



Insurance Claims and Disputes Exploring Settlement through Arbitration

Kumari Medha¹

¹ Kumari Medha, Student, LLM, Christ (Deemed to be University), Delhi NCR

Abstract

Arbitration is an emerging method of adjudication in the commercial matters and its development in the disputes regarding claims under insurance. In India, the matters relating to arbitration deals under the Arbitration and Conciliation Act, 1996, while the claim of insurance generally comes before the district consumer forums along with the State and Central Consumer Commission subject to pecuniary jurisdiction. In this article, it is being discussed by the author that the relevance and enforcement of arbitration awards passed in the case relating to insurance. The concept of insurance stands on the pillars of the intention of compensating for the damage incurred and reducing the risk, but on the condition that the premium received for it must be adequate to the agreed risk, otherwise it will cost the existence of the insurer company in commercial market. The author has briefly discussed the New York Convention and principle of Kompetenz-kompetenz along with the principle of contra proferentum. The author has further discussed the advantages and the problems of arbitration clause in insurance agreement. In the article the author has discussed the cases relating to the interpretation of ambiguous terms of contract and the preliminary issues. Furthermore, the author has mentioned some guiding landmark cases relating to subjects along with discharge vouchers and has concluded with some suggestions.

Keywords: Insurance, Arbitration, Arbitration and Conciliation Act, 1996, Kompetenz-kompetenz, Contra-Proferentum, Discharge Vouchers

¹ Kumari Medha, Student, LLM, Christ (Deemed to be University), Delhi NCR

Introduction

Arbitration is one of the alternative dispute resolution methods popular globally as an effective tool of quick redressal of the commercial disputes. It is a procedure of private dispute resolution adopted on the choice of the parties clearly expressed by the agreement of the parties. In India arbitration is dealt under the Arbitration and Conciliation Act, 1996 (hereinafter act of 1996) based on the United Nations Commission on International Trade Law (hereinafter UNCITRAL Model Law). In the commercial era, it is being adopted instead of adjudication by court and continuously evolving through development of case based laws. Similarly, judicial precedents i.e case based laws have been prominently evolving the arbitration as well as arbitration as a dispute resolution mechanism in insurance claims. Supreme Court of India has enumerated the importance of judicial precedents in the case of *Hari Singh v. State of Haryana*² that in the absence of strict binding rule of precedent, litigants will take every case to the highest court, inspite of the ruling to the contrary in the hope that the decision might get overruled. Similarly, it is the case in insurance matter where it is generally found that whenever an insurance company is on the losing side, they usually try to manipulate the standard form arbitration language in their favour. However, in most of the cases the court has found inclined towards the interest of the insured. Putting similar arbitration clause incorporated in the policy terms of each type of insurance has evidentially attained a general practice of insurance companies throughout the world. In the case of *Municipal Corporation, Jabalpur v. Rajesh Construction Co. Ltd*³ the court ordered to proceed with the arbitration proceeding stating that once the parties accepted the procedure shall not challenge it as this will result in the litigation beyond the purpose of the agreement followed with terms of contract.

Research Methodology

The methodology of research is purely doctrinal in nature having analytical and descriptive approach. The author has studied the scope of arbitration in insurance cases studying the related legislations, regulations and case laws along with the UNCITRAL Model Law.

Arbitration for Insurance Subjects

In India, there are two conventions mentioned under Arbitration and Conciliation Act, 1996 namely Geneva Convention and New York Convention. Member states of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, (hereinafter, the New York Convention) can be parties to the international arbitration relating to insurance and the same has been held by the Federal Court of New Jersey at *Cornell Dubilier Electronics, Inc. v. Allianz repeats Versicherungs AG*⁴ clearly stating that although the insurers are not from the same country as country of the New York Convention, the guidelines apply with an arbitration clause that allows arbitration for insurance subjects.

² (1993) 3 SCC 114

³ AIR 2007 SC 2069.

⁴ No. 18-5947 (SDW)(SCM) (D. N.J. Feb. 6, 2019).

In the process of arbitration, the questions raised on jurisdiction is very frequent and it is discussed under Section 16 of the 1996 Act⁵ which enumerates the Principle of Kompetenz-kompetenz which limits the arbitral tribunal to rule on matters of jurisdiction and the existence or validity of an arbitration agreement and to minimize interference from the courts and to defend the objective of the arbitration Law, which is an alternative mode of decision.⁶

Arbitration vs. Court in the matters concerning Insurance Claims

Since the time of British era to the 1959 case of Commander K.M Nanavati⁷ the jury system had been prevailed in India which has been a popular system in foreign countries. In the particular system of adjudication, a bench of jury is being selected with the consent of the parties and the decision of the jury with highest vote used to be the final verdict. Similar pattern is being followed under the system of arbitration; arbitrator(s) is being selected on the consent of the parties. On the context of flexibility, arbitration scores more as it provides the opportunity to select the seat, place and time according to the suitability of both the parties. Insurance arbitrations are commercial in nature and mostly the giant insurance companies are one of the parties which expect the quick disposal with confidentiality of the proceeding to remain as one of the cornerstone of the procedure. Characteristic of commercial nature of the insurance agreement is also enumerated by the Supreme Court of India in the case of *Vikram Greentech India Ltd, vs. New India Assurance Company Ltd*⁸. In India insurance cases are increasing continuously and an arbitration clause paves a way to the alternative method other than the courts. A specific feature of insurance law is that an insurance policy or deed which is issued confirming the agreement is an evidence of the existence of the agreement unlike the other where registered agreement itself is evidence.⁹

Advantages of the Arbitration Clause in Insurance Disputes

Discussing the judges most applied principle in the insurance cases, the principle of contra proferentum¹⁰, derived from insurance contracts, says that if the term of a contract can be interpreted in more than one

⁵ 16. Competence of arbitral tribunal to rule on its jurisdiction.—

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

⁶ Doug Jones, *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* (2009), 75 Kluwer Law Online 56-64.

⁷ *K. M. Nanavati vs. State of Maharashtra*, 1962 AIR 605.

⁸ (2009(5) SCC 599)

⁹ Nukalapati Naresh Kumar and Dr.P. Sailaja *Judicial Interpretation on Arbitration Proceedings in Insurance Industry in India*.

¹⁰ Nirmal Goel *Doctrine of Contra- Proferentem in Contracts Management*, available at https://cvc.gov.in/sites/default/files/r_CTE22032011.pdf.

way, the Court will prefer the interpretation that is more favourable to the party that did not write the contract in other words directs the interpretation of clause against the party that inserted it and in India in some situations where the arbitration provisions are interpreted against the author, this principle of contra proferentum is found eliminated by the court. Arbitration awards are binding, and final, an appeal possible only in exceptional cases for the parties. The enforceability of foreign arbitration awards is easy compared to foreign court judgments because there are many states that have mutually recognised the contracting parties through the New York Convention. Further, procedural flexibility of arbitration offers the freedom to agree on procedures and rules for finality. Autonomy of the parties is one of the biggest advantages that allows the choice of a neutral jurisdiction and, therefore, avoids the biases available to the other parties. Reputation is the fuel of survival in commercial market and many large insurers choose arbitration because of its confidentiality and the companies preserves their reputation in the market.

Issues in the condition of the Arbitration in Insurance Disputes

Disputes regarding the seat of arbitration and particularly, selection of neutral arbitrator are one of the challenging processes of the arbitration. Subsequently, insurance agreements sometimes provide the arbitration clauses along with the specific mentioning of participation of insurance experts who are not interested, but there is still a conflict of interest. Generally, insurance arbitrators are unwilling to strictly enforce the rule of law. Lastly, failure to provide clear instructions on how to add the third party to arbitration results in inconsistent judgments and incomplete dispute resolution.

Landmark Cases

National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd.¹¹

In this case of 2009, the Supreme Court of India dealt with the preliminary issue regarding the jurisdiction and the court stated that “where the intervention of the court is sought for appointment of an Arbitral Tribunal under section 11, the duty of the Chief Justice or his designate is defined in SBP & Co. This Court identified and segregated the preliminary issues that may arise for consideration in an application under section 11 of the Act into three categories, that is

- (i) issues which the Chief Justice or his Designate is bound to decide;
- (ii) issues which he can also decide, that is issues which he may choose to decide; and (iii) issues which should be left to the Arbitral Tribunal to decide

17.1) The issues (first category) which Chief Justice/his designate will have to decide are:

¹¹ (2009) 1 SCC 267

- (a) Whether the party making the application has approached the appropriate High Court.
- (b) Whether there is an arbitration agreement and whether the party who has applied under section 11 of the Act, is a party to such an agreement.

17.2) The issues (second category) which the Chief Justice/his designate may choose to decide (or leave them to the decision of the arbitral tribunal) are:

- (a) Whether the claim is a dead (long barred) claim or a live claim.
- (b) Whether the parties have concluded the contract/ transaction by recording satisfaction of their mutual rights and obligation or by receiving the final payment without objection.

17.3) The issues (third category) which the Chief Justice/his designate should leave exclusively to the arbitral tribunal are :

- (i) Whether a claim made falls within the arbitration clause (as for example, a matter which is reserved for final decision of a departmental authority and excepted or excluded from arbitration).
- (ii) Merits or any claim involved in the arbitration”¹².

E-Spring Building Systems (I) Pvt. Ltd., Bangalore v. Regional Manager, Tata AIG General Insurance Company Ltd., Bangalore¹³

In this case, Karnataka High Court has cleared the role of the court limited to identification of arbitration agreement and dismissed the application filed under section 11(6) of the act of 1996 for the appointment of arbitrator.

*In the case of Vulcan Insurance Co. Ltd. vs. Maharaj Singh & Anr*¹⁴, the court held that insurance contracts are to be interpreted exactly in the words in which the contract is expressed. Similarly, in the case of *General Assurance Society Ltd., vs. Chandumull Jain and Another*¹⁵ the court has restricted its role to interpret the clauses of agreement in case of any ambiguity denying its power to form a new contract.

¹² *Ibid.*

¹³ ILR 2006 KAR 2021.

¹⁴ (1976) 1 SCC 943

¹⁵ (1966(3) SCR 500)

Oriental Insurance Company Ltd. v. Nardheram Power and Steel Private Limited¹⁶

In this case the court stretched its interpretation of the said section and not only examined the existence of arbitration but also interpreted the arbitration clause in the insurance policy and discussed whether the dispute is arbitrable and arbitrators needs to be appointed or not.

Oriental Insurance Co. Ltd., vs. Sony Cheriyan¹⁷

In this case the court restated the boundaries of insurance agreements directing that Insurer Company is bound only to indemnify the loss suffered and insured is limited to demand the amount upto the sum insured and coverage taken after the loss occurred.

Central Inland Water Transport Corpn vs. Brojo Nath Ganguly¹⁸

The court has noted that word “unconscionable” means something as shows no regard for conscience and which is irreconcilable with what is right or reasonable. Whatever is not reasonable is not law. If the parties have agreed to something unreasonable, they should be treated as if they have not agreed at all and released.¹⁹

Discharge Voucher/ Settlement Intimation Voucher and IRDA Circulars

Practice of discharge vouchers is prevalent in the Indian general insurance industry for the payment of insured amount and payment is made only upon receipt of discharge voucher. General rule of insurance industry became a controversial hurdle when it started barring the arbitrations and leads to challenge the multiple arbitration awards before courts of law and forums. Several judgments came from the discharge certificate and even the Insurance Development and Regulatory Authority of India, (hereinafter IRDA) was forced to issue a circular in 2015 revised in 2016 to general insurers. The practice is still prevailing in the insurance industry for the settlement of claims.

Conclusion and Suggestions

Arbitration of insurance claims is not a panacea. The inadequacy of the arbitration clause or the failure of the parties to address all issues such as place of jurisdiction, choice of law, scope of disclosure, appeal, and enforcement of the arbitration award makes the arbitration clause ambiguous. As discussed in the article the courts has tried to remove the ambiguities of the agreement. Further, the authors has also found

¹⁶ (2018) 6 SCC 534

¹⁷ (1999 (6) SCC 451).

¹⁸ (1986 3 SCC 156, 206).

¹⁹ *Supra note 7*

that in the arbitration cases of insurance disputes the courts act under restricted dimensions which is essential to maintain the validity of the arbitration. Even if there is not enough freedom of choice, court proceedings are more predictable which is in welfare of the both the insured and the insurers as a strict interpretation of such clauses could deprive policyholders of the benefit of arbitration. It is necessary that the parties should be aware of such arbitration clauses and ensure that the arbitration clause covers all disputes related to their insurance contracts in case they wish to request arbitration on both liability and amount.

The author would suggest the following measures which should be adopted to fulfil the objective of arbitration in disputes relating to insurance claims:

- A. Arbitration should not be limited to the big amount insurance policies which is a common practice. District and State Consumer Forums are flooded with the case relating to consumers and the lack of speedy disposal deprives the insured and his family members from the benefits.
- B. Small scale arbitration centres should be introduced in the district level with the strict rule of passing the award within days.
- C. Arbitration will be pocket friendly for the small scale insurance holders as they do not have to pay high sums for the litigation going for years.

