

Decision Number: 11220

Decision Date: 2080/02/24 B.S. (23/12/1969 A.D.)

Final Decision: Supreme Court of Nepal, Joint Bench

Pre-Decisions: Insurance Committee and Patan High Court

Petitioner: Ram Bahadur Chettri (Insured)

Respondent: Sagarmatha Insurance Company Limited, Naksal, Kathmandu (Insurer)

Key Words: *Insurance, Indemnity, Surveyor, Insurance Act, 2049 B.S.*

Key Points:

1. The claim for loss/damage for Non-Life Insurance is based on the principle of Indemnity.
2. Since the purpose of Insurance is to share the risk of any unforeseen event that may occur in future, the insurance company (insurer) has to pay compensation to the Insured (person who makes insurance) for the loss/damage that has been incurred. So, the purpose of insurance is neither to make profit nor is for charity.
3. Even if the insured has suffered a lot of loss/damage other than covered by the insurance policy, the insurer is not liable to compensate the loss/damage other than covered by insurance policy (i.e. The liability to pay compensation is limited to maximum loss/damage covered by Insurance Policy).
4. Since the insurer receives a periodic amount (i.e. Premium) for accepting the risk of the insured, the compensation amount will also increase or decrease based on the amount of the premium subject to the terms of insurance policy.
5. Payment for loss/damage is not only a commercial and technical question but also a judicial process, the claimed compensation should be analyzed on a fair and rational basis, based on evidence, considering all relevant factors, including the original or initially established value of property.

6. While determining the compensation amount; contractual provision, the views of parties, experts opinions, and the possibility of beneficial use of the property should be considered.

Facts of the Case

- ❖ The Earthquake of 2072/01/12 B.S. caused loss and damage to Petitioner Mr. Ram Bahadur Chettri's building.
- ❖ The building was under an insurance policy of defendant insurer Sagarmatha Insurance Company, where the initial value of building was calculated to be Rs.56,30,000 (In Words: Fifty Six Lakhs and thirty thousands only).
- ❖ After the earthquake, the petitioner appointed a surveyor to calculate the loss/damage. And the loss/damage calculated by the surveyor appointed by the petitioner was found to be Rs.8,73,053.38 (In words: Eight Lakhs Seventy Three Thousand Fifty Three Rupees and Thirty Eight Paisa only),
- ❖ Following the report presented by petitioner to claim for loss/damage, the respondent Sagarmatha Insurance Limited Company also appointed a surveyor Mr. AnjanKumar Deuju Shrestha for conducting survey to evaluate loss/damage to the building,
- ❖ The surveyor appointed by insurer valued the loss/damage of Rs.2,03,981 (In words: Two Lakh three thousand nine hundred and eighty one rupees only),
- ❖ And as per the policy terms, depreciation, average clause, and salvage value were deducted, leaving an eligible claim amount of Rs.1,56,337 (In words: One Lakh Fifty Six Thousand Three Hundred Thirty Seven only) as recommended by Surveyor,
- ❖ However, an additional deduction of Rs.1,40,750 (In words: One Lakh Forty Thousand Seven Hundred Fifty only) was made because the insured amount exceeded the policy's actual coverage limit.

- ❖ The final amount that was to be compensated by the insurer was Rs.15,587 (In words: Fifteen Thousand Five Hundred and Eighty Seven only),
- ❖ The petitioner brought the claim at Insurance Committee against the compensation amount evaluated by Sagarmatha Insurance Company Limited and Surveyor appointed by it,
- ❖ The Insurance Committee withheld the valuation made by the Company and dismissed the claim of petitioner under Section 17 (4) of Insurance Act, 2049 B.S.
- ❖ The petitioner appealed the decision of the Insurance Committee at Patan High Court on 2073/11/11 B.S.
- ❖ But the high court also withheld the decision of Insurance Committee and evaluation report of Sagarmatha Insurance Company Limited and dismissed the claim of petitioner stating the claim of insured has not been established,
- ❖ The petitioner filed for revision in the Supreme Court under Section 12 (1 a&b) of Administration to Justice Act, 2048 B.S.

Petitioners Contention

- I (Mr.RamBahadur Chettri) appointed a surveyor who calculated the value of loss/damage to be Rs.8,37,056.38 (In Words: Eight Lakhs Thirty Seven Thousand Fifty Six Rupees and Thirty Eight Paisa only). When I went to claim the loss/damage, instead of paying compensation the defendant company appointed a surveyor unilaterally who valued the loss/damage Rs.2,03,981 (In Words: Two Lakhs Three thousand Nine hundred and Eighty One only),
- The Sagarmatha Insurance Company Limited unilaterally appointed Surveyor who only looking at the damaged house from the outside and without entering the house, calculated an unrealistic estimated cost based on guesswork and imagination, and the decision of the defendant Sagarmatha Insurance Company to deduct the amounts under various headings and pay the extremely low amount of

Rs.15,558 (In Words: Fifteen Thousands Five hundred and Fifty Eight only) based on the same survey report is erroneous.

- The decision of the Insurer, Insurance Committee and Patan High Court is against the Section 17 of Insurance Act, 2049 B.S. and Rule 33 of Insurance Regulation, 2049 B.S., and Section 3,4,25,27, and 54 of Evidence Act, 2031 B.S.
- I request for justice under Section 12 (Administration to Justice Act, 2048 B.S.) be done by quashing the illegal decision and receiving compensation based on my actual loss/damage of Rs.8,37,053.

Respondent Contention

- The surveyor appointed by the petitioner is not in accordance with Insurance Act, 2049 B.S. and Insurance Regulation, 2049 B.S.
- As the petitioner's claim is based on survey report prepared by Surveyor who don't have license, the claim should be dismissed based on Section 30(a) of Insurance Act, 2049 B.S.,
- The decisions made by Sarlahi District Court and Janakpur High Court are valid and hence the petitioner's claim should be dismissed.

Legal Issues

1. Is the Decision of Patan High Court valid?
2. Is the defendant's appeal tenable?

Judgment

- **Insurance** is the contract of transferring the financial burden of the risk that the insured may incur in his life, property, or liability to the insurer through a contract, as the life or business of a person is uncertain or risky due to various known circumstances or accidents. (*Purpose of Insurance*)

- Insurance is a written agreement between two parties; the person buying insurance (insured) and the insurance company (insurer). The insured pays a fixed amount, called a **premium**, for a certain period. In return, if something unfortunate happens like an accident, damage, or loss, the insurance company provides compensation based on the agreement. (*Definition of Insurance*)
- Once the insured pays the premium, the insurer is considered to have provided insurance coverage in accordance with the Insurance Act 2049 B.S. and the Insurance Regulations 2049 B.S. The insurer is then required to conduct the necessary investigation and settle the insurance claim in compliance with the law. If the insured suffers property loss or damage due to the event specified in the insurance policy, the insurer must compensate the insured for the loss, to the extent that it is financially capable.
- The claim for loss/damage for Non-Life Insurance is based on the principle of Indemnity, Since the purpose of Insurance is to share the risk of any unforeseen event that may occur in future, the insurance company (insurer, for definition see Section 2 P of Insurance Act, 2079 B.S.) has to pay compensation to the Insured (person who makes insurance, for definition see Section 2 Z1 of Insurance Act, 2079 B.S.) for the loss/damage that has been incurred. So, the purpose of insurance is neither to make profit nor is for charity, Even if the insured has suffered a lot of loss/damage other than covered by the insurance policy, the insurer is not liable to compensate the loss/damage other than covered by insurance policy (i.e. The liability to pay compensation is limited to maximum loss/damage) , Since the insurer receives a periodic amount (i.e. Premium) for accepting the risk of the insured, the compensation amount will also increase or decrease based on the amount of the premium subject to the terms of insurance policy. (*Procedure for insurance claims to be paid in non-life insurance*)

- The application of the Indemnity Principle regarding the insurance claim is a key consideration. According to this principle, the value to be provided in compensation for the damage or loss to property should correspond to the cost of restoring or reproducing the damaged property. This principle has been clearly outlined and explained in the decision of this Court in the case of Prudential Insurance Company Limited vs. Bhagwat Dhakal, the proprietor of Benkates Printing Press, regarding the earthquake insurance claim (Case No. 073-RB-0202), with the judgment dated 6th of Ashwin, 2079 B.S.

Given that there is no necessity to adopt a different approach or perspective from the explanation provided in the aforementioned case, the Court concludes that the claimant is entitled to compensation corresponding to the amount required for the restoration of the damage to the insured property, as per the Indemnity Principle. Therefore, the claimant shall receive the requisite amount for the repair and restoration of the house damaged in the incident, in accordance with the terms set forth by the law. (*Precedence Analysis*)

- Only a surveyor licensed by the Insurance Committee is permitted to do surveys for insurance claims purposes in accordance with the Insurance Act. In order to prove that the surveyor hired by the appellant was a licensed professional under the Insurance Act 2049 B.S., the appellant has not shown enough proof or justification. As a result, the valuation carried out by the surveyor who lacked a legal license cannot be used as the basis for calculating the amount due under the insurance claim. The appellant's argument, which attempted to base the claim payment on the unlicensed surveyor's loss/damage value, did not comply with the legal requirements. Therefore, the appellant's argument did not appear to be in accordance with the law. (*Procedure and Power of Surveyor*)
- Although the appellant claims that some titles (Minor loss, Major loss and Others) were not evaluated during the survey, it does not seem appropriate to change the survey based loss/damage value made by the licensed surveyor in the context of

the present appeal. However, since the question of payment of an insurance claim is not only a commercial and technical question but also a judicial process, the claim payment process should be based on evidence and be determined on a fair and reasonable basis, considering all relevant factors, including the original or initially established value of the property, the contractual provisions in that regard, the views of the parties, expert opinions, and the possibility of beneficial use of the property.

- Deducting any amount not explicitly mentioned in the insurance policy goes against the fundamental principles of the contract and is inconsistent with protecting the interests of consumers.

In cases where deductions other than depreciation are made after the loss/damage assessment, and such deductions are not clearly stated in the policy—or if they are, the insured was not adequately informed or did not consent to them at the time of insuring—it results in the insured being unjustly deprived of compensation for the actual loss of the insured property. This is particularly relevant in non-life insurance, where partial loss/damage of the insured property may occur.

Without clear information about deductions such as waste removal or other expenses, insurance claims must be resolved fairly and prudently.

In the present case, the insurer's decision to pay a claim of only Rs. 15,587, after deducting substantial amounts not specified in the insurance policy, is deemed unreasonable and unfair. The loss/damage assessment, which initially amounted to Rs. 2,03,981 was significantly reduced due to excessive and unjustified deductions, including scrap deductions and policy excess deductions. These deductions were not mentioned in the insurance policy and went beyond the generally accepted standards of insurance practice. Such actions were arbitrary and violated the contractual obligations and prevailing norms in the insurance industry. Therefore, the Court finds that the decision made by the respondent

insurance company to pay Rs.15,587 is unjust, as it does not align with the insurance policy,

prevailing insurance practices, or the principles of fairness and equity. The decision of the respondent insurance company, insurance committee that upheld that decision, and the decision of the Patan High Court were not in line with justice and law. Accordingly, the appeal is allowed, ensuring that the appellant is compensated in a manner that reflects the actual loss suffered and by the law and contractual terms.

- Upon reviewing the basis and amount that the respondent insurance company must pay to the appellant, the case file shows that on 2071/05/13 B.S. (August 29, 2014), the insurer collected an insurance premium of Rs. 10,168.87 for the renewal of a 12-month fire and earthquake insurance policy based on the insured sum.

The loss assessment report submitted by the surveyor appointed by the respondent company valued the damage to the appellant's house due to the earthquake at Rs. 2,03,981. According to the Property Insurance Guidelines, 2075, issued by the Insurance Board, while determining compensation, the insurer must deduct depreciation. The guidelines specify that for buildings, depreciation should be calculated at 2% per year, and for other assets, depreciation should be deducted as per applicable rules. Additionally, the guidelines state that depreciation deduction cannot exceed 50% of the insured sum under any circumstances.

In this case, applying a 14% depreciation deduction (2% per year for 7 years) on the damage valuation of Rs.2,03,981, the depreciation amounts to Rs. 28,557.35. After deducting this amount, the net payable claim stands at Rs.1,75,423.74 (One Lakh Seventy-Five Thousand Four Hundred Twenty-Three Rupees and Seventy-Four Paisa). Therefore, the respondent, Sagarmatha Insurance Company, is required to pay the appellant this amount as the rightful insurance compensation.

Thus, the High Court Patan's decision dated 2074/09/30 B.S. is found to be unjust and inconsistent with the law, as it upheld the Insurance Board's ruling that only Rs.15,587 should be paid to the appellant. Accordingly, the High Court's decision is partially reversed, and the respondent Sagarmatha Insurance Company is ordered to pay Rs.1,75,423.74 to the appellant as insurance compensation.

However, the appellant's claim that the insurance compensation should be paid based on the valuation report prepared by his surveyor is not legally justified. The rest shall proceed as per the details provided in the judgment.

Significance

1. In present legal days, the provision regarding Insurance is regulated by Insurance Act, 2079 B.S.
2. According to Section 2 (P) of Insurance Act, 2079 B.S. “**Insurer**” means an insurance company or reinsurance company licensed to carry on insurance business under this Act,
3. According to Section 2 (Za) of Insurance Act, 2079 B.S. “**Insured**” means the person who insures and includes the person entitled to benefit from the insurance policy.
4. According to Section 2 (Y) of Insurance Act, 2079 B.S. “**Insurance Surveyor**” refers to a licensed insurance intermediary, whether an individual or an institution, responsible for assessing the value of damaged property and liabilities.
5. For Insurance Company registration, the legal documents and procedure required for Insurance Company are stated under Section 26 and 28 of Insurance Act, 2079 B.S.

6. According to Section 40 of Insurance Act, 2079 B.S., Insurer shall maintain a separate disaster fund to cover future losses due to disasters.
7. Insurance contracts are based on the principle of uberrimae fidei (utmost good faith), which imposes a higher standard of honesty and disclosure on the contracting parties than is generally required in ordinary commercial contracts. In line with this principle, Section 62(3) of the Insurance Act of Nepal, 2079 B.S., expressly mandates that:

“When entering into an insurance contract, the insurer and the insured shall, on the basis of good faith, clearly disclose to each other the factual information relating to the proposed risk.”
8. Section 2(U) of the Insurance Act, 2079 B.S. defines an insurance intermediary as any person or organization that has an official license from the Insurance Authority to operate, including insurance agents, insurance surveyors, insurance brokers, third-party facilitators, or any other legally prescribed intermediaries. Section 91(3) of the same Act requires that an insurance intermediary's license is valid for three years and must be renewed upon expiration in order for them to continue operating lawfully. Additionally, Section 93(3) sets ethical standards for insurance surveyors, explicitly prohibiting them from assessing or surveying any loss or damage involving a person or organization in which they—or their close or extended family members—have a financial interest.
9. According to Section 77 of Insurance Act, 2079 B.S., (1) No person shall engage any institution as an insurance intermediary or other insurance service provider unless it has obtained or renewed a license in accordance with this Act. (2) If any insurer violates sub-section (1) and engages an unlicensed or non-renewed insurance intermediary or service provider, the insurer shall be fully responsible for any liabilities or consequences that arise from such engagement.

10. According to Chapter-17 of Insurance Act, 2079 B.S., Insured dissatisfied with the actions of Insurer can file a complaint before the Insurance Committee and the Committee will proceed as provided under the same chapter of the Act.

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Source:

1. Insurance Act, 2079 B.S. <https://lawcommission.gov.np/content/12233/12233-insurance-act-2079/>
2. NKP, 2080, Ram Bahadur Chettri v. Sagarmatha Insurance Company Limited and others (208004/24 B.S.); <https://nkp.gov.np/full_detail/10315>