

# SUPREME COURT OF INDIA

Sri Venkateswara Syndicate

Vs.

Oriental Insurance Co. Ltd.

C.A.No.4487 of 2004

(Markandey Katju and H.L. Dattu JJ.)

24.08.2009

## JUDGMENT

**H.L. DATTU, J.**

1) This appeal is directed against the order passed by National Consumer Disputes Redressal Commission, New Delhi in Original Petition No.135 of 2001 dated 19th day of January, 2003.

2) The brief facts are as under :

The appellant is a registered partnership firm. Their line of activity is trading in cotton. For the purpose of their business, they had taken M/s Jai Bharat Traders Cotton Ginning Mill on lease. The claim of the appellant is that an accidental fire took place in the godown of M/s Jai Bharat Traders, leased by the appellant firm, where its cotton stocks were stored and insured at about 2.10 a.m. in the morning hours of 24.8.1999 and according to the appellant the estimated loss was of Rs. 1.90 crores. The cotton stocks in question were covered by seven insurance policies issued by respondent - Oriental Insurance Company Ltd. hereinafter for the sake of brevity referred to as 'insurer' for a total sum of Rs.1.98 Crores during the period when the fire accident took place. The appellant made a claim of Rs.1.90 crores towards loss of stock due to accidental fire in its business premises, with the insurer. Pursuant to the claim so made, the insurance company appointed one Sri K. Siva Prasad, a licensed surveyor for preliminary investigation and for submitting a preliminary report, about the cause of fire and the probable loss said to have been suffered by the insured. The surveyor having examined the place of fire accident gave preliminary report dated 09.09.1999 to the insurance company estimating the loss of stock at Rs.1,73,92,310/-, however, had noticed in his report that the number of bales and borahs lying in the Godown and the actual quantity of lint damaged by fire has to be got confirmed from the accounts of the insured and also by physical verification of bale hoops. The insurer after receipt of the preliminary report of Sri K. Siva Prasad, had appointed Joint

Surveyors M/s Mehta and Padamsey and Kaypens, in terms of Section 64 UM(2) of the Insurance Act to give a joint report. They conducted a joint survey and in that, had estimated the loss of stock insured at Rs.1,67,80,925/- and gave a report to that effect to the insurer. The insurer being of the view that the report is perfunctory, had appointed yet another Surveyor viz. Dinesh Gopal and Co. who, in turn appointed one Mr. Panchal, former DIG (Fire) CISF and Fire Adviser to the Government of India to investigate and submit a report, who in turn after investigation and survey submitted his report dated 07.05.2000, confirming the quantification made by the Joint Surveyor. Since the insurer was not satisfied with the aforesaid report also, appointed R. Srinivasan and Co., Chartered Accountant to give a fresh report by estimating the loss of stock insured due to accidental fire incident. After inspection of the godown and verifying the books of accounts, estimated the loss of stock at Rs.1,05,00,817/-. The insurance company had placed the aforesaid report before the Joint Surveyor viz. M/s. Mehta and Padamsey and Kaypsens for their opinion. The joint surveyors in their clarificatory report dated 06.01.2001, did not agree with the findings of the chartered accountant, on the ground that the chartered accountant had based his report only after verifying the books of accounts for the period 01.10.1998 to 31.03.1999 and not till the date of fire accident.

3) Since there was inordinate delay in settling the lawful claim under the fire insurance policy, the appellant preferred original complaint before the National Consumer Forum against the insurer, inter-alia, alleging that there was deficiency in service and, therefore, they are entitled for a sum of Rs.1,67,80,925/- being the value of loss assessed by the Joint Surveyors and, therefore, sought a direction to the insurer for payment of the aforesaid amount with interest at 18% from the date of fire accident till its realization and for payment of a sum of Rs. 6,91,155/- being the value of the salvage as assessed by the surveyors and also to award damages in causing unnecessary and unwarranted delay in settling the claim under the insurance policy.

4) The National Consumer Disputes Redressal Commission, hereinafter for the sake of brevity referred to as Commission on the concession made by the insurance company based on the report of Chartered Accountant has passed the impugned order, directing the insurer to pay a sum of Rs. 1,05,00,817/- with interest at 6% per annum from 01.03.2001 till the date of payment within two months from the date of receipt of the order. The reasons assigned by the Commission for accepting the concession made by the respondents is forthcoming in its order. The same is extracted for better appreciation of the case pleaded by the parties to the lis. It is as under :

7.5 As regards the quantum of loss, we need to give weightage to the estimates made by various Investigators appointed by the Insurance Co. The first three Investigators assessed the loss at about the same figures i.e. the loss is of 1350 fully pressed bales of cotton and 88 boras of lint valued that about Rs. 1.73 to Rs. 1.74 crores. However, the Insurance Co. having noticed that these Investigators had not gone into the details of transactions and stocks in a thorough manner, asked another Chartered Accountant, M/s R. Srinivasan Co. to specially ascertain the quantum of loss caused by the fire. M/s R. Srinivasan Co. submitted a Accounts Verification Report on 22.11.2000 and assessed the loss at Rs. 1,05,00,817/-. They also furnished subsequent clarification on 22.12.2000, 22.1.2001 and 9.9.2002 pointing out the lacunae in the reports of the previous Investigators. Finally, the opposite party themselves, while disputing their liability to pay, have however agreed that the loss is only Rs.1,05,00,817/- and not Rs.1.90 crore, as claimed by the appellant.

5) Being aggrieved by the aforesaid order, the claimant is before us in this appeal.

6) The learned senior counsel Shri K.V. Viswanathan appearing for the appellant submitted, that, the action of the insurance company in appointing several surveyors till it got a favourable report to suit its estimation of loss of stock in the fire incident is illegal and shatters the confidence and trust of the people on the very purpose of insurance. It is further submitted that the National Commission despite upholding the report of the Joint Surveyors which assessed the loss at Rs.1,64,70,407/-, ought not to have accepted the concession made by the insurer and directed the insurance company to pay only the amount as quantified by the chartered accountant. Lastly, it is submitted that the National Commission despite giving a finding that there is gross deficiency in service has only granted interest at 6% per annum from 01.03.2001 and not from the date of fire accident, which, according to learned counsel is improper and illegal.

7) In response to the submission made by learned senior counsel for the appellant, the learned counsel for the insurer invites our attention to the counter affidavit filed by them before this Court in justification of the order passed by National Consumer Commission and then submits that the provisions of Section 64-UM of Insurance Act, 1938 does authorize the insurer to appoint surveyor or surveyors, may be for the second time for the purpose of getting a fair report of the actual loss suffered by the insured. To buttress their submission, they invite our attention to the provision of Section 64-UM of the Insurance Act, 1938, for which we will make reference at the appropriate stage. The learned counsel also submitted several reasons for not accepting the report of Joint Surveyors in view of the lacuna pointed out by the Chartered Accountant, who was asked to verify the Books of Accounts maintained by the insured to ascertain the actual loss incurred due to the fire accident by the insured in its place of business and therefore, there is no illegality committed by the National Consumer Commission in accepting the report of Chartered Accountant and directing the insurance company to pay as assessed and quantified by an independent agency. The learned counsel also submits that keeping in view the facts and circumstances of the case, the National Consumer Commission was justified in awarding interest at the rate of 6% per annum from 01.03.2001, though a claim was made for awarding interest at the rate of 18% from the date of fire incident till the date of payment.

8) Two issues would arise for our consideration and decision. Firstly, whether the insurance company can repeatedly appoint Surveyors after Surveyors for getting the loss/damage assessed before settling the claim of the insured. The incidental question is, whether the National Consumer Commission was justified in awarding 6% interest per annum from 01.03.2001 as against the claim of the appellant at 18% from the date of the fire accident, viz. 24.08.1999.

9) To appreciate the issues raised in this civil appeal, we extract relevant Section by omitting what is not necessary for the purpose of this case. Section 64-UM(2) of the Insurance Act, 1938 is as under : 64- UM(2) - No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who holds a licence issued under this section to act as a surveyor or loss assessor (hereafter referred to as approved surveyor or loss assessors):

Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor.

(3) The Authority may, at any time, in respect of any claim of the nature referred to in sub-section (2), call for an independent report from any other approved surveyor or loss assessor specified by him and such surveyor or loss assessor shall furnish such report to the Authority within such time as may be specified by the Authority or if no time limit has been specified by him within reasonable time and the cost of, or incidental to, such report shall be borne by the insurer.

(4) The Authority may, on receipt of a report referred to in sub-section (3), issue such directions as he may consider necessary with regard to the settlement of the claim including any direction to settle a claim at a figure less than, or more than, that at which it is proposed to settle it or it was settled and the insurer shall be bound to comply with such directions:

Provided that where the Authority issues a direction for settling a claim at a figure lower than that at which it has already been settled, the insurer shall be deemed to comply with such direction if he satisfies the Authority that all reasonable steps with due regard to the question whether the expenditure involved is not disproportionate to the amount required to be recovered, have been taken with due despatch by him:

Provided further that no direction for the payment of a lesser sum shall be made where the amount of the claim has already been paid and the Authority is of opinion that the recovery of the amount paid in excess would cause undue hardship to the insured:

Provided also that nothing in this section shall relieve the insurer from any liability, civil or criminal, to which he would have been subject but for the provisions of this sub-section. 10)Section 64-UM (1) of the Act speaks of licensing of Surveyors and loss assessors. We are not very much concerned with this sub-section. Sub-section (2) mandates that no claim in respect of a loss which has occurred in India and requiring to be paid in India equal to or exceeding twenty thousand rupees in value on any policy of insurance be admitted for payment, unless insurer obtains a report on the loss that has occurred from a person who holds a license issued under sub-section (1) of Section 64 UM of the Act as a Surveyor or loss assessor. The proviso to sub-section(2) however, retains the right of the insurer to settle a claim for an amount different from that assessed by the surveyor. This proviso impliedly permits an insurer to obtain a second or further report where considered appropriate or expedient in the circumstances of a case, based upon which the claim could be settled for a different amount than as assessed earlier.

11)Sub-section (3) provides for the Authority (Insurance Regulatory and Development Authority), the power to obtain an independent report from any other surveyor in respect of a claim referred to in sub-section (2). This sub-section vests in the Authority the power to call for a second report, either suo motto or upon the application by the insured person or on a complaint by a third party. Under sub-section (3), the second report is required to be called by the Authority himself for use, consideration and further directions.

12)Sub-section (4) envisages, that the authority may on receipt of a report referred to in sub-section (3), issue such directions as he may consider necessary with regard to the settlement of the claim including any direction to settle a claim at a figure less than, that at which it is proposed to settle it or it was settled and the insurer shall be bound to comply with such directions.

13) The learned senior counsel Shri K.V. Viswanathan for the appellant, submits that, despite the

surveyors having consistently given a specific finding that the claim was bonafide and the fire was accidental had assessed the loss at Rs.1.70 crores, but the insurance company has repudiated the claim on frivolous ground, that too after a period of three years from the date of fire incident. It is further contended that the company had appointed several surveyors, which they could not have done in terms of Section 64-UM of the Insurance Act, 1938.

14) In the instant case, the insurer had appointed a surveyor for preliminary inspection and survey to assess the loss caused due to the fire accident in the business premises of the appellant. In the preliminary survey report dated 09.09.1999, Sri K. Siva Prasad had given broadly an estimate of loss caused due to the fire accident in the business premises of the appellant. He had specifically reported that the number of bales and borahs lying in the godown and the actual quantity of lint damaged by the fire has to be got confirmed from the accounts of the insured and also by physical verification of the bale hoops. In his report, he had made it clear that he has not finally assessed the loss. The Joint Surveyors who were appointed to jointly assess the loss had given their report dated 15.11.1999, wherein they had assessed the loss at Rs. 1,67,80,925/- on receipt of this report, the insurance company by their letter dated 7.1.2000, had sought several clarifications from their Joint Surveyors, which according to them were omitted to be noticed by the Joint Surveyors while assessing the loss caused due to the fire accident in the appellant's business premises. The letter dated 7.1.2000, is extracted for better understanding the rival claims of the parties : THE ORIENTAL INSURANCE HYDERABAD REGION THE ORIENTAL INSURANCE COMPANY LIMITED DIVISIONAL OFFICE : GUNTUR Dear Sirs,

RE: FIRE LOSS TO COTTON STOCKS ON 24-8-1999 ♦

OUR CLAIM NO. 432301/136/0/F/04/2000 ♦

A/c : M/S SRI VENKATESWARA SYNDICATE ♦ GUNTUR

We refer to your joint survey report bearing Nos. MR/1269 (MS/61640) and KPS/CL/1837 dated 15.11.99 respectively.

On perusal of the papers, we have observed as under :

1) The cause of the accident is mentioned as electrical short circuit because of voltage fluctuations. When the stocks were kept in a locked godown and when there was no kind of activity for months together, we wonder as to why the lights in the godown were kept switched on round the clock. Had the lights been switched off the short circuit causing the fire accident could not have occurred. Please let us have your comments.

2) From the balance sheet of insured as on 31st march, 1999 nearly 50% of the purchases i.e. Rs. 1.07 crore out of Rs. 2.27 crores were from individual village ryots on credit basis. We fell in a claim of such a magnitude some random investigation is required on the credit purchases to confirm their genuinity.

3) As per the preliminary survey report there were two varieties of bales/borahs viz. MCU-5 @ Rs. 7,140/- per quintal in bales and Rs. 7,040/- per quintal in borahs and LK variety @ Rs. 5,650/- per quintal in bales and Rs. 5,550/- in borahs. But, in your assessment you have taken the entire quantity as a single variety i.e. MCU-5 @ Rs. 7,193/- per quintal in FP bales and Rs. 7,084-19 ps per quintal

in borahs and assessed the loss @ Rs. 1,74,82,080/-. Whereas, when we have applied the different rating the assessment is claiming to Rs. 1,72,57,305/-. Please clarify.

Please let us have your clarification on the above points at the earliest to enable us to proceed further.

Thanking you,

Yours faithfully,

Sd/-

SR. DIVISIONAL MANAGER

cc to: Regional Office, Hyderabad, for information.

15)The Joint Surveyors by their reply letter dated 12.1.2000 had stated that they did not consider an investigation into the purchases necessary although they stated that the insurer may cause and/or carry out any investigation as necessary. We intend to extract only that portion of the reply, which may be relevant for the purpose of knowing why the insurer thought it fit to appoint Chartered Accountants for verification of the accounts of the insured firm :

(2). The doubts on procurements and need for investigations (irrespective of cash or credit purchase) would arise only if the stock position as claimed did not tally with the available physical evidence. Even if purchases are proved against actual payment, the physical evidence after the incident, the single most important factor in such situations can necessitate further enquiries and investigation. That kind of a situation never arose in this particular incident as the physical evidence and the extent of damage to the building were supportive of the quantum of stocks claimed to have been held. Our local enquiries did not show any evidence other than an accidental fire. In the circumstances, we do not, from our survey and assessment point of view, consider an investigation into the purchases too essential.

Nevertheless, as insurers with privity to the contract, we note that you may cause and/or carry out any investigation as necessary. [Emphasis is supplied by us]

16)In view of certain discrepancies in the joint report of the Joint Surveyors, the insurer was constrained to appoint a Chartered Accountant for verification of the books of accounts of the insured, to ascertain the actual quantum of loss caused by fire accident in the business place of the appellatant.

17)Mr. Srinivasan, the Chartered Accountant, after detailed verification of the books of accounts and other relevant material had assessed the loss at Rs. 1,05,00817/-. In his report, he has stated that the Joint Surveyors without verifying the books of account and other relevant records of the appellatant firm had assessed the loss which does not reflect the loss sustained by the insured. They had also pointed out various other omissions in the joint report of the Joint Surveyors.

18)The insurer for the purpose of ascertaining the actual loss sustained by the insured had sought clarifications from the Joint Surveyors in view of the findings by the Chartered Accountant. We

were taken through their replies by learned counsel for the insurance company. To our mind, it appears, they were not prepared to accept their omissions while preparing their reports after inspection and verification of the place of fire accident.

19) Parties have not lead in any evidence in support of their claim. In fact National Consumer Commission has proceeded to decide the lis between the parties based on certain documents filed by the parties along with their pleadings.

20) We have carefully perused the joint survey report submitted by the surveyors who were appointed by the insurer and the report of the Chartered Accountant. The perusal of the joint survey report reveals that the Joint Surveyors without going into the records of the appellant firm had assessed the loss said to have been sustained by the insured in the fire accident. The Joint Surveyors had arrived at the cost of own Ginned lint at Rs. 7084/- as against the records of the insured which itself shows the cost of Ginned lint at Rs. 6,229.35 and Rs. 6,181.57 per quintal. Secondly, the Joint Surveyors had taken into account 88 borahs while assessing the loss, whereas as per the records of the insured submitted to the bank, there were 551 borahs as on 31.7.1999, out of which 548 borahs were sold from 1.8.1999 to 24.8.1999, (the date of the fire incident) thus leaving only 3 borahs in the stock. Mr. R. Srinivasan, Chartered Accountant, who gave the report having noticed all these omissions and after detailed verification of the books of accounts and records maintained by the appellant has assessed the loss at Rs.1,05,00817/-. In his report he has specifically stated that the Joint Surveyors have failed to notice that the accounts presented to them belonged to one of the several firms operating from the same premises under the same or similar names and further the Joint Surveyors had over looked to ascertain the identity of the firm which was insured and the firm which had in fact sustained the loss. The learned senior counsel Sri K.V. Viswanathan would contend that the Chartered Accountant who was deputed in conducting the survey had verified the books of accounts of the appellant till 31.3.1999 and not till the date of incident and, therefore, the National Commission could not have accepted the report of the Chartered Accountant. This submission of the learned counsel is not based on facts. A bare perusal of the report of the Chartered Accountant would clearly demonstrate that it is only after verifying the books of accounts maintained by the appellant in the regular course of business, has calculated the number of borahs that could have been available in the business premises at the time of fire incident. These finer aspects of the matter has been taken into consideration by the National Consumer Commission while rejecting the Joint Survey report of Joint Assessors and for accepting the report of Chartered Accountant. The Commission has also observed that after looking into several reports of the surveyors and the loss assessed by them, it would be fair to go by what the Chartered Accountant has said in his report. May be, the discussion is brief, but the conclusion is sound, and we concur.

21) The Insurance Regulatory Authority ('IRDA' for short) has formulated Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000, which regulate the licensing and the work of surveyors. These regulations stipulate that the surveyor shall investigate, manage, quantify, validate and deal with losses arising from any contingency and carry out the work with competence, objectivity and professional integrity by strictly adhering to the Regulations.

22) The assessment of loss, claim settlement and relevance of survey report depends on various factors. Whenever a loss is reported by the insured, a loss adjuster, popularly known as loss surveyor, is deputed who assess the loss and issues report known as surveyor report which forms the basis for consideration or otherwise of the claim. Surveyors are appointed under the statutory

provisions and they are the link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor could become the basis for settlement of a claim by the insurer in respect of the loss suffered by the insured. There is no disputing the fact that the Surveyor/Surveyors are appointed by the insurance company under the provisions of Insurance Act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them. We also add, that, under this Section the insurance company cannot go on appointing Surveyors one after another so as to get a tailor made report to the satisfaction of the concerned officer of the insurance company, if for any reason, the report of the Surveyors is not acceptable, the insurer has to give valid reason for not accepting the report. Scheme of Section 64-UM particularly, of sub-sections (2), (3) and (4) would show that the insurer cannot appoint a second surveyor just as a matter of course. If for any valid reason the report of the Surveyor is not acceptable to the insurer may be for the reason if there are inherent defects, if it is found to be arbitrary, excessive, exaggerated etc., it must specify cogent reasons, without which it is not free to appoint second Surveyor or Surveyors till it gets a report which would satisfy its interest. Alternatively, it can be stated that there must be sufficient ground to disagree with the findings of Surveyor/Surveyors. There is no prohibition in the Insurance Act for appointment of second Surveyor by the Insurance Company, but while doing so, the insurance company has to give satisfactory reasons for not accepting the report of the first Surveyor and the need to appoint second Surveyor.

23)Section 64 UM(2) of the Insurance Act, 1938, reads that 'No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimates to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968 shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report on the loss that has occurred from a person who holds a license issued under this Section to act as a surveyor. In our considered view, the Insurance Act only mandates that while settling a claim, assistance of surveyor should be taken but it does not go further and say that the insurer would be bound whatever the surveyor has assessed or quantified, if for any reason, the insurer is of the view that certain material facts ought to have been taken into consideration while framing a report by the surveyor and if it is not done, it can certainly depute another surveyor for the purpose of conducting a fresh survey to estimate the loss suffered by the insured. In the present case, the insurer has stated in the counter affidavit filed before the National Commission and even before us, why the appointment of second Surveyor was necessitated and also has given valid reasons for appointing second Surveyor and also has assigned valid reason for not accepting the report of Joint Surveyor. The correspondence between the insurer and the Surveyors would indicate the particulars differed by the insurer for differing with the assessment of loss made by the Surveyors. The option to accept or not to accept the report is with the insurer. However, if the rejection of the report is arbitrary and based on no acceptable reasons, the courts or other forums can definitely step in and correct the error committed by the insurer while repudiating the claim of the insured. We hasten to add, if the reports are prepared in good faith, due application of mind and in the absence of any error or ill motive, the insurance company is not expected to reject the report of the Surveyors.

24)Now with regard to the question of awarding rate of interest as compensation in cases where loss is caused due to deficiency/delay in services, this court in various judgments has held that the award of compensation must depend on facts and circumstances of each case and has to be worked out after determining the amount of loss suffered by the consumer. In the case of Secretary, Irrigation

Deptt., Govt. of Orissa v. G.C. Roy, (1992) 1 SCC 508, this court has stated that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. 25)It was observed in the case of Ghaziabad Development Authority v. Balbir Singh,(2004) 5 SCC 65, that:

it is already held that awarding interest at a flat rate of 18% is not justified. It is clear that in all these cases interest is being awarded as and by way of compensation/damages. Whilst so awarding it must be shown that there is relationship between the amount awarded and the default/unjustifiable delay/harassment. It is thus necessary that there be separate awards under each such head with reasons why such award is justified.

26)In the case of Kaushnuma Begum v. New India Assurance Co. Ltd., (2001) 2 SCC 9, this court has held that, with a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalized banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants.

27)In the case before us it has been made clear that if the insurer is not satisfied with the assessment of the surveyor, he retains the right to settle claim for a different amount. The insurer after rejecting the assessments of the surveyor and the joint surveyor has accepted the assessment made by the Chartered Accountant. Therefore, it would not be correct to say that insurer while settling the claim has caused an unnecessary delay of three years. But once the insurer has reached a settlement he should make the payment at the earliest. And if further delay is caused by the insurer in making the payment then he should be made liable to pay the interest on the amount settled, as compensation at the current rate of interest till the payment is made, as it has deprived the appellant from using his money for which he is legitimately entitled.

28)Thus, in view of the above discussion, we direct the respondent Insurance Company to pay Rs.1,05,00817/- with interest at the rate of 9% as compensation from the date of assessment done by the Chartered Accountant, within two months from the date of this order. The appeal is partly allowed. No order as to costs.