

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 8

NOTE : Answer **ALL** Questions.

1. M/s. XX is a registered partnership firm. Their line of activity is trading in cotton. For the purpose of their business, they had taken M/s JJ Traders Cotton Ginning Mill on lease. The claim of M/s XX firm is that, an accidental fire took place in the godown of M/s JJ Traders, leased by them where its cotton stocks were stored and insured, at about 2.10 a.m. in the morning hours of 24.08.1999 and according to the Firm, the estimated loss was of ₹ 1.90 crore. The cotton stocks in question were covered by seven insurance policies issued by M/s. OPQ Insurance Company Ltd. for a total sum of ₹ 1.98 Crore during the period when the fire accident took place. The firm made a claim of ₹ 1.90 crore towards loss of stock due to accidental fire in its business premises, with the insurer. Pursuant to the claim so made, the insurance company appointed Mr. K a licensed surveyor for preliminary investigation and for submitting a preliminary report, about the cause of fire and the probable loss said to have been suffered by the insured.

The surveyor having examined the place of fire accident gave preliminary report dated 09.09.1999 to the insurance company estimating the loss of stock at ₹ 1,73,92,310/- however, had noticed in his report that the number of bales and borahs lying in the Godown and the actual quantity of lint damaged by fire has to be got confirmed from the accounts of the insured and also by physical verification of bale hoops. The insurer after receipt of the preliminary report of Mr. K, had appointed Joint Surveyors M/s. M & K in terms of Section 64 UM (2) of the Insurance Act to give a joint report.

Section “64- UM(2) specifically states 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 licence issued under this section to act as a surveyor or loss assessor (hereafter referred to as “approved surveyor or loss assessors) : Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor. Sub-section (2) mandates that no claim in respect of a loss which has occurred in India and requiring to be paid in India equal to or exceeding twenty thousand rupees in value on any policy of insurance be admitted for payment, unless insurer obtains a report on the loss that has occurred from a person who holds a license issued under sub-section (1) of Section 64 UM of the Act as a Surveyor or loss assessor. As entrusted, the Joint Surveyors conducted a joint survey and in that, had estimated the loss of stock insured at ₹ 1,67,80,925/- and gave a report to that effect to the insurer. The insurer being of the view that the report is perfunctory had appointed yet another Surveyor viz. M/s. DG & Co. who, in turn appointed one Mr. P, former DIG (Fire) to investigate and submit a report, who in turn after investigation and survey submitted his report dated 07.05 2000, confirming the quantification made by the Joint Surveyor.

Since the insurer was not satisfied with the aforesaid report also, again appointed M/s. RS & Co., Chartered Accountant to give a fresh report by estimating the loss of stock insured due to accidental fire incident. After inspection of the godown and verifying the books of accounts, he estimated the loss of stock at ₹ 1,05,00,817/-. The insurance company had

: 3 :

placed the aforesaid report before the Joint Surveyor viz. M/s. M & K for their opinion. The joint surveyors in their clarificatory report dated 06.01.2000 did not agree with the findings of the Chartered Accountant, on the ground that the chartered accountant had based his report only after verifying the books of accounts for the period 01.10.1998 to 31.03.1999 and not till the date of fire accident.

Since there was inordinate delay in settling the lawful claim under the fire insurance policy, the appellant Firm preferred original complaint before the National Consumer Forum against the insurer, inter-alia, alleging that *there was deficiency in service* and, therefore, they are entitled for a sum of ₹ 1,67,80,925/- being the value of loss assessed by the Joint Surveyors and, therefore, sought a direction to the insurer for payment of the aforesaid amount with interest at 18% from the date of fire accident till its realization and for payment of a sum of ₹ 6,91,155/- being the value of the salvage as assessed by the Surveyors and also to award damages in causing unnecessary and unwarranted delay in settling the claim under the insurance policy. The National Consumer Disputes Redressal Commission, on the concession made by the insurance company based on the report of Chartered Accountant has passed the impugned order, directing the insurer to pay a sum of ₹ 1,05,00,817/- with interest at 6% per annum from 01.03.2001 till the date of payment within two months from the date of receipt of the order. As regards the quantum of loss, it was observed that due weightage is to be given to the estimates made by various Investigators appointed by the Insurance Co.

The first three Investigators assessed the loss at about the same figures i.e. the loss is of 1350 fully pressed bales of cotton and 88 boras of lint valued that about ₹ 1.73 to ₹ 1.74 crores. However, the Insurance Co. having noticed that these Investigators had not gone into the details of transactions and stocks in a thorough manner, asked another

Chartered Accountant, M/s R & Co. to specially ascertain the quantum of loss caused by the fire. M/s R & Co. submitted a “Accounts Verification Report” on 22.11.2000 and assessed the loss at ₹ 1,05,00,817/-. They also furnished subsequent clarification on 22.12.2000, 22.01.2001 and 09.09.2002 pointing out the lacunae in the reports of the previous Investigators”. Finally, the opposite party themselves, while disputing their liability to pay, have however agreed that the loss is only ₹ 1,05,00,817/- and not ₹ 1.90 crore, as claimed by the appellant. It was also observed by the Senior counsel for the appellant that, despite the surveyors having consistently given a specific finding that the claim was bonafide and the fire was accidental had assessed the loss at ₹ 1.70 crore, the insurance company has repudiated the claim on frivolous ground, that too after a period of three years from the date of fire incident. It is further contended that the company had appointed several surveyors, which they could not have done in terms of Section 64-UM of the Insurance Act, 1938. To justify the rejection of the claim, the insurance company in their letter to the Joint Surveyors made the following observations :

- The cause of the accident is mentioned as electrical short circuit because of voltage fluctuations. When the stocks were kept in a locked godown and when there was no kind of activity for months together, we wonder as to why the lights in the godown were kept switched on round the clock. Had the lights been switched off the short circuit causing the fire accident could not have occurred. Please let us have your comments.
- From the balance sheet of insured as on 31st March, 1999 nearly 50% of the purchases i.e. ₹ 1.07 crore out of ₹ 2.27 crore were from individual village ryots on credit basis. We felt in a claim of such a magnitude some random investigation is required on the credit purchases to confirm their genuinity.

: 5 :

- As per the preliminary survey report there were two varieties of bales/borahs viz. MCU-5 @ ₹ 7,140/- per quintal in bales and ₹ 7,040/- per quintal in borahs and LK variety @ ₹ 5,650/- per quintal in bales and ₹ 5,550/- in borahs. But in your assessment you have taken the entire quantity as a single variety i.e. MCU-5 @ ₹ 7,193/- per quintal in FP bales and ₹ 7,084-19 per quintal in borahs and assessed the loss @ ₹ 1,74,82,080/-. Whereas, when we have applied the different rating the assessment is ₹ 1,72,57,305/-. Please clarify.

Finally, the Supreme Court, in view of the above discussion, directed the Insurance Company, to pay ₹ 1,05,00,817/- with interest at the rate of 9% as compensation from the date of assessment done by the Chartered Accountant, within two months from the date of this order i.e. from 01.03.2001 as against the claim of the appellant at 18% from the date of the fire accident, viz. 24.08.1999.

Questions :

- (i) As cited in the facts of the case, justify whether the insurance company can repeatedly appoint Surveyors after Surveyors for getting the loss/damage assessed before settling the claim of the insured ? Cite the provisions of Section - 64 UM of the Insurance Act, 1938, to justify your answer.
(10 marks)
- (ii) Discuss the coverage of Fire insurance policy and the various types of fire insurance policies. In the given case which type of fire insurance policy is suitable and why ?
(10 Marks)
- (iii) Fire Insurance is the mother of all insurance policies, but then it inherently excludes some of the losses/exposures. Elucidate.
(10 Marks)

(iv) Was there a “deficiency in service” as alleged by the appellant and is his claim for interest at 18% justified ? Enumerate the procedure to be followed in a fire claim.

(10 Marks)

(v) Discuss the options available to the Firm under the COPA Act, 1986 for claim, and also substantiate whether the National Consumer Commission was justified in awarding 6% interest per annum.

(10 Marks)

2. Mr. J who governed by the Hindu Succession Act, 1956, died intestate on June 15, 1967 leaving behind his son. Mr. A (plaintiff No. 2), his widow, Mrs U (defendant) and his mother Mrs S (plaintiff No. 1) as his heirs. He had during his lifetime taken out two insurance policies for ₹ 10,000 each and had nominated under section 39 of the Act his wife as the person to whom the amount was payable after his death. On the basis of the said nomination, she claimed absolute right to the amounts payable under the two policies to the exclusion of her son and her mother-in-law. Thereupon his mother and son (minor) represented by his next friend Mr. A who was the father of J filed a suit in Civil Suit, for a declaration to the effect that they were together entitled to 2/3rd share of the amount due and payable under the insurance policies referred to above. Mrs U, the defendant and wife resisted the suit. Her contention was that on the death of the assured, she as his nominee became absolutely entitled to the amounts due under the insurance policies by virtue of section 39 of the Act.

Section 39 of the Act reads as :

(1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death :

Provided that where any nominee is a minor, it shall be lawful for the policy-holder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee.

: 7 :

- (2) Any such nomination in order to be effectual shall unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

Questions :

- (a) From the facts of the case, explain whether a nominee under section 39 of the Act gets an absolute right to the amount due under a life insurance policy on the death of the assured.
- (10 Marks)*
- (b) Differentiate between nomination u/s 39 Vs. Assignment u/s 38 and the implications of these sections on the given facts of the case.
- (10 Marks)*
- (c) Identify and explain the fundamental governing principle applicable in the given case, and explain finally the validity of the plaintiffs' mother and son for the compensation.

(10 Marks)

3. “If there is no insurable interest, the insurance contract becomes wagering contract, and therefore illegal, null and void”. Elucidate the statement with reference to the principle on the life of other relations. (5 marks)
4. Write short notes on the following : (2 marks)
- (i) Total loss and partial loss in marine insurance
 - (ii) Ceiling on Investments u/s 27. (3 marks)
5. “Claims settlement in general insurance is a multitasking activity”. Discuss. (5 marks)
6. Discuss the role of insurance and reinsurance in risk management. (5 marks)

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