IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

CA 400/99F

D.C. Colombo 20646/MR

W Piyaratna,

6/4/C, Jubilee Mawatha,

Sapugaskanda.

PLAINTIFF-APPELLANT

VS.

National Insurance Corporation Ltd,

No 47, Muththiah Road,

Colombo 2

DEFENDANT-RESPONDENT.

Before : A.W.A. Salam, J.

Counsel : Chandaka Jayasundera with Haritha Adikari and Narada Amarasinghe for the plaintiff-appellant and Ronald Perera PC with T K Hirimuthugamage for the defendant-respondent.

Argued on : 25.09.2012.

Decided on : 31.10.2013

A.W.A. Salam, J.

The plaintiff-appellant sued the defendant-respondent to recover damages arising from a policy of insurance. The learned additional district judge of Colombo dismissed the action on the preliminary jurisdictional objection raised by the defendant-respondent. The objection thus raised was that the court lacked jurisdiction by reason of the arbitration clause embodied in the policy of insurance and therefore the plaintiff-appellant is not entitled to file action without the dispute being first referred for arbitration. This appeal has been preferred against the said judgment.

The relevant clause in the policy of insurance reads as follows...

> Clause 19. "If any difference arises as to the amount of any loss or damage such difference shall independently of all other questions be referred to the decision of an arbitrator, to be appointed in writing by the parties".....

The plaintiff-appellant having allegedly suffered loss and damage by reason of a fire that broke out claimed a sum of Rs. 11,80000/-. The defendant-respondent denied the liability attributed to it and raised the question of *uberimefide* in the answer. In other words the defendant-

respondent took up the position that it is not liable in law to pay any money to the plaintiff-appellant against the claim made under the policy of insurance.

In my opinion, the total denial of the defendant-respondent to pay any sum of money cannot be considered as having given rise to a difference in the quantum of the claim as between the amount claimed by the plaintiff-appellant and any amount agreed to be paid by the defendant-respondent. The learned president's counsel for the defendant-respondent argued that the difference of the claim of the plaintiff-appellant is rupee zero, as the defendant-respondent has denied liability. The fallacy of this argument is quite obvious and it needs to be pointed out that the denial of the liability by the defendant constitutes "no difference" pertaining to the claim, as contemplated under clause 19.

In the circumstances, I am of the opinion that the learned additional district judge has misconstrued clause 19 and upheld the preliminary objection. Since there is no difference that had given rise to, as regards the claim made by the plaintiff-appellant, on the quantum of loss and damage arising from the policy of insurance in question, I am of the firm opinion that no arbitration proceedings are necessary as a condition precedent to invoke the jurisdiction of the district court.

Accordingly, issue numbers 8 and 9 are re-answered in the following manner...

8. No.

9. No.

As such, the appeal preferred by the plaintiff-appellant is allowed and the impugned order set aside. The learned trial judge is directed to proceed with trial and determine the other issues according to law.

The plaintiff-appellant is entitled to the costs of this appeal.

Judge of the Court of Appeal

NR/-