

Issue No:10

Dear All,

Greetings to you all,

CASE STUDY

COURT : **High Court of Judicature at Bombay**

Parties to the Case : **Kabra Extrusiontechnik Ltd. Versus National Insurance Company Ltd. & Another**

Case No. : **Arbitration Petition No. 36 of 2007**

Judgment dated : **12.01.2009**

Judge : **THE HONOURABLE CHIEF JUSTICE MR. SWATANTER KUMAR**

In a clause which states as follows:-

“13. If any dispute or difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of a sole arbitrator to be appointed in writing by the parties to or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitrators, the same shall be referred to a panel of three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as hereinabove provided, if the Company has disputed if not accepted liability under or in respect of this policy.

It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator/arbitrators of the amount of the loss or damage shall be first obtained.”

It was disputed by petitioner that the amount due to the petitioner has been discharged and an arbitrator is to be appointed. The Respondent contended that the petitioner has executed documents which state that the petitioner has received amounts in full and final settlement and as such there is no dues. It has been contended by the petitioner that the settlement was not voluntary.

It was held by the Court after considering a catena of decision that “ A voucher issued on account of compulsion, more so when the company is in dominant position to require execution of documents under the threat of non payment of legal dues payable to the Petitioner, would have the effect of rendering the document being executed involuntarily.

These matters in any case can be gone into in a greater detail after the parties have been granted opportunity to lead evidence before the Arbitrator. At this stage, the Court is only concerned whether the arbitration agreement between the parties is existing and binding. In fact, the plea of extinguishment of liability has not even been raised in the present Petition and the settlement voucher by itself would not have the effect of taking away right of making an arbitration reference.”

Relax

1. A day without sunshine is like night.
2. On the other hand, you have different fingers.
3. 42.7 percent of all statistics are made up on the spot.
4. 99 percent of lawyers give the rest a bad name.
5. Remember, half the people you know are below average.
6. He who laughs last, thinks slowest.
7. Depression is merely anger without enthusiasm.
8. The early bird may get the worm, but the second mouse gets the cheese in the trap.
9. Support bacteria. They're the only culture some people have.
10. A clear conscience is usually the sign of a bad memory.
11. Change is inevitable, except from vending machines.
12. If you think nobody cares, try missing a couple of payments.
13. How many of you believe in psycho-kinesis? Raise my hand.
14. OK, so what's the speed of dark?
15. When everything is coming your way, you're in the wrong lane.
16. Hard work pays off in the future. Laziness pays off now.
17. How much deeper would the ocean be without sponges?
18. Eagles may soar, but weasels don't get sucked into jet engines
19. What happens if you get scared half to death, twice?
20. Why do psychics have to ask you for your name?
21. Inside every older person is a younger person wondering, "What the hell happened?"
22. Just remember -- if the world didn't suck, we would all fall off.
23. Light travels faster than sound. That's why some people appear bright until you hear them speak.
24. Life isn't like a box of chocolates. It's more like a jar of jalapenos.

Up Coming Events:

CNICA and CNICA Mediation Center at Kanyakumari District is to be inaugurated shortly.

We appreciate your inputs, suggestions and contributions in this regard. We welcome all to send their articles and we shall publish the same. We shall also appreciate if you could furnish us the email address of persons who would be interested in receiving our email.

Regards

**G.Ashokapathy
Secretary,
CNICA.**