to 21.03.2024.

For Petitioner : Mr.M.Suresh
For Respondents : Mr.D.Sivaraman

COMMON ORDER

Both the CRP's arises from the same order passed in Arbitration Original Petition. Hence both the cases were taken together and common order was passed.

2.(i). The C.R.P.(MD)No.2041 of 2024 is filed by the Insurance Company against the Fair and Decreetal order, dated 01.08.2024, passed E.P.No.51 of 2018 on the file of Principal District Court, Kanyakumari at Nagercoil.

2.(ii). The C.R.P.(MD)No.2596 of 2024 is filed by the claimants against the Fair and Decreetal order, dated 01.08.2024, passed E.P.No.51 of 2018 on the file of Principal District Court, Kanyakumari at Nagercoil.



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3. In the present order the parties shall be referred as Insurance Company and the claimants.

4. The brief facts are that the claimants namely M/s.Vaam Industries has insured the factory from 29.03.2004 to 28.03.2005 for building and stock in progress for a sum of Rs.14,00,000/- under Policy No.651201/11/03/3102165. Another Policy No.651201711704/3101631 for a period from 23.12.2004 to 22.12.2005 and for the building and machinery for a sum of Rs.14,00,000/-. The claimant submitted a claim for Rs.29,34,000/- for the fire accident occurred on 13.03.2005. The insurer appointed M/s.Hanifa Associates, a registered surveyor to conduct survey. After extensive survey, a report, dated 19.10.2005, was submitted estimating total loss at Rs.7,98,751.12/- including the damages to the building, machinery and the loss of stock. The claimant was not satisfied with the said report, hence the claimant filed C.C.No.28 of 2007 before the State Consumer Disputes Redressal Commission, Chennai. Before the State Commission, a joint memo was filed by the Insurance Company and the Claimant wherein the Insurance Company agreed and deposited Rs.10,67,636/- (Rs.



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7,98,754/- towards Principal + Rs.2,68,882/- towards interest at the rate of 9% per annum for the period from the date of consumer's complaint till the date of payment, i.e., on 27.05.2011. The claimant agreed and received the said amount by reserving the right to raise arbitration for the remaining claim.

5. In O.P.No.274 of 2014, one M.Mohamed Essath Ali, a District Judge was appointed as sole Arbitrator. After elaborate hearing the Arbitrator had passed an award on 18.08.2017 for a sum of Rs.13,73,766/- including the amount already paid by the Insurance Company. The following break up would throw some clarity:

Damages to stock and materials	= Rs.9,05,716/-
Damages to building	= Rs.1,68,050/-
Damages to machinery	= Rs.3,00,000/-
Total	= Rs.13,73,766/-

The Arbitrator directed the Insurance Company to pay the said amount at 9% interest from the date of complaint before the State Consumer Disputes Redressal



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Commission till the date of realization of the amount minus the amount already paid to the claimant directly.

6. The claimant had filed E.P.No.51 of 2018 on the file of Principal District Judge, Kanyakumari, for realization of balance amount. The insurance company after deducting the amount already paid in the year 2011 and after deducting TDS at 20% per annum on the interest (as the claimant failed to furnish PAN details), calculated the due at Rs.10,55,715/- and paid the same on 20.12.2018. However, the claimant was not satisfied with the balance amount of Rs.10,55,715/- paid by the insurance company. Hence, the Principal District Judge directed the parties to file a calculation memo. The claimant filed a calculation memo, dated 18.01.2019, claiming Rs.19,85,407/- after adjusting the deposit amount of Rs.10,55,716/-. The Insurance Company had filed the calculation memo which they filed on 14.02.2019.

7. On 02.03.2019, the Court heard both the parties and found that the calculation filed by the Insurance Company was correct. However, the case was



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adjourned to ascertain the Advocate fees and the cost paid to the Arbitrator. It is pertinent to state that the Arbitrator's fee was paid in full and the Arbitrator had submitted full satisfaction memo in E.P.No.51 of 2018. But to the shock and surprise of the Insurance Company, the E.P., Court has passed the impugned order, dated 01.08.2014, directing the Insurance Company to pay Rs.9,58,386.82/- on before 16.08.2024. And also ordered to arrest the officials by 30.08.2024, if failed to pay the amount by 16.08.2024. Aggrieved over the same, the present C.R.P.(MD)No.2041 of 2024 is filed.

8. The primary contention of the Insurance Company is that the time granted is short. The impugned order was passed on 01.08.2024 with a direction to pay the amount by 16.08.2024, failing which arrest of the officials were ordered by 30.08.2024, but the copy of the order was made ready only on 16.08.2024. This Court is of the considered opinion that when the order was made ready on 16.08.2024 and directing the Insurance Company to pay the amount on 16.08.2024 is like strangulating the insurance company. On this ground itself the impugned order of arrest is liable to be set aside.



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9. The next contention of the Insurance Company is that the impugned order suffers from non-application of mind and perversity. The E.P., Court failed to consider the earlier payments which were paid by the Insurance Company along with the interest was not taken into account. Further, vide order dated 02.03.2019 it is held that the calculation memo filed by the Insurance Company is correct, but without any reasons subsequently held the calculation memo filed by the claimant is correct. However, the Learned Counsel appearing for the claimant submitted that the claimant is entitled to interest at 9% for the entire amount of Rs. 13,73,766/- from the date of complaint till realization of the amount, hence the impugned order had rightly directed to pay the balance amount of Rs. 9,58,386.82p.

10. On perusing the impugned order, it is seen that the EP Court had rendered a finding on 02.03.2019 that the calculation memo filed by the Insurance Company is correct. However, in the later portion of the order the Court has directed that the Insurance Company ought to pay Rs.9,15,709.82, which is totally against the calculation memo filed by the Insurance Company. Therefore, this



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Court is of the considered opinion that the impugned order was passed without any application of mind.

11. As far as the rival claim of applicability of interest of 9% for the entire amount Rs.13,73,766/- is concerned, this Court is of the considered opinion that the claim of the Insurance Company is correct. It is seen in the joint memo before the State Commission it is agreed that the Insurance Company has to pay Rs. 7,98,754/- along with 9% interest calculated from the date of complaint until the date of realization. Based on the State Commission's order the Insurance Company has paid Rs.7,98,754/- and for interest the Insurance Company had calculated from the date of complaint dated 13.03.2005 till the date of payment dated 27.05.2011 and arrived at Rs.2,68,882/-. After deducting Rs.31,558/- for TDS purpose, the Insurance Company had paid the amount of Rs.10,67,436/- (Rs. 7,98,754/- + Rs.2,68,882/- minus Rs.31,558/-). Thereafter, in the arbitration award the compensation was increased from Rs.7,98,754/- to Rs.13,73,766/-, minus the amount already paid. The relevant portion of the award is extracted hereunder:



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*“In the result, the insured / claimant is entitled to Rs.9,05,716/- for damages to the stock and materials and sum of Rs.1,68,050/- for damages to the building and sum of Rs.3,00,000/- as damages to the machinery, totally Rs.13,73,766/- with 9% interest from the date of filing complaint before the State Consumer Disputes Redressal Commission, Chennai till realization of the amount **minus the amount already paid to the claimant directly as per the order of the State Consumer Disputes Redressal Commission, Chennai with proportionate cost.**”*

When the award states to deduct the amount already paid, then Rs.7,98,754/- ought to be deducted from Rs.13,73,766/- which comes to Rs.5,75,012/-. The Insurance Company is liable to pay Rs.5,75,012/- along with 9% interest from the date from the date of filing complaint before the State Consumer Disputes Redressal Commission, Chennai i.e. 08.03.2007 till the date of realization i.e. 20.11.2018, which comes to Rs.6,00,879/-. Therefore, the Insurance Company is liable to pay only Rs.11,75,881/- (Rs.5,75,012/- + Rs.6,00,879/-). The Insurance Company had deposited Rs.10,55,715/- after deducting Rs.1,23,176/-. Therefore, the claimant's contention that the Insurance is liable to pay Rs.19,85,407/- is incorrect. The claimant is claiming interest for the entire Rs.13,73,766/- from the date of the complaint till the date of realization and the same is incorrect. Infact it



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would amount to claiming interest for which already interest was paid, thereby double claim and unjust enrichment. Therefore, the said claim of the claimant is rejected.

12. As far as the payment of “arbitrator cost” is concerned, the claimant had submitted a memo claiming Rs.1,55,000/-. The Insurance Company had not filed any evidence to prove that the said amount was paid to the claimant. Therefore, Insurance Company is liable to pay the same to the claimant.

13. With the above said observations, the civil revision petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

06.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes

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To

- 1.Principal District Court,
Kanyakumari District @ Nagercoil.
- 2.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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