(2014) 11 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

ARRAYCOM (INDIA) LTD. APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD. RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Citation : 2015 2 CPJ 274

Hon'ble Judges : J.M.MALIK J.

Judgement

1. ARRAYCOM (India) Ltd., the complainant Company, has been insuring its properties through United India Insurance Co. Ltd., OP, for the last eleven years. The complainant insured its stocks of finished goods, semi -finished goods, raw materials, electric components, etc., against the risk of fire in the sum of Rs. 8.50 crores and paid premium in the sum of Rs. 1,97,025 for the period 23.10.2001 to 22.10.2002, when during the subsistence of the policy, a devastating fire broke out on the first floor of complainant''s premises, on 14.3.2002 at about 6.15 p.m. Consequently, the complainant suffered loss and informed the OP on 15.3.2002. On 18.3.2002, the then Chairman -cum - Managing Director (CMD) of the complainant passed away on 18.3.2002, due to burns sustained during the fire incident dated 14.3.2002. Two other Executives of the complainant company also succumbed to injuries on 18.3.2002 and 21.3.2002, respectively. On 18.3.2002, the Superintendent of Central Excise A.R. -I, Gandhinagar, along with other staff members, went to the premises of the complainant, but due to death of the CMD, the factory of the complainant was closed down. The Superintendent of Central Excise visited the complainant''s premises on 26.3.2002 and the Panchnama, drawn on 18.3.2002 was signed by the Panches on 26.3.2002. A copy of the said Panchnama, dated 26.3.2002, has been placed on record as Annexure -C. However, the purpose of Panchnama by the Excise authorities was limited to the extent of ascertaining the excise duty payable, if any, on the excisable goods destroyed in fire. However, the Excise authorities, did not verify the entire loss. The Panchnama, however, mentions that some of the records were completely burnt.

2. THE OP appointed M/s. Mehta & Padamsey Pvt. Ltd. as the Surveyors, in this case. All the requisite information was supplied by the complainant to the Surveyors. Since there was delay in settling the matter, the complainant made a request to the OP to make interim payment for the purposes of carrying on its business. The Bankers of the complainant also wrote letter to the OP to release the ''on account payment'', vide letter dated 6.3.2003, copy of which has been placed on record as Annexure -F. M/s. Mehta & Padamsey Pvt. Ltd., the Surveyors, recommended release of an interim relief in the sum of Rs. 100.00 lakh. However, the OP did not make the interim payment as prayed. Several letters were written by the complainant to the OP, for release of the same, but it did not evoke any response. The Surveyors, vide letter dated 8.1.2004, marked as Annexure -I, wrote to the Central Excise for clarification on certain points. Similar letter dated 16.1.2004 was also written to the Central Excise authorities by the complainant, marked as Annexure -J, requesting therein to send its reply to the Surveyor''s letter dated 8.1.2004. The Office of the Assistant Commissioner, vide letter dated 29.1.2004, marked as Annexure -K, informed the Surveyors that they required some clarification on certain points, with a copy of the said letter to the complainant. It is alleged that the OP is seeking to use the Excise Panchnama as an instrument for wriggling out of its obligations under the contract of insurance by not indemnifying the complainant against the loss ascertained by the approved Surveyors, appointed by the OP, itself.

3. THE Panchnama prepared by the Central Excise Department reveals that it is not that relevant because as its purpose was limited, the quantities and value shown in the Excise Panchnama would naturally not reconcile with the quantity of the stock claimed to be destroyed. The Excise Panchnama cannot be used either as a substitute of or for questioning a Surveyor''s report.

4. AFTER obtaining clarification from the Excise Authorities, the Surveyors, M/s. Mehta & Padamsey Pvt. Ltd., finalized the assessment of loss sustained by the complainant, in the sum of Rs. 2.04 crores and submitted the report to the OP. However, the OP, vide its letter dated 1.9.2004, informed the complainant that its Head Office had appointed one M/s. Rank Associates, as Surveyors, to investigate the loss in view of various discrepancies with regard to stock as well as quantity as per Excise Panchnama, being far less than that assessed by the Surveyors. A copy of the letter dated 1.9.2004 has been placed on record as Annexure -M. The complainant protested to the said letter of OP, vide its letter dated 10.9.2004, marked as Annexure -N. The complainant did not co -operate with the second Surveyors. Vide letter dated 5.1.2005, the complainant asked the OP to supply the copy of the first Surveyor''s report, but the needful was not done. The OP thus violated Regulation 9 of the Insurance Regulatory and Development Authority (Protection of Policy Holder''s Interest) Regulations, 2002. The OP filed copies of second Surveyor''s report (M/s. Rank Associates), dated 14.12.2004. The complainant came to know about the second survey report vide reply filed by the OP dated 15.9.2005. The complainant made the following averments. Firstly, OPs are not competent to file the second survey

report. Even, it is assumed to be admissible in evidence, the same does not have legal sanctity because firstly, he had arrived at a different finding, admittedly, theoretically and not by physical verification of the salvage. The first Surveyor, M/s. Mehta & Padmasey Pvt. Ltd. physically cross -checked the debris, verified and reconciled the stock statements certified by the Bank, excise records and other statutory records. It also sought for clarification from the Office of the Assistant Commissioner about the Excise Panchnama, drawn on 26.3.2002, only thereafter, had come to the conclusion that the complainant is entitled to get Rs. 2.04 crores as compensation from the OP. Secondly, the second Surveyor has proposed the following two figures of net computed loss: "(i) Rs. 62,43,271

(ii) Rs. 92,45,362."

5. WHILE : arriving at the first figure, the second Surveyor took the quantity of the destroyed goods from the excise Panchnama but strangely took the value of the destroyed goods from the report of M/s. Mehta & Padamsey Pvt. Ltd., for the obvious reasons that said M/s. Mehta & Padamsey Pvt. Ltd., had calculated the said value on the lower side. The said figure is based upon only on five items that were covered by the Excise Panchnama, dated 26.3.2002 and other products which were, in fact, destroyed in fire, dated 14.3.2002, but were not mentioned in the said Excise Panchnama and were not at all considered while arriving at the said figure of Rs. 62,43,271. The second Surveyor made deduction of Rs. 13,70,000 towards CENVAT Credit, allegedly availed by the complainant. The said figure of Rs. 13,70,000 was calculated at a flat rate of 16% which was the rate of the excise duty proposed to be charged by the Excise Department in its Panchnama dated 26.3.2002. Again, arriving at the second figure, (Rs. 92,43,362), the second Surveyor, M/s. Rank Associates again took the quantity of lost goods from the Excise Panchnama, but strangely took the value of the lost goods from the report of the first Surveyor, M/s. Mehta & Padamsey Pvt. Ltd., for the same reason that M/s. Mehta & Padamsey Pvt. Ltd. had calculated the said value considering the lower price.

6. THE OP did not consider the high value of the items of the semi -finished goods namely heating element resin network and hybrid micro circuit which were in fact present in the stock of the complainant on the date of the fire. The same were destroyed, were physically inspected and necessary weighment was carried out by the first Surveyor. The first Surveyor had also cross -checked, reconciled the stock position enunciated in the statement, certified by the Bank of the complainant, had also physically compared with the model weight of each individual item, concluded the physical existence of the stock claimed by the complainant lying at the First Floor of factory premises on the date of fire and the first Surveyor made a downward adjustment of 5% from the value of heating elements and hybrid micro circuits. Ultimately, the present complaint was filed before this Commission, on 9.3.2005, with the following prayers: "(a) direct the OP to pay to the complainant a sum of Rs. 2,38,87,909 as claimed by the complainant vide its letter dated 7.1.2004 or the amount of loss as assessed by

M/s. Mehta & Padamsey Pvt. Ltd., together with interest at the rate of 18% p.a. from 14.3.2002, till payment and/or realization;

(b) direct the OP to supply to the complainant the survey report of M/s. Mehta & Padamsey Pvt. Ltd.;

(c) declare that the OP is indulging into unfair trade practices and order it to cease and desist from practicing unfair trade practice of appointing a second Surveyor after the submission of the report of the Surveyor appointed by it in the first instance, particularly, after a lapse of reasonable time;

(d) direct the OP to pay to the complainant a sum of Rs. 96,00,000 as per Annexure -S to the present complaint together with interest @ 18% p.a., from 1.2.2005 till payment and/or realization;

(e) pending the hearing and final disposal of the complaint, the OP be directed to deposit an amount of Rs. 2,38,87,909 as claimed by the complainant vide its letter dated 7.1.2004 or the amount of loss as assessed by M/s. Mehta & Padamsey Pvt. Ltd., with liberty to the complainant to withdraw the same on such terms and conditions as this Hon''ble Commission may deem fit and proper in the facts and circumstances of the case;

(f) direct the OP to pay to the complainant the costs of the present proceedings; and

(g) pass such other and further order and/or direction as is deemed just and proper in the facts and circumstances of the case".

Defence:

7. THE complainant is not a ''consumer'', as the policy covers a commercial transaction. Also, the complainant did not co -operate during the investigation of the case. The case is barred by time. It is contended that the complaint involves intricate and complicated questions of law and facts, therefore, this case should be decided by the Civil Court. The Bankers (SBI) did not furnish the stock statements for various months in 2001 -02 and the attested Photostat copy of the folio of the Drawing Power Register of M/s. Arraycom which contains the entries relating to the dates of submission of the monthly stock statements. The crux of the claim revolves around the Bank stock statement containing the inventory position as on 28.2.2002. In case the monthly stock of statements for July or February, 2002 had been furnished to the Bankers, subsequent to the claim, the possibility of the insured to have manipulated the figures to suit the claim lodged, cannot be ruled out.

8. THE OP has further listed the following reasons for not accepting the report of M/s. Mehta & Padamsey Pvt. Ltd., the Surveyors, as under: "(i) The most important aspect of them all is that the Surveyors in the light of the fact that their assessment is in excess of the quantity mentioned in Excise Panchnama Doc. Ref. No. 1 -14 to 1 -18, they ought to have clearly demarcated the

cenvatable goods and non -cenvatable goods. Regarding the excess in quantity over the excise Panchnama for the cenvatable goods, if they are convinced about the quantity actually destroyed, then the circumstances under which they have accepted these quantities should have been clearly brought out in the report and they should have ensured that the same quantities are reflected both in documents/records submitted to excise authorities relating to reversal of credit as well as the ones submitted to the insurers before recommending the claim.

(ii) With regard to the statement showing summary of burnt quantities of stock attached to letter dated 3.4.2003, sent to United India Insurance Co. Ltd., Regional Office, Ahmedabad, (Doc. Ref. No. 1 -93 and 94) under column ''Actual stock'', they had indicated certain quantities of RM and semi -finished material. They have not mentioned the precise location of shop floor for each of the item in each department. Inasmuch as this represents the ''saved stock'', this assumes significance and especially considering the fact that in the same first floor some of the blocks were affected by fire and other blocks have escaped from the clutches of fire.

(iii) The Surveyors have also not prepared/obtained a joint stock statement signed by the insured, showing the physical stock on the date of their visit, together with the precise location inside the factory.

(iv) In the salvage analysis covered by weighment analysis (in P. No. 7 under para No. 4.6.2002 (Doc. Ref. No. 1 -37) were given in terms of weight especially the items of HE, RNW and HMC are much bigger in nature and are clearly identifiable. Hence, physical quantification rather than weighment should have been carried out. This would have helped in having a clear comparison between the physically available damaged material and the quantum of loss claimed/ assessed for these varieties.

(v) As regards cost of five products in respect of which claim has been preferred, the process of manufacturing status has been given in respect of two only, viz., Chip Resistor (CR) and Resistor Arrays (RA). The process of manufacture has not been given in respect of Resistor Net Work (RNW), Hybrid Microcircuit (HMC) and Heating Elements (HE).

(vi) The report does not bring out the output (in terms of finished products units) from out of processing of one unit in input (substrate) even though the sizes of the inputs (substrates), as well as the outputs (finished products) varied from end -product to end -product and the ratio of output to input was not uniform in respect of each of the input, viz., substrate.

(vii) Consumption norms for pastes adopted for purposes of Annexure V (Doc. Ref. Nos. 1 -54 and 1 -55) to Surveyor''s Report relate to a period more than 11 months before the event of fire (14.3.2002). It would have been more appropriate if norms for consumption of pastes have been developed with reference to actual production during financial year in question, viz., 2001 -02 and applied it for subsequent months for ascertaining the quantities of stock on the date of loss (14.3.2002). This could have been cross -checked with the consumption arrived at with reference to the standards per unit of substrate and the number of substrates taken up for processing and actually processed.

(viii) The stock statements for Chip Resistors submitted to the Banks at the end of each month reflected the stocks in terms of ''substrate'' till the stage of termination and from that stage only, the stocks were reflected in terms of finished product units. Annexure IX to the Survey Report (Doc. Ref. 1 -64), inter alia, gives the stocks at the end of each month in terms of finished product units; nowhere in the report, the basis adopted for conversion of raw material, viz., substrate with finished and product stands brought out.

(ix) The stock statements as on 31.1.2002 and 28.2.2002 reflect quantities as on the date of plating, quantity control and packing departments. Even though in para 8.09 of the interim report of Surveyor''s it has been stated that stocks in these departments were not affected by fire, no attempt seems to have been made to ascertain and exclude the quantities in these departments claimed by the insured as destroyed by fire.

(x) The basis of valuation of cost/unit of stock for either assessment of loss or for evaluating the ''Value at Risk'', have been discussed in the report.

(xi) A comparison of Annexure V and Annexure IX to the Survey Report shows that in Annexure V, the Surveyor has shown as stock as at the month -ends stocks of certain pastes, which differ from the quantities as shown by the insured to the Bank in the monthly stock statements.

(xii) In Annexure V, in the workings of the Surveyor, certain items of paste come out in the negative, which should have been probed and highlighted. No attempt has been made by the Surveyor in this regard and the impact of the presence of such negative stock in the final assessment has not been considered/discussed at all."

On 31.8.2004, the second Surveyor inspected the factory premises of the complainant. Later, again, on 1.9.2004, inspection was done by the Second Surveyor with a letter from the Office of Regional Manager, Ahmedabad. The insured had not commenced any production of manufacturing activity in the first floor of the factory premises, after the fire. Mr. Singhvi has opined that due to non -functional of exhaust fans and the death of the person was due to inhaling of toxic fluids by them when trapped inside. An inquiry was made from the Bank, documents were filed and considered which are important for the analysis. Documents were recovered, registers were verified.

9. IT is alleged that insured has claimed even those claims which were stored, housed in the unaffected block of first floor. Even the first floor diagram submitted by the insured shows these aspects clearly. It is alleged that this is a deliberate attempt on the part of the complainant, for claiming stocks even in unaffected areas. They have also claimed marketable items hitting elements. It is

contended that if the records of first floor were destroyed in fire, how was the insured able to give such precise data like 107369 in the packing department. Again, the insured did not permit the OP to verify those records. It has also shown trimming data 93000 and bulk data 97000. The Insurance Company did not give any value for all these items due to non -production of documents. In Monthly Stock Statement of February, 2002, the insured has shown all items as closing WIP, including the items in bulk as well as in packing. The insured did not cooperate with the OP to verify the records. The value recorded in the Excise Panchnama may not be accurate/correct and only appropriate figures could be considered as the basis of ascertaining the value of the items destroyed only because of the excise duty element. The insurer shall restore indemnifying the amount relating to the quantity destroyed after making doubly sure as the same quantity has not been accepted by the Excise authorities. It is contended that the second report is reliable. Both the statements have been compared. All the other allegations have been denied. Submissions:

10. WE have heard the Counsel for the parties and have gone through their written synopses. The learned Counsel for the OF vehemently argued that while processing the claim of the complainant for settlement, it found various discrepancies as detailed above with regard to the stocks as well as quantity as the same were less as per excise Panchnama than that assessed by the Surveyor. Consequently, the OP vide its letter dated 1.9.2004, intimated the complainant that M/s. Rank Associates was appointed to investigate the loss, afresh. It is contended that the complainant at the most, is entitled to the compensation in the sum of Rs. 92,45,362. The Counsel for the OP submits that though it does not concede that the complainant is entitled to this amount, yet it contends that the amount should be settled at Rs. 62,33,968 vide letter/offer dated 29.6.2005, made by the OP. It is explained that the complainant is not entitled even for a sum of Rs. 92,45,362 as no credible documents have been produced to justify such theoretical existence of the stocks. The attention of this Commission was invited towards the second surveyor''s report, i.e. by M/s. Rank Associates, which reveals lacunae/mistakes/shortcomings in the survey report of M/s. Mehta & Padamsey Pvt. Ltd. This report, we have already mentioned above. It was argued that there lies no rub in accepting the report of the second Surveyor, provided the Insurance Company has given satisfactory reasons for not accepting the report of the first Surveyor. In this respect, our attention was invited towards the authority reported in Sri Venkateswara Syndicate v. Oriental Insurance Co. Ltd. & Anr., II : (2010) SLT 664 : III (2010) CPJ 1 (SC) : (2009) 8 SCC 507.

11. AGAIN , in Sikka Papers Ltd. v. National Insurance Co. Ltd. & Ors., : III (2009) CPJ 90 (SC) : (2009) 7 SCC 777, it was held that the Surveyor''s report is not the last word and the insurer can depart from the surveyor''s report by giving legitimate reasons.

12. IN the instant case, the complainant refused to cooperate with the second

Surveyor. Findings:

Instead of touching the heart of the problem, the learned Counsel for the OP has just skirted it. The law has crystalline clarity in this context. In New India Assurance Co. Ltd. v. Protection Manufacturers Pvt. Ltd., : VI (2010) SLT 152 : III (2010) CPJ 40 (SC) : (2010) 7 SCC 386, it was held that in view of Section 64UM(3) which provides power only with Authority, i.e. IRDA, and not the insurer. The OP could not have appointed the second Surveyor, hence, the appointment and report of second Surveyor are non est.

13. IN Sri Venkateswara Syndicate v. Oriental Insurance Co. Ltd. & Anr. (supra), it was held, at para Nos. 31, 32, 33 and 34, as under: "31. 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.

32. 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.

33. 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.

34. 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 licence issued under this section to act as a surveyor."

14. SIMILAR view was taken in Jagnnatha Poultries v. New India Assurance Co. Ltd., : 2012 (92) ALR 763 and Adarsh Chemicals and Fertilisers Ltd. & Anr. v. United India Insurance Co. Ltd., : 2013 (4) CPJ (NC) 322. It is difficult to fathom, why did the OP pursue this case, in a lackadaisical manner. The incident took place on 14.3.2002. The Superintendent of Central Excise visited the spot on 18.3.2002. M/s. Mehta & Padmasey Pvt. Ltd., the Surveyors was appointed as Surveyor, vide letter dated 1.4.2002, who visited the spot on 4.4.2002 and gave the first interim survey report on 10.10.2002, after expiry of seven months. The second Surveyor was appointed who visited the spot on 21.8.2004. There is inordinate delay in appointing the second Surveyor. The second Surveyor, if it was essential, should have been appointed, immediately. The delay causes a film of doubt over the bona fides of the OP.

15. IT is also interesting to note that the complainant was informed vide letter dated 1.9.2004 that a second Surveyor was appointed. No reasons were given for appointing the second Surveyor. The said letter is a ''four -line'' letter which discloses that a new Surveyor is to be appointed. No reasons were detailed in it. These reasons were detailed for the first time in the report of the second Surveyor. No note from the side of the Insurance Company saw the light of the day explaining that for some reasons, such and such that they were going to appoint the second Surveyor. The reasons were discovered by the second Surveyor and not by the Insurance Company. The plea raised by the OP that report of second Surveyor should be accepted is nothing but a ruse to make sure that their plea would succeed under all the circumstances.

16. THE complainant did not participate and did not furnish the requisite papers to the second Surveyor. The consumers are exasperated due to senseless delay. The request of the first Surveyor to pay Rs. 1,00,00,000 to the complainants as an interim relief was also not complied with, though, all the preparations in this regard were made. The ''but and ben'' attitude/stand set up by the OPs covers this case with a veil of suspicion and smacks of mala fides on their part. The main reason for rejection of the report of the second Surveyor and the case of the OP is that their entire case swirls around the excise Panchnama. First of all, the Surveyor should have been appointed, immediately. He should have visited the spot within 48 hours from the said incident. A clear picture would have emerged if the Surveyor was appointed immediately without any delay. The Panchnama prepared by the Superintendent of Central Excise Department does not serve the purpose. For the loss to be assessed by an insurance Surveyor, the purpose of the Panchnama is different. Panchnama is not relevant for its purpose and object. This already stands mentioned vide letter dated 29.1.2004. Sh. P.V.

Chavda, Assistant Commissioner, O/o Central Excise and Customs, Gandhinagar Division, Gandhinagar, sent a letter dated 29.1.2004 to M/s. Mehta and Padamsey & Co. Pvt. Ltd. Its relevant paras are reproduced here as under: "1. At the outset, please note that the assessment of loss in respect of fire claims is not following in our legal scope of work as we are not loss assessors. The purpose of drawing Panchnama after the incidence of fire was to ascertain the duty amount involved in respect of material loss based on the spot available information, records and verification of material lost to the extent possible. Hence, it is up to you to reconcile the quantity of stock claimed to be destroyed at the time of fire and actual stock in physical terms. The Panchnama drawn on 26.3.2002 is final in respect of Quantities and Values to the extent of damaged items covered therein."

17. THE Insurance Act lays a different and detailed procedure for assessment of loss which has nothing to do with the Excise Panchnama. The Panchnama was concerned with the loss of excise duty. The Surveyor appointed under Section 64(UM)(2) has done investigation and the report of the first Surveyor appears to be quite reasonable and just. The Panchnama did not take into account the loss sustained due to damages but included items which were not excisable items. Moreover, the Panchnama was prepared on the basis of the record available at that point of time as the complete records were not available. Many items were not excisable like, packing material, consumable and semi -finished items.

18. AT the time of preparation of Panchnama, even the cremation of CMD of complainant company had not yet taken place and as such, that Panchnama itself mentions that the said inspection was based on the documents/records then available. Excise Panchnama was concerned with CENVAT credit. M/s. Rank Associates also admits that the scope of its report was confined to excise Panchnama. It also admits that the purpose of executive authorities was predominantly to make the insured to reverse the CENVAT credit which the insured had taken with respect to materials. A number of goods were not finished products but were semi -finished products/work in progress goods and hence excise authorities had no concern. Our attention was invited towards Wednesbury Corporation,, [1948] 1 KB 223, wherein it was held that it is a well settled principle of administrative law that an authority must only take into consideration the relevance of germane considerations and not the irrelevant considerations. It is a settled law that a thing must be done in a manner prescribed by law. In the present case, Section 64UM(2) prescribes manner of survey to be done, it has to be carried out in accordance with that.

19. COUNSEL for the complainant has cited the case reported in Commissioner of Police, Bombay v. Gordhandas Bhanji, : AIR 1952 SC 16, in this context.

20. THE report of the second Surveyor also pales into insignificance because he visited the ''spot'' about two years'' after occurrence of the incident. The same is based on theoretical assumption. He could not inspect the ''spot'' physically, at the proper time. He made assumptions from the burnt debris and by going

through few documents. His assumptions appear to be all wet. In the result, we have no hesitation to accept the report of the first Surveyor. The same is reliable and just. The OP has raised copious objections for the sake of cavil. We, accordingly, make the first Surveyor''s report as basis of compensation to be awarded to the complainant. The complaint is hereby allowed and a sum of Rs. 2.04 crores is awarded, with interest @9% p.a. from the date of filing of this complaint (i.e. 9.3.2005) payable by the OP -Insurance Company to the complainant, within 90 days from the date of receipt of this order, otherwise, after expiry of said 90 days'', it will carry interest @ 12% p.a., till its realisation. We also award compensation in the sum of Rs. 2,00,000 towards harassment, mental agony and costs of the case, payable by the OP -Insurance Company to the complainant, within 90 days'' from the date of receipt of this order, otherwise, after expiry of said 90 days, the same shall be paid with interest @ 9% p.a., till the realization of the said amount.