

OPEN BOOK EXAMINATION

343

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 4

NOTE : Answer **ALL** Questions.

1. Kishore, owner of Jeevan Brothers, a business enterprise, had taken two insurance policies from a general insurance company on his factory located in Goa. One was a fire policy and the other was a consequential loss of profit due to fire policy.

On 8th January, 2015, early morning around 3.00 A.M., there was a short-circuit in the main switch-board in the sub-station receiving power from the State Electricity Board which resulted in a flashover producing over-currents. The flashover and over-currents generated excessive heat which caused the paint on the panel board to be charred, producing smoke and soot thereby causing a hole to develop in the adjoining feeder. The smoke and soot alongwith the ionized air travelled to the generator compartment where again a short-circuit took place resulting in the tripping of the generator. This resulted in the entire power supply to the plant being stopped and due to this, the supply of water/steam to the waste-heat-boiler by the flue gases at a high temperature continued to be fed into the boiler resulting in damage to it.

Kishore had the losses examined which were calculated at :

- (i) ₹1,35,17,709 for material loss due to damage to the boiler and other connected equipments; and
- (ii) ₹19,11,10,000 as loss of profits for the period during which the plant had to be shut down due to the accident.

He had intimated the insurance company of the accident and loss in due time and subsequently made a claim under the two policies on the insurer. He had sent alongwith the claim, the surveyors' reports. The insurance company rejected the claim holding that the loss did not occur due to fire. Hence, Kishore took the matter to the National Commission under the Consumer Protection Act, 1986.

Before the National Commission, the insurance company reiterated its stand that the damage to the boiler and other equipments was not caused by fire but because of stoppage of electricity due to short-circuit in the switch-board, resulting in stoppage of power leading to a thermal shock. It stated that the proximate cause had to be seen for settling a fire claim which in the present case was the thermal shock due to stoppage of power. The National Commission,

on examination of the facts, did not agree to the insurer's arguments and decided in favour of Kishore.

The insurer not satisfied with the National Commission's decision carried the matter further to a legal forum where again the counsel laid stress on two issues, *viz.*, (a) there was no fire; and (b) in any case, fire was not the proximate cause for the damage.

The counsel for the insured relied on the decision of the National Commission and argued that it was necessary to determine first whether there was a fire. Admittedly in this case, there was a short-circuit causing a flashover. A flashover is the near simultaneous ignition of all combustible material in an enclosed area. When certain materials are heated, they undergo thermal decomposition and release flammable gases. Flashover occurs when the majority of surface in a space is heated to the auto-ignition temperature of flammable gases. In the present case, it was noticed that the short-circuit in the main switch board caused a flashover. According to one of the two surveyors, this flashover should be defined as a phenomenon of a developing fire (or radiant heat source), radiant energy at wall and ceiling surfaces within a compartment. In the present case, the paint got burnt due to the flashover and such high energy levels would, undoubtedly, result in a fire causing melting of the panel board.

The second surveyor admitted that fire of a short duration could not be called a 'sustained' fire as contemplated by the insurer. In his view, the duration of fire was not at all relevant so long as there was a fire causing damage to the asset. The claim was maintainable even if the fire was for a fraction of a second. The counsel reiterated that the term 'fire' in the fire policy was not qualified by the word 'sustained' and the Appellate Court should bear in mind the basic proposition of law that a court should not add words to the statute or to a document and the policy must be read as it was. The counsel, therefore, stated that the insurance company's argument that there was no 'sustained' fire in this case and hence the claims were not admissible was basically incorrect and wrong.

The Court after hearing both the parties agreed to the argument that what was to be decided in this case, whether the loss to the property was caused by 'fire' and not 'sustained' fire. It had been clearly established in the case and also supported by the reports of the two surveyors that there was a flashover in this case resulting in a fire of whatever limited time that had caused the blackening of the switch-board and the consequent loss to the boiler and other equipments. Had the fire not occurred, the damage would not have occurred and that there was no intervening agency that was an independent source of the damage to the plant.

The Court also referred to the decision in *General Assurance Society Ltd. v. Chandmull Jain* and another [AIR 1966 SC 1644] where it was laid down by the Constitution Bench that in case of ambiguity in a contract of insurance, the ambiguity should be resolved in favour of the insured and against the insurance company.

: 3 :

The insurer had not questioned the quantification of losses by the surveyors. The Court, therefore, felt that the claims under the two policies were allowable in favour of Kishore and consequently dismissed the insurance company's appeal.

On the basis of the above facts and information, answer the following questions —

- (a) Is the insurance company justified in rejecting the claim ? What are your views on Kishore's claims ?

(7 marks)

- (b) Define 'fire' and how do you recognise the existence of fire. Relate your answer with the facts of the above case.

(7 marks)

- (c) What is 'proximate cause' and its relevance ? Determine the proximate cause in the above case.

(8 marks)

- (d) In case of ambiguity in a contract of insurance, it should be resolved in favour of the insured. Discuss the relevant provisions and their applicability to the above case.

(8 marks)

- (e) Define 'fire insurance' and explain the risks covered and exclusions under a standard fire and special perils policy.

(10 marks)

- (f) Is it compulsory for a loss to be surveyed by a person ? Who can conduct such a survey and what are the duties of such a surveyor ?

(10 marks)

2. The deceased, XYZ was pursuing B.Tech. 3rd year from an Engineering Institute. XYZ had lost his life in a motor vehicle accident which occurred on 19th June, 2011 at 10.40 A.M. near Haridwar. The Motor Accident Claims Tribunal (the Claims Tribunal) awarded a compensation of ₹19,50,000 to the parents of the deceased. The insurance company being Secure General Insurance Company Ltd. filed a petition claiming that the compensation awarded is exorbitant and excessive. The Claims Tribunal assumed the minimum income of the deceased as ₹25,000 per month, deducted ₹2,500 towards liability of income tax, deducted 50% towards personal and living expenses and applied a multiplier of 14 as per

the age of the deceased's mother (41 years) and computed the loss of dependency as ₹18,90,000. The Claims Tribunal further added a sum of ₹35,000 towards loss of love and affection, ₹15,000 for funeral expenses and ₹10,000 towards loss of estate. It was urged on behalf of the insurance company that the assumption of income of ₹25,000 per month was on the higher side, particularly in view of the fact that the deceased, XYZ has not been able to clear all the subjects even in the first semester and the second semester.

Based on the above, answer the following questions —

- (a) Discuss the rationale behind the computation of compensation decided by the Claims Tribunal. Is the insurance company justified in its arguments ?

(15 marks)

- (b) Discuss the role of Motor Accident Claims Tribunal (MACT) and the powers accorded to it by the Motor Vehicles Act, 1988 in settlement of disputes and claims.

(15 marks)

3. Name the persons who can make an application for compensation for an accident involving death or bodily injury to persons arising out of the use of motor vehicles ? State the relevant provisions of the Motor Vehicles Act, 1988.

(5 marks)

4. What do you understand by condition of 'average' in a fire insurance contract ? How does this operate ? Explain.

(5 marks)

5. Why do insurers insure 'pure risks' only ? Define 'risk' and distinguish between 'pure risk' and 'speculative risk'.

(5 marks)

6. Explain the concept of 'treating customers fairly' with respect to policy servicing in insurance business.

(5 marks)