

(2011) 09 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Amit Joshi Tours And Services Centre Pvt Ltd

APPELLANT

Vs

NEW INDIA ASSURANCE CO LTD

RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:

Citation : 2011 4 CPJ 590

Hon'ble Judges : R.C.Jain , S.K.Naik J.

Final Decision : Petition allowed.

Judgement

1. THE above named complainant, a company registered under the Companies Act, 1956, has filed the present complaint against the opposite party-New India Assurance Company seeking a compensation of Rs. 53,07,860 i.e. the difference between the loss suffered and claim settled, with interest @ 18% p.a. and litigation cost of Rs. 50,000.

2. IN nutshell the case of the complainant-company is that it had obtained a fire insurance policy from the opposite party Insurance Company vide Cover Note No. 275421 for the period from 6.12.2000 to 5.12.2001 in the sum of Rs. 89,75,000 i.e. having coverage for the building for Rs. 14,50,000, stocks for Rs. 55,00,000, plant and machinery for Rs. 17,50,000 and furniture, fittings and fixtures for Rs. 2,75,000 by paying the prescribed premium. According to the complainant, at the time of taking the insurance policy, the concerned Development Officer of the Insurance Company had personally inspected and verified the entire property including the stocks. The complainant-company had obtained finance assistance from the State Bank of Bikaner and Jaipur, Shastri Circle, Udaipur and hypothecated the property of the complainant to the said Banker. On 11.3.2001 at about 3.15 a.m., the complainant was informed by the Dy. Superintendent of Police that a fire had broken out in the insured workshop of the complainant and so he immediately reached there and found the fire brigade at the spot was trying to extinguish the fire. Fire was extinguished after some time and before that it had caused substantial damage to the entire garage and adjoining store its contents were completely destroyed. Insurance Company being informed of

the incident of fire, appointed Mr. R.C. Sharma of Technomic Engineers as its surveyor and loss adjuster who visited the site on 11.3.2001 itself and noted the extensive damage caused to the building, furniture, fittings and fixtures and the stocks. Similarly, the complainant requested the above named banker to depute an officer to inspect the premises and assess the loss. Complainant submitted all the requisite documents and material to the above named surveyor, besides the surveyor also collected the copies of the statement, accounts statement and the inspection report from the bankers. Complainant alleged that despite providing cogent and adequate proof in support of its claim, the surveyor had assessed the loss at Rs. 5,05,847.25 and after usual deductions the Insurance Company sought to settle and offered to pay a sum of Rs. 4,54,140. As there was a vast difference between the amount assessed by the surveyor and amount offered by the Insurance Company and the loss actually suffered by the complainant on account of the said fire, the complainant filed the present complaint.

3. ON being noticed, the Insurance Company resisted the claim by filing a written version inter alia raising preliminary objections that the complaint as framed and filed is not maintainable as the complainant has not approached this Commission with clean hands and is therefore not entitled to any relief. The complainant has not been able to substantiate the alleged loss sustained by it inasmuch as it failed to produce its account books, stock register, invoices of the purchase of spare parts exceeding Rs. 50,00,000. The complainant had accepted the amount of Rs. 4,54,140 in full and final settlement of the claim by signing the discharge voucher and therefore, is not entitled to any further amount and lastly that the facts of the case are so complicated that the same cannot be proved in the summary jurisdiction under the Consumer Protection Act and, therefore, it is a fit case, which should be relegated to Civil Court for proper adjudication. On merits, the factum of the complainant-company having been given an insurance policy in the above sum covering the risk of fire, etc. in respect of the building, plant and machinery, furniture, fittings and fixtures and stock to the above extent, is not disputed. Similarly, the fire incident at the workshop of the complainant is not disputed. No mala fide is alleged on the part of the complainant-company in regard to the fire incident. It is denied that Insurance Company has committed any deficiency in service entitling the complainant to any compensation much less the compensation claimed by it in the present complaint.

4. IN the rejoinder, the complainant has controverted the preliminary objections and pleas raised by the opposite party-Insurance Company in their written version and has generally reiterated the averments and allegations made in the complaint. In support of their respective case, the parties have mainly relied upon documentary evidence besides, filing the supporting affidavits of the complainant's Director, Smt. Pushpa Joshi and the Insurance Company filing the affidavit of the above named surveyor. That apart, it would appear that on request made on behalf of the Insurance Company, the cross-examination of Smt. Pushpa Joshi, Director of the complainant-company was also recorded.

5. IT is pertinent to note here that on a request made by the complainant, the Commission appointed District Forum No. 1, Udaipur as Local Commissioner to record the statement of the Branch Manager, State Bank of Bikaner and Jaipur, Shastri Circle, Udaipur. The said District Forum, recorded the statement of the officials of the above named Bank, who were duly cross-examined on behalf of the Insurance Company. It is also pertinent to mention that the surveyor had taken photographs and had prepared a CD of his inspection of the site carried on 12.3.20.11, which were produced on record. On the request made by the Counsel for the opposite party-Insurance Company, the same were exhibited before the Commission and the Commission had occasion to make certain observations in regard to the state of affairs, which were depicted from the said photographs and the CD.

6. WE have heard Mr. Manu Mridul, learned Counsel representing the complainant and Mr. Sunil Kapoor, learned Counsel representing the Insurance Company and have considered their submissions.

7. AS noted above, in the present complaint there is no dispute in regard to the issuance of the insurance policy covering building, plant and machinery, furniture, fittings and fixtures, etc. of the workshop of the complainant and the stock and that there was an incident of fire in the wee hours of 11.3.2001 during the currency of the said policy resulting into loss to the building, plant and machinery, furniture, fittings and fixtures as also to the stocks lying in the store room of the complainant's workshop. No overt act is alleged on the part of the complainant in the said incident. It is also not disputed that the claim of the complainant is on account of the said losses arising out of the claim and the compensation as paid a sum of Rs. 4,54,140 some time in July, 2001, it is a limited question, which needs to be answered as to whether the Insurance Company was justified in settling the claim of the complainant in the above sum. In this regard the most important document is the report of the Surveyors, Technomic Engineer dated 30.1.2001. This detailed report is for consideration of all relevant factors. After doing that exercise the above named surveyor assessed a net loss at Rs. 82,080.28 in respect of the claim towards damage to the building for Rs. 73,816.97, for the furniture, fittings and fixtures and a sum of Rs. 3,49,950 towards loss/damage for the stock of spare parts of automobile.

8. THE complainant has not seriously disputed the assessment of surveyor so far as it relates to the damage to the building, plant and machinery, furniture, fittings and fixtures, etc., but there is a serious dispute in regard to the quantification of the loss to the extent of stock of auto spares parts which were damaged. According to the complainant, the loss/damage to the stock of spare parts itself was to the extent of Rs. 51,38,127 against which the surveyor has assessed the loss at Rs. 3,49,950 which is wholly incorrect/untenable. Before we consider the submission, it is necessary to refer in some detail the observations made by the surveyor in regard to the stocks of auto spare parts, which were damaged in the said fire incident. "Stock- In order to arrive at the value at risk

the Insured was asked to produce the books of accounts, stock register, purchase invoices, sales book, etc. The insured stated and confirmed that they are not having proper accounting system they used to record purchase and sales only. In response to one of our letters insured stated in their letter dated 22.3.2001 that the said record i.e. purchases, sale bills and stock register burnt during the fire. In the above mentioned letter of the insured it was confirmed that February 2001 stock statement submitted to the Bank be considered as proof in support of their claim bill. During the course of our discussions it was informed that total stock pertaining to the insured was worth Rs. 56,14,475. As per the fire insurance policy the sum insured should represent the market value of the property as on the date of loss. Since accounts or other record are not maintained as confirmed by the insured from time-to-time as such the submitted closing stock cannot be correct. The value of the stock was much less (as stated elsewhere in the report) than as stated to be Rs. 56,14,475. On 12.3.2001 we again went to the site of loss along with Mr. V.K. Lodha (Branch Manager), Mr. C.M. Jain (ADM) for segregation of salvage. We requested Mr. O.P. Verma, Branch Manager SBBJ, Udaipur to be present at time of segregation of salvage. Segregation of salvage was done in the presence of Branch Manager Mr. V.K. Lodha, Mr. C.M. Jain, ADM and Branch Manager SBBJ, Udaipur Mr. O.P. Verma. Nature and extent of loss was identified, a list was prepared which was duly signed by the insured (Director Shri Amit Joshi, Manager Mr. Mukhim Mohmmmed Sindhi s/o Mr. Wall Mohmed Sindhi and Supervisor Mr. Pankaj Rajguru s/o Mr. Himmat Lal Ji). In absence of verification of records finalization of loss could not be done. Books of Accounts- As stated by insured that they are not maintaining books of accounts, i.e. cash book, ledger, etc., does not appears to be correct, on the following basis- 1. That the insured is doing business since long back. 2. That the insured submitted details of sales for the quarter ended 31.3.2001 to the Sales-tax Department on 4.5.2001 stating sales of Rs. 10,79,319, i.e., after around 2 months of incidence, than there should have been some basis with insured for its submission. 3. That being considering the experienced businessmen non maintenance of accounts is not possible at all. 4. As per Companies Act, the company has to maintain the books containing receipts and payments, i.e. there is statutory requirement to maintain the books of accounts to get its accounts audited and commented by the Chartered Accountant over maintenance thereof and further depict true and fair view on that basis. 5. As per Income-tax Act, every assessee has to maintain books of accounts showing income and expenses to arrive at the profit for ascertaining the tax liability. Further as per provisions of the I-T Act, every assessee whose gross turnover is exceeding Rs. 40.00 lacs has to get its accounts audited by the Chartered Accountant under Section 44AA of the IT Act. Loss of Records: The statement of the insured stock stated to be lost in fire, being lying on the working table also does not appear to be correct, on the following basis- 1. If we consider total sales of Rs. 74,95,698 as basis as stated in sales-tax return for the 11 months average monthly sale comes to Rs. 6,81,427 and average daily sale comes to Rs. 27,257. 2. Looking to the nature of business for the sale of Rs. 27,257 there should be average 30 bills per day. 3.

On the average 30 bills per day. total bills would be 8250 for the 11 months sales. 4. Considering the 8250 sales bills volume on the available table such volume cannot be stored with the purchase bills and stated stock register, etc. 5. Immediately after reporting of the fire incidence we visited the site of loss and there we did not find any traces of such volume of burnt paper containing either sale bill, purchase bill, stock register or file cover containing bills. 6. In the fire all papers can burn in toto, whereas if the statement of insured be considered for loss of records in fire as correct then it should contain some un-burnt portion of paper as well as hard file and hard board of stock register, for which no signs were found during our immediate visit to site, except one partially burnt duplicate book. Justification for Purchase and Sales- There is no sales and purchase amounts as are appearing in the submitted bank account statement, we opined on the following basis: 1. In the submitted bank account statement there were no withdrawal for the stated cash purchases. 2. In the submitted counter-foils of cheques no transactions of purchase appeared. 3. In the credit side of the bank statement no payment for receipt of stated bulk sale appears by way of cash and/or cheque receipts. On inquiry to provide the list and place of supplier of stock (spares used in the trade), they could not provide the name of a single supplier of the city and/or out of the city." The Surveyor had given the following basis for assessment of the stock: "1. Copy of insurance cover note No. 275421 period of insurance 6.12.2000 to 5.12.2001. The individual sum insured for building Rs. 14,50,000, for stock Rs. 55,00,000, for plant and machinery Rs. 17,50,000, fixtures, fittings, furnitures Rs. 2,75,000. 2. Claim form duly filled in, wherein the insured claimed loss of stock of spares as Rs. 55,00,000, building Rs. 1,95,000 and FFF Rs. 67,000. 3. Statement of the Director Mr. Amit Joshi narrating the incidence and giving opinion on the cause of loss. Further he explained that he did not suspect any sabotage as management-worker relations were cordial and there was general peaceful atmosphere in the industrial area. He confirmed that they do not have any issue and receipt system and nor having stock register. It was only confirmed .that they are having accounting system where sales and purchases are entered. 4. Office of Fire Control Service, Municipal Corporation, Udaipur issued certificate dated 19.3.2001 indicating that on 11.3.2001 at about 02.15 a.m. through a constable of Police control room information as given to the Fire Brigade. Accordingly Fire tender vehicle No. RJ27-2517 went to the site and driver Shri Vishnu Prakash, Fire Man Shri Omprakash and labour Shri Dalla controlled the fire. We sent to the Fire Brigade office and verified the available record. We met Fire Officer, Udaipur Shri Suresh Thanvi. He helped us in getting the proper record. It was found mentioned on page No. 135 of the logbook that vehicle RJ27-2517 was posted at police control room because of Holi Festival for three days i.e. 9th, 10th and 11th March, 2001. This vehicle was used for fire control at Sukhor road from 2.15 a.m. to 5.00 a.m. It means it took about two and half hours to control the fire including time for going to and fro. 5. Copy of FIR as the matter was reported to P.S. Ambamata. The incidence was entered in Rojnamcha on 11.3.2001 at Sr. No. 501 indicating time 7.00 a.m. Further investigation of the incidence was entrusted to ASI Shri

Narender Singh and his findings and investigation report is still awaited. This confirms in the FIR no estimation of loss was given by the insured and the incidence was informed by the Dy. SP. Shri Sharad Choudhry. In our opinion in the FIR estimated amount of loss should have been given by the insured so that the matter can be investigated at an appropriate level. In the subject claim an ASI was deputed for investigation. 6. The statement of Shri Narendra Singh s/o Shri Lokandra Singh, watchman was recorded. It was stated that he was sent to Vill. Ramsai (Distt. Pali) to bring Raju Mistri to attend some urgent maintenance jobs. Only after reaching Udaipur on 13.3.2001 he came to know about the incidence. But till date i.e. on 16.3.2001 on which we met the watchman, Raju Mistri did not reach Udaipur and for which he was reportedly, specifically sent by the insured. 7. Statement of the supervisor Shri Pankaj Rajguru s/o Shri Himmat Lal Ji narrating the incidence. He confirmed that on the day of incidence nobody was present at the premises. As the watchman was sent to bring Shri Raju Mistry. 8. Statement of the workshop Manager Mr. Mukeem Mohd. Sindhi narrating the incidence. He confirmed that after the repairs of outside vehicles payment is made at city office. Further it was also confirmed the all purchases are made by their city office we simply keep stock at our workshop store.

9. During the course of our inspection when no record was available nor appeared any stock monitoring system we decided to segregate the salvage in presence of the insured. The videography of segregation process was done. At the time of segregation of salvage, nature and extent of loss was identified. It was found that the spares and stock sustained fire and water damages. On 12.3.2001 when we went to the site of loss along with Insurance Officials, Bank officials and insured (himself and their staff) for segregation of salvage. Nature and extent of loss was identified, a list was prepared which was duly signed by the insured (Director Mr. Amit Joshi, Manager Mr. Mukhim Mohmed Sindhi s/o Mr. Wall Mohmed Sindhi and Supervisor Mr. Pankaj Rajguru s/o Shri Himmat Lal Ji). 10. We approached Banker and verified their inspection report. First inspection was carried out on 30.5.2000. Almost on every month stock inspection was done by bank officials. It was commented that the stock was sufficient to cover the outstanding and major items were verified only. The stocks were verified with stock statement. Nowhere it was found mentioned that stock rates were verified from purchase invoices.

11. Account statement from 1.9.000 upto 12.3.2001 is enclosed all transactions. 12. Copy of stock statement for last six months submitted to the bank i.e. as on 30.9.2000, 31.10.2000, 30.11.2000, 31.12.2000, 31.1.2001 and 28.2.2001. This is varying from Rs. 50.00 lacs to Rs. 57.00 lacs. 13. Attention of the insured was drawn (indicating that no claim under this policy is payable unless the terms of this condition have been complied with) to condition No. 6 (b) of the fire insurance policy i.e. The insured shall also at all time at his own expense produce, procure and give to the company all such further particulars, plan, specification, books, vouchers, invoices, duplicates or copies thereof, proofs and information with respect to the claim and origin and cause of the loss and

circumstances under which the loss or damage occurred and, any matter touching the liability or the amount of the liability of the company. Underwriter's liability is subject to inter alia this condition also. It was explained that no claim under this policy shall be payable unless the terms of this condition have been complied with. We wrote three registered A/D letters dated 14.3.2001, 26.3.2001 and 16.4.2001 to the insured which were acknowledged by the insured (copies of the same were also endorsed to the Banker by registered letter with the request to take up the matter with the insured to comply with this condition). 14. In above letters we asked for duplicate invoices, copies of invoices of list of suppliers of stock so that we can go and verify the purchase. Nothing was supplied by the insured. 15. During the course of our discussions with the insured on his comment that while underwriting this business Insurance Company checked everything why we were asking for invoices and books, etc. We made it very clear that proof of ownership and proof of existence of subject matter of insurance has to be supplied by the insured. Then only indemnity under the policy can be arrived at. Further principle of insurance was explained that the general duty of good faith is implicit in all contracts, whereas the more stringent duty of utmost good faith (*Uberrima Fides*) applies to contracts of Insurance. This is the duty to disclose all material facts. This duty is inherent in common law, but the inherent duty is extended by the contractual duty. The duty of disclosure on the part of the proposer is not satisfied by merely supplying truthful answers to the questions found on relevant proposal form. If there are other material facts they must be disclosed. This duty is very strictly interpreted and it extends to material facts and proposer knows or ought to know. The declaration at the end of the proposal form that is signed by the proposer extends the above duty of Utmost Good Faith. The effect of this is to render any inaccuracies in the answers to the question on the proposal form sufficient to make the contract voidable. While the duty of disclosure affects the proposer to a marked extent because it is he who knows, or ought to know, all the materials facts relating to a risk proposed for insurance, insurers are also bound to observe Utmost Good Faith. Relying on this principle we gave enough opportunity by way of registered letters to supply us informations relating to subject matter of insurance. The breach of duty of utmost good faith may arise in two ways-

(a) There may be non-disclosure of material facts either through an oversight or because the proposer thought that it was not material. However, if material facts are not disclosed intentionally, it becomes concealment. (b) There may be misrepresentation of facts, that is the insured may make inaccurate statements either through oversight or intentionally. If there is non-disclosure or misrepresentation with the fraudulent intention the insurance contract become void. A void contract has no legal effects or validity. In fact it is not a contract at all. If the duty is broken in any other way, the contract becomes voidable, which means, the insurer will have the option to avoid the contract and reject the claim.

16. The insured produced an estimate of Rs. 1,95,000, which was studied and scrutinized properly. As per estimate basis of our valuation is PWD BSR (Building

Schedule of Rates) 1998 and current market rates. For assessment we have considered 15% above BSR rates and same were verified from the market. As regards the lump sum rates for building considered by the insured as Rs. 450 per sq. ft. 17. The insured produced an estimate of Rs. 67,000 for FFF, which was studied and verified from the market. We contracted persons dealing in such job and discussed the estimates and finalized the loss. 18. The building involved in the claim is a store where automobile spares and accessories were stored. It is 25 ft. long and 15 ft. wide GI sheet covered supported on Ms steel perlins shed at height of 9 ft. The working height available for use was 6.5 ft. In order to justify insured's claim to have arranged stock worth Rs. 55,00,000 in the space available we also conducted volumetric analysis. Accordingly we found that- The volume available for storage of such type of automobile spares used by the insured $15.00 \text{ ft.} \times 25.00 \text{ ft.} \times 6.50 \text{ ft.} = 2437.50 \text{ cft.}$ Out of the available space the seating area where tables, visitor chairs were lying is $10.00 \text{ ft.} \times 6.00 \text{ ft.} \times 6.50 \text{ ft.} = 390.00 \text{ cft.}$ where no storage can be done. The volume available for storage of type of automobile spares used by the insured $(2437.50 \text{ cft.} - 390.00 \text{ cft.}) = 2047.50 \text{ cft.}$ From the above if we see that entire volume which is available for storage stuffed with stock of spares without even leaving a space to walk it is 2047.50 cft space. In our opinion in this space the type of stock of automobile spares used by the insured cannot be stored at all. Besides this during our inspection we found that one cotton waste partially burnt bag and a bed for watchman was also found lying. This indicates that it was also occupying space not used for storage stock of automobile spare. 19. A list of damaged spares was prepared in the presence of insured which was duly signed by the insured (Director Amit Joshi, Manager Mr. Mukhim Mohamed Sindhi s/o Mr. Wali Mohamed Sindhi and Supervisor Mr. Pankaj Rajguru s/o Mr. Himmat Lal Ji). All were present at the time of segregation. In spite of our repeated reminder for purchase invoices for verification of rates insured did not produce anything in support of the purchase rates. We are left with no other alternative than to verify rates from open market and accordingly assessment of the items verified from the salvage was done. 20. The insured produced a claim bill for Rs. 57,62,000, which was discussed and on the basis of available information and supporting we finalized the loss after making necessary adjustment on various reasons as stated above. On the basis of the above, our detailed inspection, discussions and keeping in view the coverage under the policy of insurance held by the insured, we finalized the loss."

9. VCD has been exhibited and shown. We found that various motor spare parts are lying in partly/fully burnt condition in the store in question. There are several racks lying in the room of the height of 6" to 7" with 4-5 shelves are lying totally empty and some racks have certain burnt/partly burnt articles. Some papers like partly burnt registers are also visible.

10. LEARNED Counsel for the complainant emphatically argued that the factors enumerated by the surveyor are untenable because the entire record including the account books, stock register, etc. maintained by the complainant in respect

of the stocks of auto spares was kept in the same store room where the spare parts itself were stacked and the same (accounts book, etc.) were also burnt and, therefore, could not be produced before the surveyor. It is pointed out that the complainant has led cogent evidence by producing the authenticated copy of the bank statement showing the details of the said stock of spares which were hypothecated with the Bank. He submits that these stock statements duly verified by the bank should form a sound basis for computing the value of the stock immediately before the peril. In support of his submissions, he placed reliance on the Supreme Court decision in the case of *Ishwar Dass Jain (Dead) through LRs. v. Sohan Lal (Dead) by LRs.*, X (1999) SLT 209=I (2000) CLT 45 (SC)=(2000) 1 SCC 434, wherein following observations were made by the Supreme Court: "The extracts of the alleged account books were wrongly treated as admissible by the Courts below. Under Section 34 sanctity is attached in the law of evidence to books of account if the books are indeed "account books" i.e. in original and if they show, on their face, that they are kept in the "regular course of business". Such sanctity cannot attach to private extracts of alleged account books where the original accounts are not filed in Court. This is because, from the extracts, it cannot be discovered whether the accounts are kept in the regular course of business or if there are any interpolations or whether the interpolations are in a different ink or whether the accounts are in the form of a book with continuous page numbering. Hence, if the original books have not been produced. It is not possible to know whether the entries relating to payment of rent are entries made in the regular course of business. It is only in the case of Bankers" Books Evidence Act, 1891 that certified copies are allowed or the case must come under Section 65(f) or (g) of the Evidence Act. Private extracts of accounts in other cases can only be secondary evidence and unless a proper foundation is laid for adducing such secondary evidence under Section 65 or other provisions of the Evidence Act, the privately handwritten copies of alleged account books cannot by themselves be treated as secondary evidence. For the purposes of Section 34 loose sheets of paper or scraps of paper cannot be termed as "book" for they can be easily detached and replaced."

11. THERE cannot any quarrel with the legal proposition, which emerges from the above position but in the case in hand, the statement of stock position though certified by the bank official cannot be put at par with the entries contained in a banker's book, which are admissible in evidence. In any case given the facts and circumstances of the present case and various observations made and findings recorded by the surveyor (*supra*), the same cannot be accepted and acted upon on its face value. If the complainant had really the stock of spare parts valuing at more than Rs. 50,00,000 as is claimed, it should have been in a position to produce the purchase vouchers and the proof of making payment of the price of the said spare parts to the person(s) from whom the complainant had purchased the same. Adverse inference is liable to be drawn against the complainant on that account. We must therefore hold that the claim of Rs. 51,38,127.00 made by the complainant on account of the loss/damage to

the auto spare parts was not only disproportionate to the actual quantity of stock but was highly exaggerated.

12. IT was next pointed out on behalf of the complainant that the surveyor in its report though had made an inventory of as many as 42 items of spare parts, which according to him could be verified from the salvage lying on the spot but the surveyor has not taken into account many other items i.e. the auto spare parts made up of rubber, PVC or other combustible material like tyres and tubes and various other components required to be fitted in motor cars. There appears to be force in this contention because a bare perusal of the said inventory appearing at pages 17 to 19 of the survey report would show that these items are metallic only and no item, which is made of rubber PVC or other compound, is included therein. It is a common knowledge that the motor cars have hundreds of components/parts and all of them are not made of metal alone. Having compared the inventory of spare parts put up by the complainant in support of his complaint and the above referred inventory, in the survey report, we are of the opinion that the surveyor has left out atleast the spare parts made of rubber and combustible compound. From the video recording of the site, it was observed that several burnt tyres, etc., were lying in the store which was the subject matter of fire. The surveyor has not included these items and any compensation on account of damage to the tyre tubes. Similarly there are many other spare parts made up of rubber and other compounds which are not included in the inventory prepared by the surveyor.

13. GOING by the entirety of the facts and circumstances, the nature of job in which the complainant was engaged and that the complainant had itself taken a coverage of exceeding 50 lacs to cover the loss to its stock of spare parts, we are of the view that it would be just and proper to estimate the value of those kind of spare parts at Rs. 2 lakh in addition to the value reached by the Surveyor. Adding the amount of Rs. 2 lakh to the assessed amount of Rs. 5,05,847.25, we consider it appropriate to quantify the total net adjustable loss of the complainant on all the three counts at Rs. 7.00 lacs.

14. IN view of the foregoing observations, we are of the view that Insurance Company should have settled the claim of the complainant for at least at Rs. 7 lakh. The Insurance Company has already paid a sum of Rs. 4,54,140 to the complainant as far back as on 11.7.2001 and therefore, we direct that the balance amount of Rs. 2,51,707 shall be paid by the opposite party-Insurance Company along with the interest @ 9% per annum with effect from 1st September, 2001 till the date of payment. In case of default, the rate of interest shall stand enhanced to 12% per annum from the date of default. In the peculiar facts and circumstances of the case, we leave the parties to bear their own cost. Petition allowed.