

A.F.K

RESERVED

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW**

COMPLAINT CASE NO. 25 OF 2010

M/s. Saharanpur Cloth Merchant
Shop No.3, Laxmi Market
Pratap Nagar, Raiwala
Saharanpur, U.P.
Through Proprietor Mohd. Ikram.

...Complainant

Vs.

01. The New India Assurance Company Ltd.
Opposite Madhu Palace, Jagadhri Road
Yamuna Nagar-135001
Haryana
Through Branch Manager

02. Union Bank of India
Main Branch, Railway Road
Saharanpur, U.P.
Through Branch Manager

...Opposite Parties

BEFORE:

HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT
HON'BLE MR. R C CHAUDHARY, MEMBER
HON'BLE MR. SANJAI KUMAR, MEMBER

For the Complainant : Sri Sushil Kumar Sharma, Advocate.

For the Opposite Party : Sri J N Mishra, Advocate.

Dated : 21-03-14

JUDGMENT

PER MR. JUSTICE VIRENDRA SINGH, PRESIDENT

This complaint has been filed by M/s. Saharanpur Cloth Merchant,
Saharanpur against New India Assurance Company Limited and another
with the prayer that the opposite party No.1 Insurance Company be

:2:

directed to pay to the complainant a sum of Rs.30,00,000/- alongwith interest @ 18% as damages and also a sum of Rs.2,00,000/- for physical and mental harassment as well as costs.

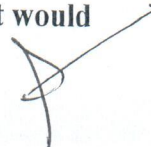
The facts of the case stated in brief are that the complainant is engaged in the business of cloth merchant at Saharanpur. The complainant took the insurance policy of a sum of Rs.30,00,000/- towards the fire and allied perils for his business premises and assets from Opposite Party No.1. The policy bearing no. 353503/48/08/34/00001592 dated 26-02-2009 was valid for the period from 01-03-2009 to 28-02-2010. In the night of 14/15-07-2009 fire broke out in the premises of the complainant. The complainant informed the police on 15-07-2009. The fire brigade people reached the premises of the complainant and brought the fire in his premises under control. The complainant informed the Insurance Company also on 16-07-2009 regarding occurrence of the fire in his premises in the night of 14/15-07-2009. The Insurance Company appointed Sri Vinay Mittal as surveyor and he demanded certain documents and information from the complainant related to the fire. The complainant provided the demanded documents and information to the surveyor. The complainant alleged that the opposite party has not decided the insurance claim and there is deficiency in service on the part of the opposite party no.1 in not deciding the claim of the complainant. The complainant had taken loan from the opposite party no.2, Union Bank of India and has to pay back the loan amount.

The Opposite Party No.1 Insurance Company pleaded in its written statement saying thereby that insurance policy in favour of the



:3:

complainant, as alleged in the complaint, is not denied. The facts mentioned in the complaint require strict proof from the complainant. The complaint is not maintainable because the sole deficiency in service alleged in the complaint does not sustain and survive any more since the insurance company vide letter dated 31-03-2010 has decided the insurance claim thereby considering the recommendations of the surveyors and investigators appointed for assessment of loss, deciding to offer Rs.2,96,000/- as the amount of claim payable as full and final settlement of the insurance claim to the complainant. The complaint is further not maintainable because the complainant has concealed the facts that during the pendency of the complaint, the alleged deficiency in service has been rectified and a cheque of Rs.2,96,000/- dated 31-03-2010 was sent to the concerned bank and the cheque amount has been cleared through the bank and was never returned by the complainant. The complainant had manipulated the records and made incorrect statement and grossly exaggerated the loss caused to him. **The insurance policy requires that notice of theft or loss should be given immediately to the police and to the company, but the complainant gave the information to the police nearly after a month (precisely 26 days), and to company after delay of 16 days from the date of alleged theft. As per Survey Report dated 25-10-2004 there was no evidence of any forcible entry into the premises. This is corroborated from the fact that the charge sheet was issued under Section 380 of the Indian Penal Code, for simple theft only, and not for theft and house breaking and/or burglary, under Section 457/350 Indian Penal Code. It is also stated that even if the loss had been caused, then it would**



:4:

not have been covered under the Insurance Policy, since simple theft is not covered thereunder. Thus, on this account too, complaint was not legally sustainable.

Perusal of the aforesaid pleadings of both the parties shows that there is no dispute in respect to the facts pertaining to the cloth merchant business of the complainant, the insurance cover of the said business provided by the opposite party no.1, the insurer, on the date of alleged occurrence and the alleged occurrence of fire occurred in the business premises of the complainant. The only dispute seems to be decided by this Commission remains as to:

- (1) Whether the complaint is not maintainable as pleaded by the opposite party.
- (2) To what amount if any the complainant is entitled to get beyond the assessment made by the surveyor appointed by the opposite party.

In support of the facts of the complaint the complainant filed his affidavit dated 09-01-2012 as well as his rejoinder affidavit dated 18-09-2012 and the following papers have been filed as documentary evidence by him.

- Complainant's Annexure No.1 – Copy of insurance policy cover note.
- Complainant's Annexure No.2 – Copy of information to police.
- Complainant's Annexure No.3 – Copy of Fire Brigade Report.
- Complainant's Annexure No.4 – Copy of letter dated 16-07-2009 sent by the complainant to the insurance company.
- Complainant's Annexure No.5 – Copy of letter dated 24-07-2009 of the surveyor demanding documents from the complainant.



:5:

- Complainant's Annexure No.6 – Copy of letter dated 19-09-2009 sent by the complainant to surveyor Sri Vinay Mittal alongwith documents.
- Affidavit's Annexure No.A – Letter dated 01-04-2010 by complainant to the insurer refusing to accept the cheque amount of Rs.2,96,000/- as claim sent by insurer to the Union Bank of India, the opposite party no.2.

On behalf of opposite party, an affidavit dated 28-08-2012 of Sri Vijay Kumar Sinha, Deputy Manager (Legal Cell), an affidavit dated 15-03-2012 of Vinay Mittal the surveyor have been filed in the evidence of the opposite party alongwith the documents as follows:

- Annexure No. C.A.1, the photocopy of letter dated 24-07-2009 and 27-07-2009 by Vinay Mittal, Surveyor & Loss Assessor addressed to M/s. Saharanpur Cloth Merchants demanding some documents and preparing the inventory of damaged documents in case shifting of them from the shop.
- Annexure No. C.A.2, the photocopy of Investigation report dated 27-07-2009 by Capt. Lekh Raj Batra (Retd.) concluding confirmed occurrence of fire due to electric short circuit.
- Annexure No. C.A.3, copy of survey report dated 24-11-2009 by Sri Vinay Mittal assessing the loss of Rs.2,96,000/- only.
- Annexure No. C.A.4, copy of letter dated 14-01-2010 sent by the insurance company to the complainant demanding some papers from the complainant.
- Annexure No. C.A.5, copy of investigation report dated 18-03-2010 by Sri K N S Sodhi, Investigator & Consultant.

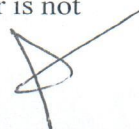


:6:

- Annexure No. C.A.6, copy of letter dated 31-03-2010 by the insurance company to Manager, Union Bank of India, Saharanpur sending a cheque of Rs.2,96,000/-.

We have heard Sri Susheel Kumar Sharma, learned Counsel for complainant and Sri J N Mishra, learned Counsel for opposite party the insurer.

In respect to issue no. (1) in dispute as above, perusal of the record shows that since the insurance claim allowed by the insurer to the tune of Rs.2,96,000/- only against the claim of Rs.30 lac has not been admitted by the insured complainant which too has been sent by the insurer to the banker of the insured even with no consent of the insured therefore it cannot be stated that the grievance of the insured has been redressed and the complaint is not maintainable. In our view the complaint is very well maintainable and we have the jurisdiction to hear it. The contentions of the insurer in this regard that the deficiency in service by the insurer does not survive any more since the insurer had decided the insured's claim vide letter dated 31-03-2010 offering the aforesaid amount as full and final settlement of the claim has no impact on the complaint of the complainant because the alleged letter on record Annexure No. CA 6 is addressed and sent to the Manager Union Bank of India from whom consent of full and final settlement of claim of the complainant could not be expected. This letter is neither sent to the complainant nor any other sort of consent of the complainant is brought on record pertaining to the full and final settlement of claim of the complainant. More so the complainant vide his letter dated 01-04-2010 Annexure No.A informed the insurer that the amount sent to his banker by the insurer is not



:7:

acceptable to him. Further more since the complainant had already filed the complaint before this Commission to get the claim of Rs.30 lac, there was no occasion to accept by the complainant a meagre amount of Rs.2,96,000/- only as full and final settlement of claim of the complainant against the claim of Rs.30,00,000/-. Hence the complaint is maintainable.

There is no dispute that the occurrence of the fire was occurred. The only dispute is that the surveyor of the Insurance Company has assessed the loss of Rs.2,96,000/- only while as per the assessment and contentions of the complainant the loss occurred to the tune of Rs.30,00,000/-. In this regard, it has been pleaded in the affidavit of the complainant that in every month the opposite party no.2 the bank, inspected the shop of the complainant to verify the stock available with him in his shop and as per stock statement submitted by the complainant to the bank and it has been the settled practice of the bank that if it does not find the stock upto the mark, the bank reduces the Cash Credit Limit of the shopkeeper and in the case of the complainant it never happens as the stock of the complainant was always found kept. It is submitted that in these circumstances the stock of the complainant cannot be disputed by the insurer as it found burnt in the fire.

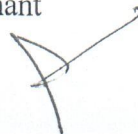
The insurer submitted that all the documents sought by the surveyor were not provided to him by the complainant as the surveyor in his report dated 24-11-2009 specifically stated this fact and observed that "we are constrained to submit the report as per available record only". It has also been stated in the affidavit of the insurer that since in the survey report dated 24-11-2009 the surveyor observed that the financial accounts



:8:

are totally baseless and quite open to fudging adjustments, therefore, no reliance can be placed on the affidavit of the complainant. It is also submitted on behalf of the opposite party that the surveyor had also observed that probably all the suppliers of the year 2008-2009 were fictitious and the insured refused to provide the copy of the purchase bills, therefore, the position of stock could not be believed as per statement of the complainant. The extent of loss, under the heading 'physical appearance', the surveyor concluded that, the fire was not ravaging and remained restricted inside the closed shop, the quality of cloth being sold by the insured, were low value synthetic, polyester type cloths, so much that rolls of ladies suits, rolls in upper row had melted and hanging like plastic, other cloths which were intact and well recognizable were also of very low value items apparently. The surveyor after thorough study of the quality of cloths and the bills provided to him observed as the insured had produced bills of usual rate of such cloth as Rs.30/- to Rs.50/- generally and seldom the high value of cloth as per invoices is Rs.80/- also. The surveyor having seen the quality of cloths in the insured shop opined that average rate of cloths should not be more than Rs.30/- per meter and the value of ladies suit rolls damaged comes for 2400 mtrs. @ Rs.30/- equivalent to Rs.72,000/- only. The surveyor also opined that the sum insured of Rs.30,00,000/- is very much beyond the actual stock held. The surveyor concluded that the net liability of the insurer comes to Rs.2,96,000/-. Thus, it is contended on behalf of the opposite party on the basis of above observations that the complainant is not entitled to any relief prayed in the complaint.

As per contentions of the learned Counsel for the complainant

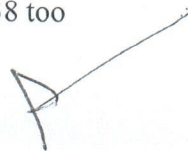


:9:

giving reference of the affidavit and rejoinder affidavit of the complainant, the complainant had sent the bills/receipts of Rs.31,61,268/- for the cloth purchased to the opposite party no.1 the insurer. All the documents were sent to the surveyor and there is no exaggeration in the complaint pertaining to loss caused to the shop of the complainant by fire.

We have found on record that there is no dispute in between the parties for the facts that the insurance cover was granted by the opposite party to the complainant and we are of this view that certainly the coverage of loss for Rs.30,00,000/- for insurance must have been given after the officers of the opposite parties inspected the site of the insured and after assuring themselves regarding feasibility of the grant of insurance for the stock available in the shop, therefore, at this stage of survey of the shop wherein the occurrence of the fire was occurred and the stock of the cloth as well as the records are burnt, the insurer could have not challenged the availability of the stock in the shop of the complainant to the tune of Rs.30,00,000/- the insurance coverage of which was given by the insurer and specifically in this scenario of the facts that the stock of the complainant was time to time verified by his banker being the complainant in debited to the bank for the credit limit allowed to the complainant by the bank and there is no case either of the insurer or from the record of the bank that at any point of time the cash credit limit of the complainant was reduced by the bank being the stock found less than the credit limit allowed.

Our attention has been drawn by learned Counsel for the complainant towards Section 2(6A) of the Insurance Act, 1938 too



:10:

wherein it is defined regarding 'Fire Insurance Business' that a fire insurance contract is one:

- Whose principal object is insurance against loss or damage occasioned by fire.
- The extent of the insurer's liability being limited by the sum assured.
- The insurer having no interest in the safety or destruction of the insured property.

Halsbury's Laws of England Fourth Edition 2003 Reissue Volume 25 at page 323, wherein it has been held that:

“603. **Fire as Proximate cause of loss.** To constitute a loss within the meaning of the fire policy, it is not necessary to show that the subject matter of the insurance has itself been burned; it is sufficient that the loss has been proximately caused by fire.

In the same volume at page 334 paragraph 628, provided as follows:

“628. **Valuation of Total Loss:** In the case of total loss, the measure of indemnity must necessarily be the value of the property destroyed, up to the limit of the sum insured. For the purpose of ascertaining this value, the rules set out below may be applied.

- The value to be taken is the value of the physical property destroyed; no allowance is made for loss of prospective profits or other consequential loss.
- The value is the intrinsic value of the property to the insured, its real and actual value; no allowance has to be made for mere sentimental value.
- The value is the value at the time of the fire.



:11:

Hon'ble Supreme Court in the case of **New India Assurance Company Limited versus Pradeep Kumar IV(2009) CPJ 46(SC)** has observed:
“22. In other words although the assessment of loss by the approved surveyor is a prerequisite for payment or settlement of claim of twenty thousand rupees or more by insurer, but surveyor's report is not the last and final word. It is not that sacrosanct that it cannot be departed from; it is not conclusive. The approved surveyor's report may be the basis or foundation for settlement of a claim by the insurer in respect of the loss suffered by the insured but surely such report is neither binding upon the insurer nor insured.”

Sudhakar Traders versus National Insurance Company Limited and another IV (2005) CPJ 25 (NC) and Koyal Textiles versus United India Insurance Company Limited I(2007) CPJ 135 (NC) in which it has been held that the claim is duly supported by the vouchers needs to be allowed.

Principle of Law laid down in *Castellain versus Preston and others* (1) 8 Q.B.D. 613 wherein Lord Brett L.J. while elaborating the principle of Fire Insurance observed:

“In order to give my opinion on this case, I feel obliged to revert to the very foundation of every rule which has been promulgated and acted on by the courts with regard to Insurance Law. The very foundation, in my opinion, of every rule which has been applied to insurance law is this, namely, that the contract of insurance contained in a marine and fire policy is a contract of indemnity, and of indemnity only, and that this contract means that the assured, in case of a loss against which a policy has been made, shall be fully indemnified, but



:12:

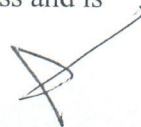
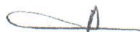
shall never be more than fully indemnified. That is the fundamental principle of insurance, and if ever a proposition is brought forward which is at variance with it, that is to say, which either will prevent the assured from obtaining the full indemnity, or which will give to the assured more than the full indemnity, that proposition must certainly be wrong”.

Insurance Surveyors and Loss Assessors (License Professional Requirements and Code of Conduct) Regulations, 2000

Chapter VI deals with the Code of Conduct of the surveyors and mandate that every surveyor shall act impartially, thus the surveyor is supposed to be an independent authority not acting as an employee or agent of the Insurance Company.

Learned Counsel for the complainant argued that it is mandatory for the Insurance Company to get a survey done by a licensed surveyor if the claim is above Rs.20,000/- but the report of the surveyor is neither binding upon the insurance company nor on the insured, however due weightage and regard should be given to the report of surveyor unless the same is found to be suffering from irregularities and seems to be biased, in this respect learned Counsel for the complainant placed reliance on the judgment of the

Similarly reliance has been placed on **New India Assurance Company Limited versus Somesh Readymade Garments IV(2011) CPJ 273(NC)**, Jagdish Devidas Somaiya versus Oriental Insurance Company Limited and another II(2012) CPJ 67 (Gujrat State Commission) by the learned Counsel in his arguments that the report of surveyor lacks credibility as the surveyor is a interested witness and is



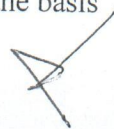

:13:

acting as an employee of the Insurance Company showing the entire approach of the Surveyor to be to repudiate the claim of the complainant, while the surveyor is an independent body who should work without bias.

Complainant relied upon Insurance Regulatory and Development Authority (Protection of Policyholder's Interests) Regulations, 2002 too, in which under Rule 3(1) it has been specifically provided that the insurer shall communicate the insured the warranties, exceptions and conditions pertaining to the policy. In the instant case nothing has been communicated to the complainant thus the repudiation is per se illegal and bad. In this respect the complainant relied upon the judgment of the Hon'ble Supreme Court in **M/s Modern Insulators Limited versus Oriental Insurance Company Limited I(2000) CPJ 1 (SC)** in which it has been held:

- 1. It is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties and good faith forbids either party from non-disclosure of the facts which the parties know. The insured has a duty to disclose and similarly it is the duty of the insurance company and its agents to disclose all material facts in their knowledge since the obligation of good faith applies to both equally.*

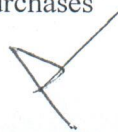
In the light of aforesaid contentions, we are of this view that since as per account statements of the complainant prepared by a Chartered Accountant and their regular submissions to the bank the creditor of the insured, the goods burned by the fire comes to the tune of Rs.35,80,070/-, therefore, the insurer cannot dispute the amount of insurance on the basis



:14:

of assessment by the surveyor that the quality of the cloth was low, the rate of the cloth per meter was not higher, the account books of the stock were not prepared or produced before the surveyor because in the case of total loss, the measure of indemnity must necessarily be the value of the property destroyed upto the limit of the sum insured. The value to be taken is the value of the physical property destroyed. The value is the value at the time of the fire. The Hon'ble Supreme Court since has already laid down the law that although the assessment of loss by the approved surveyor is a prerequisite for payment or settlement of claim of Rs.20,000/- or more by insurer, but insurance report is not the last and final word and it is not that sacrosanct that it cannot be departed from as it is not conclusive and it may only be the foundation for settlement of a claim by the insurer in respect of the loss suffered by the insured but surely such report is neither binding upon the insurer nor insured, therefore, the surveyor report in this case is not worth weightage being it based on self observation of the surveyor for the quality and value of the cloths which had already burnt in the fire and at any cost could have not been assessed being not in existence as it was prior to the occurrence of the fire. Therefore, such type of cases the accounts prepared by the insured should have been the basis of the assessment of loss and since in this case specifically the statement of the stock since has been submitted to the creditor bank, there was no reason with the surveyor to give no weightage to such stock in the shop informed to the bank i.e. creditor of the insured.

As per trading account of the complainant/insured from 01-04-2009 to 14-07-2009 the opening stock is Rs.33,62,480/-, the purchases



:15:

have been made to the tune of Rs.31,69,240/- and the sales is up to 14-07-2009 to the tune of Rs.31,10,830/- and the closing stock is of Rs.35,80,070/- upto 14-07-2009. If for the sake of argument it is admitted that sales and purchases were not properly accounted for by the complainant to the surveyor, the opening stock in the financial year to the tune of Rs.33,62,480/- could have not been denied being the stock regularly informed to the bank the creditor of the insured and since the insurance cover of the stock is limited to the tune of Rs.30,00,000/- by the insurer to the insured, the insurance coverage cannot be denied less than the coverage allowed being the occurrence of the fire in the stock of cloth and specifically wherein either the entire cloth is found burned or if to some extent is saved by the fire brigade, that cannot be a stock worth sale being partly damaged by fire. In such circumstances the total loss could have not been denied.

The insurer firstly deputed Sri Vinay Mittal, Surveyor & Loss Assessor who submitted his report on 24-07-2009 and 27-07-2009. Later on Capt. Lekh Raj Batra, Surveyor & Loss Assessor, Consultant Engineer, Valuer, Investigator and Detective was also deputed who has also submitted his report on 27-07-2009 and finally K N S Saudhi Investigator & Consultant was also deputed has submitted his report on 18-03-2010. What was the necessity to depute one by one the three surveyors by the insurer has not been clarified.

There is no mention even no evidence is on record to show as to whether the subsequent investigators/surveyors were appointed by the permission of Insurance Regulatory & Development Authority. In this regard, the law laid down by Hon'ble N.C.D.R.C., New Delhi in M/s. ,



:16:

Jagannath Poultries V/s New India Assurance Company Limited is very much relevant which shows that as per Hon'ble Supreme Court in the case of **Sri Venkateswara Syndicate V/s Oriental Insurance Company Limited and another reported in (2009) 8 SCC-507**, it is well settled that the authority to call for subsequent report by any subsequent insurer rests in the Insurance Regulatory & Development Authority. In **New India Assurance Company Limited V/s Protection Manufacturers Private Limited reported in AIR 2010 SC-3035**, it is held that where the subsequent report of the insurer is submitted the same was bad in law because the appellant Insurance Company should have applied to the Regulatory Authority under the Act for a second opinion and appointment of second surveyor must be discarded. Here in this case before us we come to this conclusion that neither there was any opportunity before the insurer to call a subsequent report, nor for such subsequent report any permission is taken by the insurer from the Insurance Regulatory & Development Authority, therefore, no weightage may be given to the reports of surveyors in this case which seem to have procured one by one by insurer merely for the purpose of repudiation of the claim of complainant. More so since the case of the complainant is of the fire in the shop wherein the documents and the accounts are inevitable to be destroyed by the fire. The complainant had taken recourse of the documents prepared by his Chartered Accountant and the papers submitted to his banker. The surveyor did not give weight to the accounts of the complainant. We are of this view that in the aforesaid circumstances the report of the surveyor is not acceptable against the accounts prepared by the accountant of the complainant and the accounts

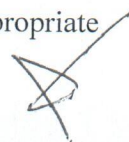


:17:

which were submitted regularly by the complainant to his banker.

As per contention of learned Counsel for the complainant, the accounts prepared by the accountant of the complainant had never been refused rather had been accepted by the Income Tax Department as well as the creditor bank and there is no report or any evidence of the insurer that such type of accounts were not accepted by the bank or the Income Tax Department, therefore, there is no occasion for not to give weight or not to accept the accounts of the complainant. Hence, in our opinion, the closing stock of Rs.35,80,070/- shown in the trading account from 01-04-2009 to 14-07-2009 i.e. prior to occurrence of the fire is acceptable wherein the opening stock is shown for Rs.33,62,480/- which is not refusible on any reason being the entry submitted to the bank as well as the Income Tax Department. In such circumstances, the repudiation of the claim for full coverage of risk to the tune of Rs.30,00,000/- should have not been refused and the opposite party/insurer has committed error thereby allowing only Rs.2,96,000/- as the loss to the complainant and committed error thereby refusing the claim of the complainant to the tune of Rs.30,00,000/- as was claimed by the complainant/insured.

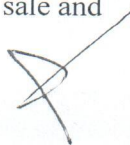
The learned Counsel for the opposite party vehemently contended thereby emphasizing the contents of the report of the surveyor that the opposite party/insurer has rightly decided the claim of the complainant but we are not convinced with the contentions of the learned Counsel for the opposite party even on taking into account the contents of the report of the surveyor. The survey reports of the three surveyors/investigators on record shows that Capt. Lekh Raj Batra as per his report dated 27-07-2009 reported that since he has not been provided with the appropriate



:18:

detail, he is unable to comment on view of risk and that may be worked out by the final surveyor. However, he has admitted in his report that seeing length and breath of the shop, quality of cloths which were lying half burn, one can well calculate that if that shop is fully packed with that type of material, it will not cost more than 4 to 5 lacks. We are unable to understand this finding as to on what basis the finding is arrived while Sri Batra has not detailed the quality and quantity of cloths against the accounts of the complainant. Sri Batra has further added in his report that if the material of such big amount is burnt, the ashes will even not be adjusted in the shop and as per insured, the loss occurred due to fire worth Rs.30,00,000/- is not justified. Strange enough that the insurer had insured the shop for the cloths for Rs.30,00,000/-, which is with no argument is meant to be insured after inspection of the cloths, even than the surveyor is reporting that the ashes even will not be adjusted in the shop if the material of such big amount is burnt. The report certainly we found perverse and even against the facts of insurance.

The report of Sri Vinay Mittal the surveyor on record shows that the insured has been found to have been submitting monthly stock statement to his bankers which have been obtained and considered by the surveyor. The accounts of the insured were maintained by his Chartered Accountant on his computer, few ledger accounts of which have been received. The surveyor has found the sales of the complainant as per audited financial accounts to the tune of Rs.2,16,00,000/- in the year 2009 and Rs.1,55,00,000/- in the year 2008. After collecting some stock statements from the financing bank and the monthly sale and purchase declared in every statements, the surveyor found annual sale and



:19:

purchase ranging upto Rs.1,08,00,000/-. It is also observed after perusal of the ledger account of the sales record that the insured is making daily sale of Rs.30,000/- to Rs.70,000/- and sometimes upto Rs.2,00,000/- to Rs.3,00,000/-, but the surveyor mentioning the fact that all the sales are depicted in cash, did not give weight to the accounts saying thereby that neither the sale bills mentioned; nor any sale proceeds deposited in bank. We do not find this much approach of the surveyor is worth acceptable. This approach shows that anyhow the claim is to be refused. How a person could be found to keep the sale bill book for verification/inspection specifically in this scenario of the fact that the business of the complainant does not come under the Sales-tax/Vat Act and the fact that if any bills etc. must have been in existence, the same might have been burnt in the extensive fire in the shop. Some of the name of the parties from where the purchases were made by the complainant shown in the report have not been given due weightage by the surveyor. How the surveyor opined that most of the articles in the insured shop were low value synthetic, polyester type cloths when there was no bills for alleged cloths were available to the surveyor. The surveyor himself observed that after physical inspection he had found that the cloths which did not burn, but melted like plastic was of very low quantity synthetic. How the surveyor came to this conclusion without any expert report pertaining to synthetic and clothing in this regard. Regarding value at risk, the surveyor has reported that the insured has furnished a provisional trading account as on date of loss i.e. on 14-07-2009, showing the closing stock of Rs.35,80,000/- against sum insured of Rs.30,00,000/- and since he (surveyor) has already rejected the books of



:20:

account of insured and other financial records, the stock declared is highly exaggerated and does not reflect the true stock position in his opinion, the sum insured of Rs.30,00,000/- is very much beyond the actual stock held and as such no average clause is recommended. We are constrained to have this report that the surveyor has opined that the sum insured of Rs.30,00,000/- remained very much high beyond the actual stock held. How the surveyor can opined it when the insurer is supposed to extend the risk of insurance after verifying the stock of the insured.

We will like to mention herein that like the regular appointment of three surveyors one by one in this case, the written statement filed by the insurer before us relates to some facts which are not relevant nor have any concerned with the dispute in between the parties. Those facts are reproduced as below:

“The insurance policy requires that notice of theft or loss should be given immediately to the police and to the company, but the complainant gave the information to the police nearly after a month (precisely 26 days), and to company after delay of 16 days from the date of alleged theft. As per Survey Report dated 25-10-2004 there was no evidence of any forcible entry into the premises. This is corroborated from the fact that the charge sheet was issued under Section 380 of the Indian Penal Code, for simple theft only, and not for theft and house breaking and/or burglary, under Section 457/350 Indian Penal Code. It is also stated that even if the loss had been caused, then it would not have been covered under the Insurance Policy, since simple theft is not covered thereunder. Thus, on this account too, complaint was not legally sustainable.”

It shows that the insurer seems much cautious merely to repudiate



:21:

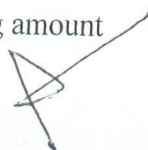
the claim of the complainant irrespective of facts wrongly pleaded and unauthoritatively deputing the surveyors one by one.

In the light of the aforesaid discussions, we are of this view that the report of the surveyor being not based on the true facts is liable to be rejected and the complainant is entitled to get the full risk coverage of Rs.30,00,000/- being the stock held by him to the tune of Rs.35,80,000/- and which have been found completely burnt in the shop of the complainant. Whatever may be the cloth alleged to have been saved by the Fire Brigade, that have also been reported to be half burn, which cannot be said to be of worth sale therefore it shall be deemed a case to have been of total loss. Therefore, we find this complaint to be allowed for the loss to the complainant up to the coverage of risk to the tune of Rs.30,00,000/- to be paid by the insurer/opposite party.

The complainant/insured has also demanded the interest @18% per annum, which is, in our view, not acceptable @18% rather is acceptable @14% per annum on which rate the complainant borrowed the money from the bank. The complainant has also demanded a sum of Rs.2,00,000/- for physical and mental harassment, which we do not find worth allowed as the physical and mental harassment is very well covered towards the interest allowed to the complainant.

ORDER


The complaint of the complainant is allowed to the tune of Rs.30,00,000/- (Rupees Thirty lacs only) to be paid by the opposite party/insurer to the complainant out of which a sum of Rs.2,96,000/- which has already been paid by the opposite party to the banker of the complainant, shall be deducted and the interest on the remaining amount



:22:

@ 14% per annum shall be calculated to be paid to the complainant from the date of the complaint filed by the complainant. In the circumstances of this case a further sum of Rs.15,000/- towards the cost of litigation shall also be paid by the opposite party to the complainant.

Let copy of this judgment be sent by post to complainant as well as to the insurer.


21.03.14
(JUSTICE VIRENDRA SINGH)
PRESIDENT ✓


(R C CHAUDHARY)
MEMBER


(SANJAI KUMAR)
MEMBER

pnt.

प्रमाणित प्रतिलिपि
(निःशुल्क)
21-3-14
जारी करने की तिथि-
प्रथम पक्षकार परिबन्दी/अप्रीन्यूसी/बुनरीक्षणकर्ता/प्राथमिक
द्वितीय पक्षकार विपरीत/प्रत्यर्थी
प्रेषण माध्यम कथितगत, प्राधिकृत अभिकर्ता/पंजीकृत अफ
रीडर/लिपिक
राज्य उपभोक्ता शिवाय प्रतिताप आयोग, उत्तर प्रदेश