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CONSUETUDE OF ADR CONCOMITANT TO INSURANCE DISPUTES

Author: AMIRDHA VARSHINI. C

V year, B.Com.,LL.B.,(Hons.)

SASTRA DEEMED TO BE UNIVERSITY

Co-Author: C.A. Sathiya

Asst. Professor

SASTRA DEEMED TO BE UNIVERSITY

ABSTRACT

Conflicts are inexorable and insurance is no exception to the same. The idea behind insurance is to mitigate risk and compensate for losses that have already occurred. Long-running, unresolved cases are overloading Indian courts. The issue is still far from being fixed as backlogs of unresolved cases continue to increase despite the installation of more than a thousand fast-track courts that have already processed voluminous cases. The two most frequent complaints from customers are the non-payment of claims on technical grounds and their displeasure with business practices. Contemporaneously the insured also engages in fraud and misrepresentation. Currently, people have started to place their confidence towards Alternate Dispute Resolution to avoid courtroom litigation. In the context of insurance, there are different procedures used by insurance companies to settle claims and legal issues. This line of action is made available to insured clients as one of the sources of remedy when a claim is rejected. In fact, ADR is being considered as the first step by the majority of Insurance Companies by incorporating ADR clauses in the insurance contracts or policy proposal or policy wordings. It is used to prevent time-consuming and expensive litigation. This paper would elucidate the consuetude of ADR concomitant to Insurance Disputes and will through light on a few aspects such as the cause of insurance disputes, the role of regulatory bodies and courts, why ADR should be preferred in such disputes, a study on which Insurance company prefers ADR predominantly to resolve disputes and the effect of ADR in Insurance disputes.

Keywords:

1. Insurance 2. Alternate Dispute Resolution 3. Claim 4. Regulatory bodies 5. Policy

INTRODUCTION

Insurance is a risk mitigation tool. When a person acquires insurance, they are purchasing safeguards to prevent unforeseen financial losses. If anything miserable occurred to them, the Insurance Company will compensate them or an individual they pick. A legally binding agreement exists among the policyholder or insured and the insurer is known as an insurance policy. The notion of Alternative Dispute Resolution (ADR) has the potential to provide a substitution for traditional conflict resolution techniques. In general, ADR employs an impartial third party to assist the parties in communicating, discussing differences, and resolving the conflict. It is a way that allows people and groups to retain harmony and social stability while also providing a possibility to minimize antagonism. Alternative Dispute Resolution (ADR) methods which may include mediation, arbitration, and negotiation have grown in prominence in India as a method of settling conflicts in a multitude of industries, including insurance. Insurance disputes, like any others, can be settled via alternative dispute resolution procedures. These procedures are frequently less laborious and affordable than typical judicial proceedings, and they can result in speedier resolution of conflicts with mutually acceptable solutions.

In India, the insurance sector, which had been a state monopoly, returned to private enterprise after 1990, with a larger amount of foreign direct investment authorized. In 2015, amendments to the Insurance Act and the Insurance Regulatory and Development Authority Act brought about significant changes in the insurance industry. This cleared the door for more innovation, openness, and competitiveness in order to better serve the requirements of the insured population, resulting in higher insurance penetration.

CAUSES OF INSURANCE DISPUTES

The excitement seen when selling insurance is rarely displayed after a claim is filed. An insurance agent who discusses a policy might do so without disclosing all or some of the contract's limitations. Frequently, the insured purchases a policy without reading the minute details about relevant facts. When a claim is filed, the medical examination of the insured by the panel doctor is generally judged to be insufficient. Liability for breach of *"uberima fides"* is rejected. As a consequence, credibility has been lost. The insured does not receive what he requires, and the company suffers a loss of goodwill. According to the National Institute of Public Finance and Policy study, a typical 12,721 health insurance complaints is submitted in India's district consumer forums each year[1].

[1]Shefali Malhotra, Ila Patnaik, Shubho Roy and Ajay Shah, *Fair play in Indian Health Insurance*, No. 228, NIPFP Working paper series, 1, 32,33, (2018), https://nipfp.org.in/media/medialibrary/2018/05/WP_228.pdf.

In India, there are numerous reasons for insurance disputes. The following are some of the most typical types:

1. Rejection of claim: One of the most prevalent reasons for insurance disputes in India is the insurance company's rejection of a claim. The policyholder may feel that the claim is genuine, however, the insurer may read the policy differently or consider that the claim wasn't covered by the policy.
2. Prolonged settlement: Another prominent reason for insurance disputes in India is a claim's prolongation before being settled. The policyholder may consider that the claim has been unfairly postponed although the insurer may believe otherwise.
3. Underinsurance: When a policyholder purchases insufficient insurance coverage, they may discover that the reimbursement supplied by the insurer is minimal.
4. Misrepresentation or non-disclosure: While acquiring an insurance policy, policyholders must give proper details. Failure to provide essential details or misrepresenting facts might lead to claims settlement disputes.
5. Policy cancellation: Insurance companies may terminate a policy for a variety of reasons, including nonpayment of payments. If the policyholder considers the cancellation unfair or unjustified, this might lead to a dispute.
6. Policy interpretation: Insurance disputes may also result from disagreements between the insurer and the policyholder on how the terms and conditions of the policy should be interpreted.
7. Unfair settlement practices: Claims of unfair settlement practices by the insurer, such as lowballing or unduly prolonging the claim settlement procedure, can lead to insurance disputes.
8. Fraud: In India, insurance fraud frequently results in legal conflicts. This might happen if someone makes a fraudulent claim or exaggerates their loss in order to get a larger payment.
9. Premium: When the premium has been dramatically raised at the time of renewal, there may be some disagreement regarding the amount of the premium.
10. Refusal by the insurer to renew: If the risk variables have changed or if there have been many claims in the past, the insurer may decide not to renew the policy.

Alternative Dispute Resolution has the scope to resolve every dispute mentioned above but it is pertinent to note that disputes that are criminal in nature such as fraud can be resolved through Alternate Dispute Resolution only if they are petty in nature. If the dispute is fully criminal in nature then it can be dealt with only through the traditional courtroom process.

LEGISLATIONS THAT GOVERN INSURANCE DISPUTES

Insurance disputes are governed by a plethora of laws in India. A few noteworthy legislations are:

1. The Insurance Act, 1938[2]: The principal piece of law governing India's insurance market is the Insurance Act of 1938. It controls how insurance businesses are established, run, and managed in India.
2. The 2019 Consumer Protection Act[3]: This Act outlines provisions for the defence of consumer rights and the resolution of their complaints. Additionally, it allows for the creation of consumer tribunals at various levels for the swift resolution of disputes.
3. The Motor Vehicles Act, 1988[4]: It also regulates auto insurance and mandates insurance for all motor vehicles operating on Indian highways.
4. The Marine Insurance Act of 1963[5]: This Act establishes the rights and obligations of insurers and insured with regard to marine insurance in India.
5. Life Insurance Corporation Act, 1956[6]: The formation of the Life Insurance Corporation of India is made possible by the Life Insurance Corporation Act, 1956, which also governs the life insurance industry in India.
6. The Insurance Regulatory and Development Authority Act, 1999[7]: This Act establishes the Insurance Regulatory and Development Authority (IRDA), which is responsible for overseeing the Indian insurance market. The country's insurance industry must be promoted and governed by the IRDA.

ROLE OF REGULATORY BODIES AND FORUMS

Through the plethora of Legislation, many regulatory bodies were formed to resolve Insurance disputes. Notably, the Insurance Regulatory and Development Authority of India (IRDAI), in collaboration with companies, has established a three-tier grievance redressal mechanism to efficiently resolve issues. They are:

1. Corporate level: As a mandatory initial step, every insured who has a complaint must contact the complaints/grievance redressal cell of the relevant insurer. They may file a complaint with IRDAI if they do not hear back from the insurer within an appropriate duration of time or are not pleased with the company's reply.
2. IRDAI: If the insurer's internal grievance redressal process is ineffective or the disgruntled insured is not pleased, they may file a grievance on the IRDAI's Integrated Grievance Management System. IRDAI sends the complaint to the relevant insurer after registration. The insured has the choice to escalate the

[2] The Insurance Act, 1938, No. 04, Acts of Parliament, 1938 (India).
[3] The Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India).
[4] The Motor Vehicles Act, 1988, No. 59, Acts of Parliament, 1988 (India).
[5] The Marine Insurance Act, 1963, No. 11, Acts of Parliament, 1963 (India).
[6] Life Insurance Corporation Act, 1956, No. 31, Acts of Parliament, 1956 (India).
[7] The Insurance Regulatory and Development Authority Act, 1999, No. 41, Acts of Parliament, 1999 (India).

issue, request another investigation of the complaint, or go to the Insurance Ombudsman, civil court, or consumer forum if a resolution is not reached in 15 days.

3. Ombudsman: The Insurance Ombudsman is selected by the regulator which is, in the present instance, the IRDAI and they have the authority to take complaints. If the matter is unresolved or not handled adequately, the insured always has the option of contacting the ombudsman. To file a grievance, he must do so with the ombudsman whose territorial jurisdiction is within the insurer's office. The Ombudsman can only consider disputes with a maximum financial value of Rs. 30 lakhs.

Apart from IRDAI, the other regulatory bodies and Forums that resolve insurance disputes are:

1. Consumer Dispute Redressal Forums: It was established in accordance with the Consumer Protection Act of 1986, these forums have the authority to deal with grievances from customers on the products and services they have purchased, which includes insurance policies. In situations involving unfair business practices, poor service, and carelessness, they have the authority to grant compensation and damages.
2. Securities and Exchange Board of India: The SEBI controls the operation of publicly listed insurance businesses and manages the regulation of the Indian securities market. It has the authority to look into violations of regulations by businesses and take appropriate action.
3. India's Competition Commission (CCI): It is in charge of upholding fair competition in the market and combating anti-competitive behaviour. It has the authority to look into and penalize businesses, particularly those in the insurance industry, that exhibit anti-competitive behaviour.
4. Reserve Bank of India (RBI): The RBI monitors various insurance companies' operations in addition to regulating the banking and financial industry in India. It has the authority to look into and punish businesses that break the law.

According to Article 44(b)[8] of the Limitation Act of 1963, the method for calculating the limitation period for insurance claims, time is to be determined by "the date of the occurrence causing the loss, or where the claim on the policy is denied either partly or entirely, the date of such denial." While there is a two-year restriction time for making a claim in the consumer court, there is a three-year limitation period for filing a claim in civil court or in arbitration.

TRADITIONAL METHOD TO RESOLVE INSURANCE DISPUTES

The Insurance Regulatory and Development Authority of India supervises the insurance sector in India. IRDAI develops laws and guidelines for insurance businesses to safeguard policyholders' rights. To prevent fraudulent marketing and unjust claim rejections, the authority acts as an oversight to verify insurer conformity. According to IRDAI standards, each insurance firm is expected to design its own method for resolving consumer complaints. They have appointed a proactive grievance redressal officer to deal with policy-related

[8] The Limitation Act, 1963, Art. 44(b), No. 36, Acts of Parliament, 1963 (India).

disagreements. In the event that a claim is denied, the insured may appeal to the grievance redressal officer. If the insurer does not answer within 15 days, the insured can file an objection online with the Integrated Grievance Management System for prompt resolution.

If the issue is not resolved within 30 days, policyholders can file a grievance with the Ombudsman. For cases up to 30 lakhs including expenditures, the ombudsman attempts to address the situation with mutual accord and proposes a settlement. If a recommendation-based settlement does not work, the Ombudsman will issue an award within three months after getting the complaint. The insurance company is bound by it. If the insured refuses to agree to the award or if the case exceeds 30 lakhs, he or she may seek adjudication in civil, consumer, or commercial courts.

Despite these constitutional safeguards, the number of insurance disputes is skyrocketing, owing to a variety of factors such as a growing population, increasing hardships of life, corporate practices, and consumer discontent. The strategy of the company's Grievance Officer may not function since the insured are unsure of them as unbiased. The grievance officer may handle the claim routinely without considering the demands of the parties. Almost 80% of conflicts in consumer forums are about insurance claims, which have an impact on the insurance industry and its reliability. And so, there is a need for alternate dispute resolution in Insurance disputes.

ADR AND INSURANCE

The following are some alternate methods for settling insurance disputes:

- Negotiation: The fundamental strategy for settling insurance issues is negotiation. The goal of negotiation is to find a compromise through conversation between the disputing parties. The parties may negotiate alone or with a third party's assistance, such as a lawyer.
- Mediation: In mediation, a third person who is impartial to the situation assists the disputing parties in settling their differences. The mediator encourages discussion between the parties, aids in defining the points of contention, and helps the parties arrive at a compromise. Compared to court cases, mediation is frequently speedier and less expensive.
- Arbitration: Arbitration is a formal method for resolving disputes in which an arbitrator, a third party, who is unbiased and hears all parties' evidence and arguments, renders a binding award. The arbitrator's ruling is final and enforceable against both parties. The procedure can be less expensive and is typically quicker and less formal than a court case.
- Insurance Ombudsman: The government established the Insurance Ombudsman as a legislative authority to handle complaints and disagreements between policyholders and insurance providers. A straightforward, efficient, and less expensive option to going to court is the Ombudsman.

The term 'Online Dispute Resolution (ODR)' has been a part of the legal lexicon for a long period of time, the COVID pandemic is the reason that it is just now becoming popular in India. It involves employing technology

to settle conflicts between individuals or companies using a variety of out-of-court procedures. Apart from well-known legal processes and procedures such as arbitration, conciliation, mediation, etc. that aid in settling conflicts outside of the judicial system. These processes offer a practical, economical, time-saving, and successful means of amicably resolving disputes when combined with technology.

- ODR in India has been adopted by several sectors of the nation for the swift resolution of conflicts and grievances, albeit in its earliest stages. A few examples are as follows:
- Online Consumer Mediation Centre (OCMC): This platform specializes in the settlement of consumer disputes involving e-commerce and was established as an experimental initiative by the Ministry of Consumer Affairs, Government of India. The mission of OCMC is to offer cutting-edge infrastructure for online and in-person mediation of consumer disputes.
- RTI Online: The Department of Personnel and Training, Government of India, has created a website (https://rtionline.gov.in/) for submitting Right to Information requests and first appeals about ministries, departments, and other central government public authorities.
- MahaRERA Conciliation and Dispute Resolution Forum: The Maharashtra Real Estate Regulatory Authority established the MahaRERA Conciliation and Dispute Resolution Forum to aid in the equitable settlement of problems amongst promoters and allottees.

Based on the standpoint of insurance, ODR can handle disagreements regarding policy terms, premium payments made or due under the terms of the policy, and the legal interpretation of the policies insofar as such disagreements relate to claims and grievances regarding policy servicing against insurers and their agents and intermediaries. ODR has the potential to be a useful tool for peacefully settling disagreements over one's own damage and the third party in car accident cases, as well as disagreements involving low-value trip insurance and disagreements resulting from high-quantity marine insurance policies, among others.

NEED FOR ADR IN INSURANCE DISPUTES

ADR is required in insurance disputes for a multitude of reasons, including:

Cost-effectiveness: When compared to traditional litigation, ADR can be a more affordable way to settle insurance issues. ADR processes like mediation and arbitration, which often entail fewer formalities and can be finished more quickly, are frequently less expensive than going to court.

Saving time: Traditional litigation can be time-consuming and irritating for all parties involved when insurance issues take a long time to resolve. ADR processes like mediation and arbitration can hasten the resolution of a dispute by allowing the parties to communicate more swiftly.

Flexibility: ADR procedures can be modified to meet the particular requirements of the parties to an insurance dispute. To guarantee that the disagreement is settled fairly and effectively, the parties may decide to choose a neutral mediator or arbitrator with knowledge of the pertinent legal issues.

Relationships are preserved: Insurance disputes can be quite difficult and strained among the people involved. By promoting transparent interaction and cooperation in the resolution of the conflict, ADR techniques like mediation can aid in maintaining the connection between the parties.

Confidentiality: ADR processes, including mediation and arbitration, can stay secret, which can be crucial in insurance disputes involving confidential information.

Expertise: Exposure to experts in one specific industry or business is made possible by ADR techniques, which can aid in the more efficient resolution of technical disagreements.

Avoids uncertainty: ADR processes can assist in avoiding the uncertainty involved in traditional litigation, where the case's conclusion is up for interpretation by a judge or jury.

ADR offers plenty of advantages that make it a desirable choice for settling insurance disputes overall.

CIRCUMSTANCES IN WHICH ADR CANNOT HAVE OPTED

ADR is probably not a wise choice in the following circumstances in insurance disputes:

- Party declines to take part: ADR depends on everyone involved being willing to take part in good faith. It might not be a smart choice if one side refuses to take part in the ADR procedure.
- Substantial power disparity: It can be challenging to ensure that an insurance dispute is settled fairly through ADR when there is a considerable power imbalance between the parties involved. Traditional litigation might be a better choice in these circumstances.
- Legal precedent: ADR decisions are frequently not distributed or readily available, so they can't be used as precedents in subsequent cases. Traditional litigation might be a better choice if a need to establish precedent in a certain area exists.
- Quick relief: ADR procedures like mediation and arbitration can be time-consuming, which may not be appropriate when instant redress is required, such as when there is an imminent threat to property or safety.
- Complex legal issues: ADR may not be appropriate when there are complex legal issues involved in the dispute, especially if the parties concerned are unfamiliar with the law or the legal process.
- Formal discovery: In some circumstances, formal discovery may be required to compile evidence and develop a case. ADR procedures might not offer as many chances for official discovery as conventional litigation.

The particulars of the case will ultimately determine if ADR is a sensible alternative in an insurance dispute. Before determining whether to pursue ADR or conventional litigation, parties to a dispute should carefully weigh their choices.

CIRCUMSTANCES IN WHICH ADR IS EXPOITED IN INSURANCE DISPUTES

When handling insurance claims, insurance companies are required to act in good faith, which includes applying ADR in a just and moral way. Insurance firms, however, have occasionally abused ADR to their advantage; potentially depriving claimants of the money they are due. Insurance companies could abuse ADR by selecting an ADR supplier that is prejudiced in their favour. For instance, an ADR Tribunal may be more inclined to decide in favour of the insurance company if there is a financial connection between that provider and the insurance company, even if that decision is not in the claimant's best interests.

Insurance providers could put undue pressure on claimants to accept a settlement that is less than what they are legally entitled to. This could occur if the insurance provider is aware that the claimant is in need of an immediate settlement due to financial vulnerability or if the claimant is unaware of all of their legal rights. ADR can be used by insurance firms to postpone or reject claims entirely. ADR may be used as a means of avoiding going to court, where the claimant may have a better chance of achieving a fair settlement. They may drag out the ADR proceedings in an attempt that the claimant would finally give up or agree to a smaller settlement.

An insured party may abuse ADR by, among other things, submitting baseless or fictitious claims. The two parties involved in the ADR process risk losing time and money if an insured party presents an incorrect claim or overstates the extent of their loss. Bad faith negotiation is another way that an insured party could abuse ADR. Making inflated demands or failing to engage in good faith might contribute to the ADR process being prolonged and make it more challenging to come to a fair and acceptable settlement.

Another way an insured party may abuse ADR is by withholding crucial details regarding their claim. This can involve concealing pertinent information or omitting to disclose health issues that might affect the veracity of their claim. ADR abuse by an insured party can have substantial repercussions, including diminished credibility and legal repercussions.

ADR can still be a powerful tool for settling insurance disputes if used appropriately, despite these objections. To guarantee that all parties involved have equal access to resources and information, it is crucial to select a dependable and impartial ADR provider. Before engaging in an ADR process, it is essential to understand every legal right and option completely. By abiding by these rules, ADR can be a useful tool for swiftly and fairly settling insurance disputes.

MEDIATION AND INSURANCE DISPUTES

Mediation is an evolving, organized collaborative method in which a neutral third party helps disputing parties resolves their problem based on their requirements and objectives. The disagreeing parties achieve an agreement on their own. The method entails quickly identifying cost-effective solutions that will work for everyone. If mediation was initiated at the grievance stage, it fosters trust in the insured that his grievance will be resolved as soon as possible; the parties may leave the occurrence in the past and move forward, which is the essence of the insurance contract;

Confidentiality in mediation guarantees greater accessibility of information because parties are not worried that their statements and the records utilized during mediation will be employed against them in litigation; an effective mediation enables a policyholder to prevent publicly re-living happenings that may indicate difficult times in their lives or businesses; and assures that relationships are restored because relationships are important in the insurance industry. Insurers with strong underwriting businesses do not want to alienate their policyholders. In a healthcare controversy caring is often more important than monetary recompense. Patients in medical negligence instances frequently seek clarification, an apology, and reassurance that this tragedy will not occur anymore. Doctors engaged might want to avoid public awareness in order to protect their reputation and earnings. Would be more ready to negotiate with the claimant in a private mediation procedure, which could result in lesser risks than the legal system.

The parties will work together and come to a successful agreement through mediation at the grievance stage, conducted by a neutral third party. It has a chance to keep crucial business contacts and is more private. Early settlements help insurance firms project a more palatable image of being more compassionate, which increases business. Increased client base and brand reputation are protected. There is a low likelihood of additional litigation because the settlement was reached by mutual accord. Through mediation, insurance firms are better able to understand the demands of policyholders. gives them the tools they need to develop better customer-centred policies.

Each party gains a greater understanding of the advantages and disadvantages of their claims thanks to the impartial third party's objective evaluation of the case through reality checks. Even if a settlement cannot be reached, the parties' enhanced communication will enable them to proceed with future negotiations or litigation more quickly. The stress of backlog on the court is lessened by mediation. In ***M.R. Krishnamurthi v. New India Assurance***[9] (2019), the Hon'ble Supreme Court acknowledges the crucial function of mediation as a method of resolving disputes in cases involving motor vehicle accidents.

[9] M.R. Krishnamurthi v. New India Assurance, CIVIL APPEAL NOS. 2476-2477 OF 2019.

ARBITRATION AND INSURANCE DISPUTES

Although there are numerous alternative methods to resolve disputes we could predominantly witness that Insurance policies progressively prefer the option for arbitration. The courts in India would obligate the parties to arbitrate if the policy has an arbitration clause. Liability-related issues cannot be arbitrated if the arbitration agreement contains exclusions for such disputes. The arbitration provision, whether it is a part of the original contract or is an additional agreement, shows the parties' desire to submit any disputes to arbitration when examining the terms of the insurance contract broadly. Determining which disputes are arbitrable and which are not, nevertheless, is a matter on which the parties hardly compromise. Unless the parties have expressly and categorically stated differently, the subject of arbitrability in disputes between the parties always pertains to "undeniably judicial determination." Numerous courts have ruled that no party can be forced to arbitrate a dispute if the party has not given their agreement to do so.

The existence of an arbitration provision does not automatically provide the ability to use an arbitration clause, and thus, threatens to undermine the protection of Insurance Consumers, according to the worldwide perspective. Once a party, in this case, the Insurance Company refuses to take accountability, there is no longer a "dispute" that may be brought before arbitration. The arbitration could not be precluded, however, in the case of ***Raytheon Co. v. National Union Fire Ins. Co. of Pittsburgh***[10] since the insurance provider "disputed or not recognized liability." Consequently, arbitration should be used to settle any disputes that are linked to the underlying or possibly latent claims. The international courts have taken a pro-arbitration stance and determined that if a provision mentions arbitration, the disagreement can be resolved through that process.

ROLE OF THE JUDICIARY IN ARBITRATION OF INSURANCE DISPUTES

Section 11(6)[11] of the Arbitration and Conciliation Act, 1996 governs the selection of the arbitrator(s) for the purpose of determining a problem, may be invoked by the parties in the instance of any controversy or issue. As a prerequisite to depending on the arbitration clause in the contract, the insurance company must disclose liability under or in relation to the policy prior to the employment of arbitration. SC in ***Oriental Insurance Co Ltd v. Narbheram Power and Steel Pvt Ltd***[12] that the insured must file a civil lawsuit to establish its liability before referring the matter to arbitration to determine the amount of the claim when the insurance company has directly and unquestionably rejected and dismissed the claim. However, because it is a prerequisite under insurance plans, the insured cannot bring a civil lawsuit without first receiving an arbitral award. As a result, it might be inferred that the insured is rendered totally helpless and the insurer manages to evade responsibility.

[10] Raytheon Co. v. National Union Fire Ins. Co. of Pittsburgh, No. 03 Civ. 9230(SAS), 306 F. Supp. 2d 346.
[11] Arbitration and Conciliation Act, 1996, S. 11(6), No. 26, Acts of Parliament, 1963 (India).
[12] Oriental Insurance Co Ltd v. Narbheram Power and Steel Pvt Ltd, CIVIL APPEAL NO. 2268 OF 2018.

In contrast, the insurance company in the case of ***Ms Geo Chem Laboratories Pvt Ltd v. United India Insurance Co Ltd***[13] denied that any disagreement had occurred, which made the inquiry take longer. They also argued against arbitration since the challenge was premature and the maintainability of the aforementioned issue was questioned. Due to these unsuitable restrictions on the scope of the complaint and process disruption, the Delhi High Court ruled that the party must provide evidence that suggests that an arbitration agreement does not exist.

Arbitration provisions in insurance contracts vary from case to case, and the terms and conditions presented in the proceedings may either be related to the quantum of the demand or 'any' issue in the agreement that will end up in arbitration. Regardless of the contract's backdrop or phrasing, the disputed contract is dependent on the insurer's unambiguous acknowledgement or rejection of the claim. This results in national courts intervening in the arbitration to 'promote' and 'defend' it against non-arbitrable issues at the stage of Sections 8 and 11 of the Arbitration Act.

The Supreme Court's decision in ***Mayavati Trading v. Pradyuat Deb Burman***[14], rendered by a three-judge panel, has made it clear that the court's authority to decide a request for an arbitral reference is relatively limited and restricted to looking solely at the presence of an arbitration agreement. The arbitral tribunal must make decisions on all other issues pertaining to the dispute's arbitrability. However, as determined by a full bench of the NCDRC and eventually upheld by the Supreme Court of India in ***Emaar MGF Land Limited & Anr v. Aftab Singh***[15], the existence of the arbitration provision cannot bar the jurisdiction of the consumer courts.

In the case of ***Vulcan Industries Co. Ltd v. Maharaja Singh & Anr***[16]**.,** the insurance provider denied responsibility. According to the arbitration clause specified in the insurance policy, no disagreement or dispute may be submitted to arbitration. According to the Supreme Court, legal action might be taken as a remedy in this situation. According to the case, any disagreement originating under the terms of an insurance policy cannot begin a legal procedure until an arbitral decision has been made if the arbitration provision is written in broad terms and waives the right to sue. It was found that such clauses cannot establish conditional precedent since an issue raised must be resolved through judicial processes if it cannot be brought to arbitration. If the insurance does not contain an arbitration provision, the insured may file a lawsuit in a business or consumer court. The courts will order the parties to arbitrate if the policy has an arbitration clause, but this is not the case when liability disputes are not covered by the arbitration clause.

[13] Ms Geo Chem Laboratories Pvt Ltd v. United India Insurance Co Ltd, ARB. P. 479/2020.
[14] Mayavati Trading v. Pradyuat Deb Burman, AP No. 565 of 2018.
[15] Emaar MGF Land Limited & Anr v. Aftab Singh, REVIEW PETITOIN (C) Nos. 2629-2630 OF 2018 IN CIVIL APPEAL NOS.23512-23513 OF 2017.
[16] Vulcan Industries Co. Ltd v. Maharaja Singh & Anr, 1976 AIR 287, 1976 SCR (2) 62.

WHEN AND WHY MEDIATION SHOULD BE PREFERRED OVER ARBITRATION?

It is crucial to remember that each disagreement is unique, and the optimal ADR procedure will rely on the individual circumstances of the dispute. When the parties wish to retain their relationship, control the result of the dispute, keep expenses down, and uphold confidentiality, mediation might be a good alternative in insurance disputes. Although both dispute resolution processes have benefits and drawbacks, mediation for insurance disputes should be chosen over arbitration for a number of factors.

Firstly, mediation is a more adaptable and informal method that enables the parties to cooperate to find a resolution than arbitration, which entails a formal hearing process with rigid rules of evidence and legal arguments. This strategy can be especially helpful in insurance disputes where the parties may have varying interpretations of the terms of the policy or factual disagreements that call for a more deft strategy.

Secondly, compared to arbitration, mediation is frequently quicker and less expensive. Typically, arbitration entails a formal hearing procedure that can be expensive and time-consuming, particularly when expert witnesses or in-depth discovery are needed. Contrarily, mediation can be finished more quickly and for less money, especially if the parties can settle their disagreement in just one session. Furthermore, mediation can be carried out remotely, which can reduce travel costs and other associated costs.

Thirdly, the continual connection between the parties is probably to be maintained through mediation. Insurance disputes can be difficult and emotionally taxing, and even after they are settled; the parties may still need to conduct business together. In contrast to arbitration, which frequently has a winner-takes-all resolution that can be detrimental to the relationship, mediation enables the parties to collaborate to create a solution that satisfies their interests and protects their connection.

Last but not least, mediation is a private process. Mediation enables the parties to talk about delicate problems without worrying about public disclosure, in contrast to arbitration, which frequently entails a public hearing and a written ruling that is subject to publicity. This might be crucial in insurance claims involving private or sensitive information.

CONCLUSION

There isn't one type of ADR that is always regarded as the most rational or suitable for resolving insurance issues. The best form of ADR to practice will depend on the particulars of the dispute because each form has advantages and disadvantages of its own. Due to its potential for being faster, cheaper, and considerably less formal than traditional litigation, arbitration is an increasingly common form of ADR for resolving insurance issues. In addition, many insurance plans have clauses mandating arbitration as opposed to traditional litigation for the resolution of disputes. In addition, mediation can be an advantageous type of ADR for settling insurance disputes since it offers a less hostile environment where parties can collaborate to find a solution that is acceptable to both of them. The specifics of the disagreement and the interests of the parties concerned will largely determine as to which type of ADR is adopted.