

ASSESSMENT OF LOSS – CLAIM SETTLEMENT AND RELEVANCE OF SURVEY REPORT

Insurance Companies for ages have fairly established procedure. The items insured and claimed for, are varied and will include Automobiles, Buildings, machinery, stocks of various commodities and the like. Whenever a loss is reported, a Loss adjuster (Surveyor as he is popularly known in India) is deputed who assesses the loss and issues Report known as Survey Report which forms the basis of consideration or otherwise of the claim. Surveyors are independent professionals who assess the loss or damage and serve as a link between the insurer and the insured. They play a very crucial role between the insured and the Insurer. In India, the surveyors are licensed and procedurally regulated by IRDA. The surveyors have to satisfy the requirements of Sec 64UM of Insurance Rules 1939 read with section 42D of the Act and rule 56A. In general they are to possess technical qualifications as specified by the Authority, undergo practical training, apply and hold the licence.

The Insurance Regulatory Authority IRDA formulated Insurance Surveyors & Loss Assessors (Licencing, 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 code of conduct expected of them. Some of the duties and responsibilities of them are :

- ❖ Declaring whether he has any interest in the subject matter in question and whether the loss pertains to any of his relatives, business partners or through material shareholding.
- ❖ Maintaining confidentiality and neutrality without jeopardising the liability of the insurer and claim of the insured;
- ❖ conducting inspection and re-inspection of the property in question suffering a loss;
- ❖ examining, inquiring, investigating, verifying and checking upon the causes and the circumstances of the loss in question including extent of loss, nature of ownership and insurable interest;
- ❖ estimating, measuring and determining the quantum and description of the subject under loss;
- ❖ commenting on the admissibility of the loss as also observance of warranty conditions under the policy contract;
- ❖ assessing liability under the Policy, recommending applicability of depreciation, commenting on salvage and its disposal etc.,

Surveyors are required to submit their report as expeditiously as possible, but not later than 30 days of their appointment.

In a recent ruling, the Apex Court held that the compensation fixed by the Surveyor deputed is not binding on the Claimants or the Insurance Companies. Quite often Courts have interpreted the Policy and its conditions in favour of the complainants and some times pass strictures also. In a path breaking judgment recently , the Apex Court chided the Insurers for spending public money unnecessarily. This assumes significance as in most cases the compensation as spelt out in the Survey Report forms the basis of the settlement made by the Insurers.

Here is something from the pronouncement by the Supreme Court of India in Civil Appeal no. 3253 of 2002 .

The facts of the case are that by special leave, New India challenged the order passed by the National Consumer Disputes Redressal Commission dismissing the revision petition filed against the earlier order. The District Forum, Uttarkashi had directed the Insurers to pay a sum of Rs.158409/- along with interest at the rate of 12% per annum to the respondent Pradeep Kumar in a claim for damages to the Open body truck insured with New India. The truck loaded with potatoes met with an accident in Sept 1998 and had fallen down into khud 300 ft below the road. The Insured had filed the petition before the Forum citing deficiency in service by the Insurers.

The Insurers had the vehicle surveyed by Manoj Kumar (spot survey) and upon submission of repair estimates by Vivek Arora. Not satisfied with the report of Vivek Arora, the vehicle was surveyed again by another approved surveyor B.B. Garg who estimated the damages at Rs.63,771/-. The claim was accordingly approved but the Insured refused to accept this amount and took to Forum. The District Forum held that there was deficiency in service and ordered them to pay Rs.158409/- along with interest at the rate of 12% p.a. with cost of Rs.1000/- The Insurers appealed without avail in the State Commission. The concurrent order was challenged in National Commission where also they failed. In the Apex court, the Counsel for Insurers heavily relied upon Sec 64 UM (2) of the Insurance Act 1938 that the loss assessed by the approved surveyors appointed in view of the provisions of Section 64-UM was binding, more so, in the absence of any evidence on record to establish that the loss assessed by the approved surveyors was not correct and justified. There were other grounds such as repairs conducted prior to approval and that Insurers are not liable to indemnity for new parts.

The impugned section 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 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 license issued under this section to act as a surveyor.

The Act further states " 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." The accident itself was not disputed and vehicle had indeed suffered damages. The surveyors had affirmed that the damages were in conformity with the description of the accident mentioned in the claim form. The spot survey report was not filed and some strong remarks were made on this. As against estimate of Rs.166580/-, Vivek Arora assessed the loss at Rs.59304/- and the assessment of BB Garg was marginally more.

The Court observed that the object of the proviso is that the claim in respect of loss required to be paid by the insurer is Rs.20,000/- or more, the loss must first be assessed by an approved surveyor (or loss assessor) before it is admitted for payment or settlement by the insurer. However, the Insurer may settle the claim at any amount or pay the insured any amount different from the amount assessed by the approved surveyor. In other words although the assessment of loss by the approved surveyor is a pre-requisite 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 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.

The Court concluded that the claim of the complainant had been accepted by the Consumer Fora as duly supported by original vouchers, bills and receipts. Taking into consideration such expenses as also the interest the complainant had to pay to the bank from which the loan was obtained, the Dist forum awarded Rs.158409/- alongwith interest. The Court observed that the Insurers had not objected to the interest paid by the complainant to the bank being awarded and had not raised this issue before the National Commission. The Apex Court upheld the earlier decision of the Commission and stated that the present appeal was devoid of any substance and went on record that Insurance Company would have been well advised in not spending public money on avoidable and wholly frivolous litigation.

Stating thus Honble Judges DK Jain & RM Lodha dismissed the appeal. As has been there are lessons to be learnt and this judgment has thrown open some new perspectives, especially for the Insurers. Look forward to your feedback.....

With regards
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