

Supreme Court, Division Bench
Honorable Justice Tanka Bahadur Moktan
Honorable Justice Nahakul Subedi

Decision

073-RB-0202

Case: Earthquake Insurance Claim

Appellant/Opponent: Anand Babu Khadka, Company Secretary and authorized representative of Prudential Insurance Company Limited, Kamladi, Kathmandu

Vs.

Defendant/Petitioner: Bhagwat Dhakal Proprietor of Venkatesh Printing located at Kathmandu District, Kathmandu Metropolitan City Ward No. 10, New Baneshore, Shankamul.

Initial Decision Making Authority: Chairman Prof. Dr. Fatte Bahadur K.C.

Member Uday Raj Sapkota

Member Kapil Dev Oli

Member Sugat Ratna Kansakar

Initial Decision Making Body: Insurance Board, Kupondole, Lalitpur

Date of Decision: 2072/12/10 (corresponding to 23 March, 2016)

Decision at the Appellate Level: Hon. Justice Jeevan Hari Adhikari
Hon. Justice Abdul Aziz Musalman
High Court, Patan

Date of Decision: 2073/9/12 (corresponding to 27 December, 2016)

The summary of the facts and decision of the case submitted pursuant to Section 9 (1) of the Judicial Administration Act, 2073, is as follows:

Fact Section

The petition submitted by Bhagwat Dhakal, Proprietor of Venkatesh Printing on 2072/05/08 (corresponding to 25 August, 2015) is as follows: Whereas the press machines of M/s Venkatesh Chhapakhana, a private firm, had been continuously insured for the past four years with the insurer, Prudential Insurance Company Limited, through Prabhu Bank Limited, and due to the Great Earthquake of 2072/01/12 (corresponding to 25 April, 2015), the insured press machines of the printing press were damaged; immediately after informing the insurance company, a surveyor was deputed, and after completion of the survey, as it appeared that some time would be required for settlement of the claim, an advance amount was also requested. The employees of the insurer and the surveyor repeatedly visited the printing press, conducted inspections, and obtained signatures on various documents. The printing press has not agreed to any amount other than the insurance amount claimed by it. However, the insurance company, after making excessive depreciation

deductions, reduced the claim amount and issued a claim settlement voucher stating that a total sum of NPR 1,255,000/- (Rupees Twelve Lakh Fifty-Five Thousand only) would be payable. As this was not acceptable to the printing press, it seeks an investigation and prays that, in accordance with the claim, an amount of NPR 6,385,955/- (Rupees Sixty-Three Lakh Eighty-Five Thousand Nine Hundred Fifty-Five only) be awarded and recovered.

An order pursuant to Rule 33 (1b) of the Insurance Regulation, 2049, had been set aside by the Insurance Board on 2072/05/09 (corresponding to 26 August, 2015) in the name of the insurer, Prudential Company Limited, directing it to submit within seven (7) days a written reply explaining as to what actions were taken in relation to the said insurance claim along with all relevant documents and details.

In relation to the insurance claim of the insured Venkatesh Chhapakhana arising from the earthquake, this company received a joint survey report from Mr. Basanta Devkota and India-based Protocol Insurance Surveyors & Loss Assessors (M/s Protocol Insurance Surveyors & Loss Assessors). In the said survey report, the assessed loss amount was NPR 1,632,989/-. After making deductions for excess and additional salvage in accordance with the terms and conditions of the insurance policy, the payable amount was evaluated at NPR 1,335,489/- (Rupees Thirteen Lakh Thirty-Five Thousand Four Hundred Eighty-Nine only), and a claim settlement voucher was sent for payment in accordance with the submitted report. Although Prabhu Bank Limited, on behalf of the insured, informed that the assessed claim amount was not acceptable, the insured was informed that payment of an amount exceeding that determined by the surveyor could not be made. This is the substance of the written reply submitted by Prudential Insurance Company Limited.”

An order issued by the Insurance Board, in the name of the insurer, Prudential Insurance Company Limited, pursuant to Rule 33(1b) of the Insurance Regulations, 2049, directing it to submit within seven (7) days the proposal form obtained at the time of insuring Venkatesh Printing Press, the original insurance policy (policy docket), photographs taken at the site of the incident, the complete joint survey report submitted by the surveyors, and any other documents and details, if any, to substantiate that payment as claimed is not required to be made.

The rejoinder submitted by Prudential Insurance Company Limited stated that with regard to the earthquake insurance claim of Venkatesh Printing Press, it is hereby reiterated that the requested proposal form and policy docket, photographs taken at the site of the incident, a copy of the survey report submitted by the joint surveyors, and the insured’s consent letter have been enclosed and forwarded. Further, in accordance with the survey report, liability was determined and a claim settlement voucher was issued for payment of the claim; however, we would like reiterate that the insured refused to accept the claim payment.

Letter of Federation of Nepalese Printing Industries dated 2072/10/10 (corresponding to 24 January, 2016), informs that with regard to the service life and operational efficiency of printing machinery, machine tools currently in use in Nepal, such as Heidelberg and Fuji machines imported from Germany, Japan, and India have been in operation even though they were imported more than fifty years ago. Provided that periodic servicing and maintenance are carried out, production can be continued through second and third generations; therefore, the service life of such machinery has not yet been definitively determined.

While determining the depreciation rate, it appears from the survey report that for machines in use for more than twenty-two years, 70% was deducted from the market value to arrive at the actual

value. Moreover, the insured, on 2072/03/14/ (corresponding to 29 June, 2015), signed a consent letter agreeing to accept the amount determined by the surveyor. In such circumstances, the principle of estoppel applies. Since the applicant's claim for additional payment by reducing the depreciation rate does not appear tenable, liability arises as determined by the surveyor. The Insurance Board, by its decision dated 2072/12/10/ (corresponding to 23 March, 2016), and pursuant to Section 8 (d1) of the Insurance Act, 2049, Section 17 (4 of the same Act and Rule 33 (2) of the Insurance Regulation, 2049, ordered Prudential Insurance Company Limited to pay the amount of NPR 1,335,489/- (Rupees Thirteen Lakh Thirty-Five Thousand Four Hundred Eighty-Nine only), as determined by the surveyor under the insurance policy.

I, the appellant and proprietor of M/s Venkatesh Printing Press, purchased the press machines and other equipment in 2012 and had them insured with Prudential Insurance Company Limited on 2069/03/14 (corresponding to 28 March, 2012), and have been continuously renewing the insurance since then. Due to the Great Earthquake on 2072/01/12 (25 April, 2015), the insured press machines were damaged, wherein I had immediately informed the insurer and claimed the insurance amount. At the time of insurance, the insurance policy unambiguously established a sum insured of NPR 3,150,000/- for paper, books, ink, and chemicals, and NPR 11,950,000/- for machinery, totaling NPR 15,100,000/-. When the sum insured is determined at the time of insurance, it should be based on the current market value, and compensation should be provided accordingly. Calculating depreciation based on a period of 20/22 years prior to the insurance is in no way legally justifiable. According to a letter from the Federation of Nepalese Printing Industries, the insured machinery used in the printing press can continue producing through second and third generations if periodic maintenance and servicing are carried out. In the event, the insured machinery was damaged due to the earthquake, I claimed a total compensation of NPR 61,35,422/- (including VAT) for machinery and NPR 2,50,000/- for mechanical equipment, totaling NPR 63,85,955/-. However, the surveyor's damage report mentioned NPR 5,893,297/- for machinery and NPR 150,000/- for mechanical equipment, totaling NPR 6,043,297/-. Although the surveyor's damage report mentioned a total loss of NPR 60,43,297/-, deductions of 70% for depreciation, 10% for salvage value, and a policy excess of NPR 2,97,500/- were made, resulting in a payment of only NPR 13,35,489/-. This decision is contrary to the principles of insurance indemnity. While I have claimed insurance compensation, there is no situation in which I would sign any document that would forfeit my legal right. The consent letter, allegedly prepared in a deceitful manner by the opposing party to prevent me from receiving the compensation that I am legally entitled to cannot be considered valid evidence against me. The opposing insurance company cannot be released from its legal liability for compensation merely on the basis of a purported consent letter. Therefore, I request that the erroneous decision of the Insurance Board dated 2072/12/10 (corresponding to 23 March, 2016) be annulled, and that I be granted the compensation amount as per my claim.

Since the insurance amount claimed by the appellant was NPR 6,385,955/-, and the surveyor recommended NPR 6,043,297/-, the Insurance Board initially held that only NPR 1,335,489/- should be paid, allowing a 70% depreciation deduction without a legally valid basis. As this decision could affect the valuation of evidence, the High Court, Patan, for the purpose of No. 202 of the Court Proceedings (*Adalati Bandobasta*) by its order dated 2073/04/20 directed that the respondent be summoned and produced before the court.

When the insurer accepted the insurance after valuing the printing press machinery at a total sum of NPR 11,950,000/-, the insurance company agreed to pay the amount equivalent to any loss to the machinery during the policy period and also collected the corresponding premium. Therefore, at the time of paying the compensation, the insurer cannot make any depreciation deduction on the ground that the machinery is old. It appears that the applicant, Bhagwat Dhakal, signed accordingly on 29/06/2015, but the surveyor submitted the survey report detailing the actual damage to the printing press machinery on 03/07/2015. From this perspective, it appears that the consent letter was obtained from the appellant even before the surveyor prepared and submitted the report with the actual details of the damage. Without first determining the exact extent of the damage to the printing press machine, the consent letter was signed to pay the appellant only NPR 1,335,489/- and therefore, the said consent letter cannot be considered to be valid. The decision of the Insurance Board dated 2072/12/10 to pay the appellant only NPR 13,35,489/- by applying a 70% depreciation deduction based solely on the consent letter cannot be considered valid. Accordingly, the High Court, Patan, by its judgment dated 2073/9/12/3 (corresponding to 27 December, 2016), held that the appellant is entitled to the insurance amount of NPR 60,43,297/- (Rupees Sixty Lakh Forty-Three Thousand Two Hundred Ninety-Seven only) as stated in the surveyor's report.

The appeal petition filed by Anand Babu Khadak, Company Secretary of Prudential Insurance Company Ltd., Kamladi before this court is as follows: At the time of submitting the insurance proposal, the insurance company did not carry out its own valuation of the printing press; instead, the valuation was conducted by Kist Bank Ltd., Kathmandu, in connection with a loan taken by the opposing party. Accordingly, an insurance contract was entered into with Prabhu Bank Ltd. for the period from 01/04/2015 to 31/03/2016, which was accepted by the insurance company. Pursuant to Rule 32 (2) of the Insurance Regulation, 2049, a surveyor was appointed to assess the actual loss of the insured printing press. Pursuant to Rule 32 (3) of the same Insurance Regulations, the amount payable to the insured was determined. As per the Act, the surveyor assessed the situation on site and also applied depreciation cost. The surveyor's report shows that the Final Survey Report was completed on June 25, 2015 which is evident from the survey report submitted therein. After the final report was prepared on June 25, 2015, the opposing party recognizing the report signed the consent letter on June 29, 2015. Therefore, stating that the consent letter was signed prior to assessing the full damage and was made to sign on a very low amount is erroneous. It appears that the court focused only on the date the survey report was submitted rather than the date the final survey was completed. In the present claim, the insurance of the printing press machinery was not based on restatement Values; rather, the sum insured was determined at market value, and the insurance was provided on the basis of the principle of indemnity, i.e., to cover the actual loss at market value. At the time of insurance, the insured machinery was valued without applying depreciation for old machinery as per the rules, and it appears that the insured items, the press machinery were over-insured. This fact is also confirmed by the surveyor's report. According to the quotation submitted by the insured, the claimed amount of NPR 6,385,955/- is based on the current market value. If payment is made without deducting the mechanical depreciation (wear & tear) for machinery parts that have been in use for more than twenty-two years, it would be contrary to the principle of indemnity and it would also be clear that the insured, Venkatesh Printing Press, could derive undue benefit from the insurance. Furthermore, the amount of NPR 60,43,297/- assessed by the surveyor, which the appellant is entitled to receive as per the High Court, Patan's decision would contravene the terms and benefits of the insurance policy, because the surveyor's assessed amount did not include deductions for depreciation, salvage, or excess. The Insurance Board's decision to apply a 70% depreciation on this amount and pay the insured was annulled by the High Court, Patan, which instead held that the insurer should pay the amount as claimed by the

appellant. The High Court's decision misinterpreted the evidence, overlooked the established principles of the insurance industry, and failed to consider the necessary evidence, thereby contravening Section 54 of the Evidence Act, 2031, and therefore, the said decision should be annulled and the decision of the Insurance Board dated 2072/12/10 (23 March, 2016) should be upheld.

In this case, considering that the insured had insured old machinery without applying depreciation for such items and had already provided a consent letter for a minimal amount, and in light of the evidence and Sections 3 and 54 of the Evidence Act, 2031, the decision of the Appellate Court, Patan, dated 2073/09/12 (27 December, 2016), appears to be reviewable and therefore, this court by its order 2075/2/21 (corresponding to 4 June, 2018) and for the purpose of No. 202 of the Court Proceeding (*Adalati Bandobasta*) hereby directs the respondent to be present and to present the case upon the presence of the respondent or upon the expiry of the limitation period.

The rejoinder submitted by Bhagwat Dahal, Proprietor of Venkatesh Printing Press before this court is as follows: The fundamentally significant and decisive matter in insurance is the insurable interest. The insured may choose either to insure the asset at its depreciated value or at its market value. There is no prohibition or limit on insuring depreciable assets at their market value. The primary legal provision governing the depreciable value of an asset is also reflected in the Income Tax Act, which recognizes that the depreciable value and the market value of an asset differ due to depreciation, which is clearly stated in Section 7 (2) (d) of the Income Tax Act, 2058. The determination of which value constitutes the insurable interest is a matter of mutual agreement between the insured and the insurer regarding the payment and receipt of the premium. Therefore, the respondent's claim that the insurable interest of a depreciable asset is its depreciated value cannot be accepted in any manner. The claimant (plaintiff) had provided the details of the assets to be insured to the insured even before the insurance and an inspection was also conducted by the insured's technical representative. Following the above inspection, the value of the assets was determined, and the plaintiff established the insurable interest based on the actual value and obtained insurance accordingly. Once the parties to the contract mutually establish the insurable interest, it cannot be deemed otherwise, and is also estopped pursuant to Section 34 of the Evidence Act, 2034. In insurance matters, the insured pays the premium based on the insurable interest to cover the risk of the insured. The insurer determines the premium based on the amount (value) of the insurable interest. Once the insured submits the insurance policy in response to the insurer's proposal and the insurer receives the insurance premium, the insurance contract is considered complete. Section 27 of the Insurance Act, 2049, legally provides that insurance is deemed to have been effected once the premium for the insurance is paid.

The legal provisions regarding the determination of the insurance premium are laid down in Section 41 of the Insurance Act, 2049, and Rule 18 of the Insurance Regulations, 2049. According to Rule 36(c) of the Insurance Regulations, 2049, the insurance transaction is considered to have taken place once the premium is paid. To increase the sum insured (insurable interest) of an existing policy an additional premium may also be payable. In the case of an existing insurance, when an additional premium is paid over the original premium, the Supreme Court has established the principle that compensation is to be received based on the value corresponding to the higher premium paid. At the time of collecting the premium, the opposing insurance company did not apply any depreciation

cost to the insurable asset nor determined its depreciated value. The act of the opposing insurer in collecting a higher premium while failing to pay the corresponding insurance compensation and not accounting for the depreciated value of the asset at the time of premium collection is completely prohibited by law. This contradicts the insurance policy, established principles of insurance, and the law. Moreover, the mere fact that a document (consent letter) prepared by an unauthorized person was signed does not mean that the person who has fully paid the premium for the risk has waived their right to compensation. In this regard, since the claimant lodged a timely objection to the insured regarding the consent letter, the consent letter can neither create an estoppel nor obtain legal validity. Concerning insurance, the opposing party has neither been able to contest the premium or claim that compensation need not be paid after the premium was received, nor have they provided any legal basis for such a claim. The respondent has attempted to divert the court from the main issue and mislead it by using terms such as 'utmost good faith,' 'restatement values,' and 'over insurance.' In the present insurance matter, the value of the insured property, as evidenced by the insurance policy, is NPR 15,050,000/-, and the loss due to the earthquake has been assessed at NPR 6,385,955/-. Therefore, in the present dispute, while the market value and insurable interest are established by the insurance policy and the surveyor's assessment, any contrary claims by the respondent are inherently unjust. Since such a document prepared by an unauthorized person, contrary to the fundamental principles and accepted norms of insurance, is meaningless and not binding, and no error exists in the evaluation of evidence in the High Court's judgment, the decision of the High Court, Patan, dated 2074/9/12 (27 December 2017), is in accordance with law and justice, and should be upheld.

Decision

The present case was listed for hearing before the Bench, and the case file along with the appeal petition was duly examined.

Learned Senior Advocate Mr. Basant Ram Bhandari and Learned Advocate Mr. Anand Babu Khadka on behalf of the appellant Prudential Insurance Company Limited made the following arguments: The opponent insured, Venkatesh Printing Press, had a surveyor appointed in accordance with Rule 32 (2) of the Insurance Regulations, 2049, to assess the actual damage caused by the earthquake, and a survey report was prepared. In the report prepared by the surveyor, the loss was assessed at NPR 6,043,297/- without making any deductions for depreciation, salvage, or excess. Since the insured printing press machinery was over 20 years old, deductions of 70% for depreciation, 10% for salvage, and the policy excess were applied to the surveyor's assessed loss of NPR 60,43,297/-, resulting in an actual payable amount of NPR 13,35,489/- as per the survey report. The insured had, on 2072/03/14 (corresponding to 29 June, 2015), acknowledged before the surveyor that they agreed to accept this amount. As the Insurance Board's decision was annulled and the High Court, Patan, held that the respondent should be paid the amount claimed by them, which is inconsistent with the facts, the advocates requested that the said judgment be set aside and the decision of the Insurance Board be upheld.

On behalf of the respondent Venkatesh Printing Press, Learned Senior Advocate Mr. Surya Prasad Koirala and Mr. Chetnath Ghimire and Learned Advocates Mr. Arjun Khanal, Mr. Gopal Prasad Aryal and Mr. Kiran Paudel argued that Before obtaining insurance, the insured provided the

insurer with the details of the machinery to be insured, and after a technical inspection by the insurer's representative, the value of the assets was established as the insurable interest and to deem it otherwise, the opponents are estopped by Section 34 of the Evidence Act, 2031. From 27 March 2012, the insured regularly has paid the insurance premium to the appellant company for a period of four years and has also renewed the insurance. In accordance with Section 27 of the Insurance Act, 2049, the insurance premium has been duly received. Rule 36 (c) of the Insurance Regulations, 2049, provides that the insurance transaction is deemed to have taken place once the premium is paid. The insurer is obliged to provide compensation based on the insurance premium paid by the insured. Even if the insured unknowingly signed the consent letter prepared by the surveyor, since a timely objection was lodged with the insurer, the consent letter neither creates an estoppel nor obtains legal validity. In the present dispute, the High Court has reached a decision upon making an appropriate evaluation of the market value, insurable interest, insurance policy, and the surveyor's assessment and the evidences and therefore, the decision of the High Court is consistent and should be upheld.

The petitioner had submitted a petition wherein the principal contention of the petition was that his private firm, Venkatesh Printing Press had insured its press machinery and other equipment through Prabhu Bank Limited with the insurer, Prudential Insurance Company Limited, on 2068/12/14 (corresponding to 27 March, 2012) for a total sum of NPR 15,100,000/-, and the insurance was renewed for four years. After the major earthquake on 2072/01/12 (corresponding to 25 April, 2015) that damaged the insured press machinery, the insurer was immediately informed, and a surveyor assessed the loss at NPR 6,043,297/-. However, the survey report prepared cited to pay only NPR 1,335,489/- after applying a 70% depreciation deduction which is unlawful. As the petitioner, did not provide any consent to any document prepared by the surveyor, the petitioner through his petition prays that he receive the insurance amount corresponding to the actual loss.

An appeal petition had been filed by the opponent Prudential Insurance Company Ltd. before this court which stated that since the insured machinery had been in use for over twenty-two years, the survey report determined the actual loss by applying a 70% depreciation on the market value. The insured had also agreed to accept the amount assessed by the surveyor and signed a consent letter. The Insurance Board initially decided that the amount of NPR 1,335,489/- should be paid under the insurance policy. Dissatisfied with this, the proprietor of Venkatesh Printing Press, Bhagwat Dhakal, filed an appeal with the High Court, Patan, which overturned the Insurance Board's decision and held that the respondent should pay insurance compensation of NPR 6,043,297/- as per the surveyor's report. Accordingly, the opponent prays that the the High Court, Patan's decision be overturned and the decision of the Insurance Board be upheld.

Considering the aforementioned facts and the appeal in the present case, and having heard the reasoned arguments of the learned senior advocates and other counsel appearing for both parties, this Bench finds it necessary to address the following issues regarding the determination of the insurance amount payable by the appellant insurer to the respondent insured:

- a. What is the nature of an insurance contract? Under what terms and conditions was the insurance agreement executed between the appellant insurance company and the respondent printing press, and whether such an agreement can assume the status of a legally enforceable contract?
- b. On what basis should insurance payment be made? Are the grounds and principles on which the insurance (compensation) payment is to be made under the insurance

agreement between the appellant insurer and the insured printing press in accordance with law?

- c. Whether the decision of the High Court, Patan, is legally and judicially sustainable, and whether the appeal filed by the opponent appellant insurer is tenable?
2. With regards to the first question: What is the nature of an insurance contract? Under what terms and conditions was the insurance agreement executed between the appellant insurance company and the respondent printing press, and whether such an agreement can assume the status of a legally enforceable contract? Since a person's life, property, or business may be uncertain and exposed to risks due to various circumstances or accidents, the process of transferring the financial burden of such potential risks to another party through an agreement is known as insurance. Under such an arrangement, the person seeking insurance (the insured) enters into a written contract with the insurance company (the insurer), agreeing to pay a specified premium in consideration of the insurer assuming the designated risk for a stipulated period. The document issued by the insurer to the insured upon acceptance of the risk is called the insurance policy. Since the policy is issued for a specified period with a predetermined premium corresponding to the level of risk, and provides that compensation will be paid in the event of a future occurrence, the insured retains the right to claim and receive from the insurance company the amount of loss suffered within the coverage of the policy. The primary purpose of insurance is to ensure that the insured receives compensation from the insurer for losses suffered due to potential unforeseen events, in accordance with the terms and conditions of the insurance policy. The assurance of payment of compensation constitutes the principal consideration of the insurance contract. Insurance is not merely an acceptable process of risk management (public or social response to risk), but has also evolved into a crucial and integral component of market relations (a core institution of market relations). Recently, insurance has also been recognized as an important component of social security programs. In view of this, it is necessary to develop a clear understanding regarding the rights and obligations of the insurer and the insured, particularly in matters such as claim settlement under the insurance contract.
3. Renowned insurance law authors K.S.N. Murthy and Dr. K.V.S. Sharma have stated in their book *Modern Law of Insurance*¹ that, for any agreement to constitute an insurance contract, there must be a written agreement between the insured and the insurer. The agreement must clearly specify the preconditions, including that the insurer will pay compensation for any occurrence of the insured event, and that the insured will make periodic premium payments accordingly. Regarding insurance contracts, as far back as 120 years ago, Justice Channell of the United Kingdom, in the case of *Prudential Insurance Co. v. Inland Revenue Commissioners*², explained that for an insurance agreement to be valid: **first**, the insured must

¹ (KSN Murthy & Dr. KVS Sharma, Modern Law of Insurance, 6th Ed)

- a. There must be a contract between parties who are called the insurer and the insured;
- b. The contract must be that the insurer undertakes to protect the insured from any loss of damage to be insured on the happening of the event;
- c. In consideration for the above, the assured undertakes to make the insurer a periodical payment of a sum of money called premium;
- d. The contract must be in writing and the document is called the insurance policy.

² There are at least three requirements for valid contract of insurance.

- It should provide some benefit for the policy holder on the occurrence of some event;
- The occurrence should involve some element of uncertainty;

be entitled to receive compensation upon the occurrence of the event specified in the policy; **second**, the occurrence of such an event must be uncertain; and **third**, the event must be of a nature that directly causes loss to the insured. This interpretation continues to be cited as an authoritative reference in the understanding of insurance contracts to this day.”

4. Given that the very nature of an insurance contract involves payment for loss arising from the occurrence of a specific event it is regarded as a contingent contract. In such an agreement, there is no certainty whether the envisaged event will occur or not, but it is not considered impossible for the event to take place. Through the insurance contract, the potential financial burden of the insured’s risk is transferred to the insurer.
5. Based on the subject matter and nature of the insurance, insurance is generally classified into life and non-life insurance. In life insurance, upon the death of the insured, a specified amount is paid to the person designated in the policy, to a person chosen by the insured, or to the legal heirs, and if death does not occur, the premium along with any bonuses is returned as agreed. In non-life insurance, the insured pays the premium for the risk of certain property or liability, and the insurer, in accordance with the policy, is obligated to provide compensation or indemnity for any loss resulting from the insured event. The Insurance Act, 2049, and the Insurance Regulations, 2049, make separate provisions for the procedures of life and non-life insurance. As the present matter concerns non-life insurance, further analysis of the legal framework relating to life insurance is not considered necessary.
6. Under the Insurance Act, 2049, an insurance contract is deemed to be in effect once the insurer has received the premium from the insured. The insurer is required, in accordance with law, to make the necessary inquiry and assessment before settling any insurance claim. The policy demonstrates that the financial burden of potential loss arising from the events specified in the policy has been transferred from the insured to the insurer through the mechanism of insurance.
7. In the context of non-life insurance, the insurance contract is determined in a manner similar to other contractual agreements, through a process of proposal and acceptance. Between the insurer and the insured, the insurance process is completed through mutual offer and acceptance regarding the property to be insured, the specific period of coverage, the insured event, the determination of the sum insured, the payment of premiums, and the procedure for claim settlement in the event of loss. Section 27 of the Insurance Act, 2049, provides that an insurer shall not assume insurance risk until the premium has been received. Accordingly, an insurance contract is deemed to be in effect only after the insurer has received the premium from the insured.
8. Since an insurance contract is founded on mutual trust, both the insurer and the insured are obliged to disclose to each other the true and accurate information concerning the proposed risk and potential compensation. As an insurance contract is entered into on the principle of utmost good faith (*uberrimae fidei*), it is the duty of both parties, the insurer and the insured to reveal all material facts necessary for the formation of the contract. When entering into an insurance contract, the insured is required to provide the insurer with accurate details of the property or business to be insured. Similarly, the insurer must clearly disclose to the insured, in a manner

• The uncertain event should be one which is prima facie adverse to the interest of the assured

For detail please refer to: Prudential Insurance Co. v. Inland Revenue Commissioners [1904] 2 KB 658) [1904] 2 KB 658)

that is understandable, the nature of the risk being assumed, the extent of coverage, and the procedure and parameters for claim settlement

9. Examining the nature of the insurance contract in the present dispute, there is no controversy that the respondent, printing press proprietor Bhagwat Dhakal, on 2068/12/27 (corresponding to 9 April, 2012), insured his printing press machinery for Rs. 11,950,000 and other materials for Rs. 3,150,000, establishing a total sum insured of Rs. 15,100,000 with the appellant, Prudential Insurance Company Limited, under Policy No. 0014110111/1200278. Subsequently, it is evident that the insured continuously renewed the insurance contract for four years, paying the premium of Rs. 54,607.25 for the first two years, including value-added tax, and Rs. 49,147.09 for the next two years within the stipulated period. The appellant company has not disputed this fact. Examination of the policy attached to the case file confirms that the insured renewed the policy covering the aforementioned printing press machinery and other materials under the fire and earthquake risk plan. Perusal of the case file reveals that, according to Rule 12 (1) of the General Fire Insurance Rate Regulations, 2058, except in the special circumstances referred to in Rule 12.2, the standard fire insurance rates, general conditions, benefits, and other special conditions shall also apply to earthquake risks. Further, Chapter 1, Paragraph 1 (c) of the insurance policy executed between the appellant and the respondent specifies that in the event of damage or loss to the assets listed in the schedule due to an earthquake, the insurer shall compensate the insured. Accordingly, it is evident that the insurance contract executed between the parties constitutes a legally enforceable insurance agreement covering losses to the insured printing press machinery caused by an earthquake.
10. As regards the contention of the appellant insurer, it is stated that at the time the insured printing press submitted the insurance proposal, the insurer did not itself conduct or cause to be conducted an independent valuation of the printing press. Instead, the valuation carried out by KIST Bank Limited/Prabhu Bank Limited at the time the insured obtained the loan was accepted, and the insurance proposal was approved for the same insured value as proposed by the bank, treating such valuation as having been made in the ordinary course of business and in good faith. With regard to the ground of appeal taken by the appellant insurer that the printing press, while insuring its machinery, concealed and misrepresented material facts and obtained an insurance contract for old machinery of a lesser value, thereby disentitling itself to compensation as claimed, it is to be examined that, for the purpose of an insurance contract, both the insured and the insurer are required to act with mutual understanding and trust. The insured is obliged to disclose to the insurer, to the best of its knowledge, the true and correct particulars of the goods or property sought to be insured, while the insurer, on its part, is equally duty-bound to ascertain the true nature and value of such property by conducting, or causing to be conducted, necessary inquiries, including technical inspection and valuation through its own representatives or experts, before determining the insured value of the property. At the time of entering into an insurance contract, provided, either party fails to provide true and accurate information to the other regarding the subject matter of the contract, or makes false representations whether by commission or omission with the intent to induce the contract, or knowingly commits an error relating to the subject matter thereof, or if the contract is concluded as a result of one party misleading the other by false statements, such circumstances constitute a breach of the principle of *utmost good faith* essential to an insurance contract. In such a case, the contract may be rendered voidable on the ground of misrepresentation or inducement by deception. However, where the insurer itself fails to discharge the procedural obligations

incumbent upon it, particularly by not undertaking proper inquiry or valuation of the property, thereby resulting in an inaccurate assessment of value, the insurer cannot subsequently evade the liabilities arising from the contract by alleging that the insurance was obtained through misrepresentation or concealment. Once the insurance policy has been duly accepted, the insurer is bound to assume and bear the risk covered thereunder. Furthermore, all terms and conditions relating to renewal of insurance, payment of premium, and settlement of insurance claims, including deductions on account of depreciation, salvage, or policy excess must be duly disclosed to the insured at the time of entering into the contract and expressly incorporated in the insurance policy itself. Any deduction made at the stage of claim settlement under a head not stipulated in the policy not only runs contrary to the fundamental principles of contract law but is also unacceptable from the standpoint of consumer protection and fairness.

11. In the present case, it is evident that the insured printing press, for loan purposes, had furnished the lending bank with complete details of its machinery and materials, whereupon a technical inspection was conducted by the bank's representative and the value of the printing press assets was duly assessed. It further appears that the insurer accepted the said valuation and effected the insurance coverage on the very same basis. Inasmuch as both parties to a contract are free and competent either to enter into or refrain from entering into a contract, and to determine its terms and conditions, the insurer was at liberty to accept or reject the valuation assessed and fixed by the lending bank. However, once the insurer accepted such valuation and agreed to underwrite the risk on that basis, it cannot thereafter be contended that the insured had furnished incorrect information regarding the insured property or had induced the contract by misrepresentation. In substance, it is equally the duty of the insurer to obtain proper knowledge by undertaking a realistic assessment of the financial and technical aspects of the risk it proposes to underwrite. Even if the insurer did not conduct an independent valuation prior to entering into the insurance contract, once it accepted the valuation carried out by the lending bank at the time of extending credit and concluded the insurance agreement on that basis, it cannot thereafter evade the liabilities arising from the contract on the ground that it had not undertaken its own valuation, or by alleging that old machinery was misrepresented as new, or on any other similar pretext. The risk so accepted voluntarily must be borne in accordance with the terms of the contract. Since it is the duty of the parties to adhere to the terms of the contract in good faith, the insurance agreement between the appellant insurer and the respondent insured must be performed in accordance with the prevailing law.
12. Turning to the second question, namely, On what basis should insurance payment be made? Are the grounds and principles on which the insurance (compensation) payment is to be made under the insurance agreement between the appellant insurer and the insured printing press in accordance with law, it must be observed that the legal foundation of the relationship between the insurer and the insured lies in the relevant contract or insurance policy. From both a theoretical and practical perspective, there can be no dispute that the insurance policy constitutes the primary and decisive basis for resolving all disputes related to insurance claims and the performance of the insurance contract. In substance, prior to insuring any property, the insurer, with the presence or on behalf of the insured, conducts an assessment of the property's value in accordance with prevailing standards, and determines the sum insured, which the insurer undertakes to cover through the insurance policy. In such circumstances, it is just and reasonable that the value stated in the insurance policy serves as the primary basis for the payment of the insurance claim. However, due to certain inherent characteristics of an insurance contract, some

theoretical aspects of the insurance claim must also be taken into account when determining the amount payable under the claim.

13. Under non-life insurance, various unforeseen events such as accidents, medical expenses, fire, earthquake, natural calamities, strikes, riots, terrorism, and loss or damage to homes, vehicles, machinery, agricultural produce, livestock, deposits, and loans are typically covered. Accordingly, the primary nature of non-life insurance is property insurance. The principal objective of non-life insurance is to provide compensation for actual loss or damage sustained to the insured property due to the occurrence of an event specified in the policy. Therefore, the basis for claim payment should be the actual loss or damage to the property at the time of the event, rather than the nominal insured value stated in the policy. Non-life insurance is not intended for profit-making but serves as a mechanism for managing risks to property. Under non-life insurance, the principle of transferred risk applies, whereby the insurer's liability is limited to the amount necessary to restore the insured property to its pre-loss condition following the occurrence of a specified event. Consequently, unlike life insurance, non-life insurance does not give rise to an obligation to pay the full sum insured; the focus is on indemnifying the actual loss sustained. In such a scenario, the value determined at the time of issuance of the insurance policy represents only the maximum limit for claim payment. This means that even if the actual loss to the insured property exceeds the declared value, the insurer's liability cannot exceed the sum insured as specified in the policy. Principally, in property insurance, the insurer's liability does not arise from the date of issuance of the policy, but from the point at which the insured property suffers loss due to an event specified in the policy. Consequently, the sum insured stated in the policy serves only as a reference, and the actual value of the loss must be recognized as the insurer's liability³.
14. Non-life insurance is fundamentally based on the Principle of Indemnity. Accordingly, the basis for insurance claim payment must be the actual loss suffered by the insured property or the cost required to restore the property to its condition immediately prior to the occurrence of the insured event. In other words, the replacement cost or reproduction cost of the property may serve as the basis for determining the insurance claim. However, in cases where older models of certain assets have been replaced by new models, if the insured accepts a new-for-old policy and the value of the new model is higher, there may arise situations where the insured receives a payment exceeding the actual loss suffered by the property. In the event of total loss of the insured property, the insurer is obligated to pay the full sum assured under the policy. However, in cases of partial loss, careful consideration must be given to the possibility of overestimation or underestimation of the actual damage incurred.
15. The determination of the exact value of damage in property insurance is recognized as a complex and significant issue. Where the insured property suffers total loss, the policy provides for payment up to the sum assured, making valuation relatively less problematic. However, in cases of partial loss, determining the insurer's liability becomes more intricate. In such situations, it is a common practice in the insurance industry for the insured to seek higher valuation and the insurer to propose a lower assessment⁴. Therefore, resolution must be guided by principles of fairness and reasoned judgment.

³ Ray Hodgins, Insurance Law, Text and Materials, Second Edition, Cavendish Publishing Limited, p. 60.

⁴ Ibid p. 586

16. The actual loss to the insured property must be determined based on the nature and extent of the property and the damage sustained. However, in relation to property valuation or the assessment of loss, it is pertinent to briefly discuss two fundamental principles recognized in insurance jurisprudence.

First: The assessment method is based on Actual Cash Value. Under this method, the loss to the insured property is determined on the basis of the cost required to restore or reproduce the property in its original condition (current cost of reproducing the property). Under this method, the basis for insurance payment is the replacement cost required to restore the insured property to its pre-loss condition⁵ resulting from the event covered under the policy. Similarly, another important method determines the loss based on the current market data or fair market value of the property. For this purpose, the valuation is based on the prevailing market prices of similar property of like kind and quality. However, in the case of buildings or similar properties, the value also depends on factors such as the location or land value, so determination of loss solely on market value carries the risk of not reflecting the true extent of the damage⁶. Nevertheless, this method of valuation is more commonly applied in insurance practice. Additionally, the loss to the insured property is often assessed based on the impact on its productive capacity or net earning power, using various statistical and actuarial methods to determine the economic loss suffered by the insured asset.

The second method of loss assessment is the **Broad Evidence Rule**. This rule recognizes that valuation based solely on actual cash value may be overly mechanical and might not accurately reflect the true loss. Since the primary objective of property insurance is to provide just compensation, the *Broad Evidence Rule* allows for a comprehensive assessment, taking into account the original cost of the property, contractual provisions, declarations by the parties, opinion of expert/qualified expert, gainful use of property, among other relevant factors, to determine the actual value of the insured property⁷. Although this method of valuation has been criticized for its inherent lack of predictability⁸ and the non-quantifiable nature of some of its indicators, it encompasses all relevant factors in a comprehensive manner. Consequently, judicial authorities have consistently relied upon this method⁹ in resolving insurance disputes. Indeed, the question of insurance claim payment is not merely a commercial matter but also a judicial one. Accordingly, in the claims settlement process, it is appropriate that the valuation of loss be conducted on a reasoned and evidentiary basis, taking into account all relevant factors, including the original or declared value of the insured property, the interpretation of the insurance agreement, the positions of the parties, expert opinions, and the potential for the profitable use of the property.”

17. In relation to the settlement of an insurance claim, another important aspect of loss assessment is the deduction depreciation. It is a matter of common understanding that the value of any property tends to diminish with its continued use. As the use of a property results in a gradual

⁵ Cost to repair or replace the same with material of like kind and quality, Ibid.

⁶ Jeffrey W. Stempel, Principles of Insurance Law, Carolina Academic Press, 2020, p. 947 विस्तृतका लागि हेर्नुहोस् 49 Colum. L. Rev. 818, 820

⁷ The Wisconsin Supreme Court in *Strauss Bros. Packing Co. v. American Ins. Co.*, (98 Wis. 2d 706, 298 N.W.2d 108) (1980), held that, although market value was the proper test for determining the actual cash value of farm products, the “broad evidence rule” gave the court the right to consider all facts “reasonably tending to throw light upon the subject.”

⁸ Jeffrey W. Stempel, Principles of Insurance Law, Carolina Academic Press, 2020, p. 945

⁹ *McAnarney v. New York Fire Insurance Company*, (1928) 247 N.Y. 176, 159 N.E. 902

reduction in its recorded value, such diminution is required to be accounted for while assessing the value of the property as well as the extent of loss. The principle of depreciation deduction is thus premised on reducing the value to the extent of such wear and tear. Since the monetary value of the loss caused to the insured property is determined on the basis of the cost required to restore the property to its original condition, the difference between the value of the property at the time the insurance policy was initially issued and the diminished value resulting from its use up to the time of occurrence of the particular incident constitutes depreciation. In commercial terms, depreciation deduction represents the value attributable to the use or consumption of an asset. For the determination of depreciation deduction, various methods may be adopted, including the straight-line method, the diminishing balance method, the revaluation method, and other recognized approaches.

18. Irrespective of the method adopted for property valuation, depreciation deduction remains an integral and inseparable consequence of the use of the property. All the loss assessment methods and principles discussed above recognize depreciation deduction as a mandatory component of the actual assessment of loss. Accordingly, the loss is determined on the basis of the value remaining after depreciation, and insurance claim payment is made in conformity therewith. In the renowned book *Principles of Insurance Law* by Jeffery W. Stempel, particular emphasis is placed on the principle that the replacement value of the insured property must be determined only after making a deduction for depreciation (Replacement Cost Less Depreciation)¹⁰. Even while determining depreciation, it is considered necessary, similar to property valuation to assess the initial value of the property, its total useful life, the period of use, prevailing market value, productive or profit-generating use, and other relevant factors and evidence, including expert opinions in the concerned field. However, in certain situations, where the market value of such property increases over time, the value at the time of the occurrence may exceed its initial value. In such cases, the valuation of the property must be carried out on the basis of its prevailing market value rather than merely the sum insured, and the proportion of depreciation should be determined accordingly. Further, in some instances of partial loss, the generally accepted rules of depreciation may not be applicable. In such circumstances, it becomes necessary to assess depreciation and loss on the basis of other equitable, reasonable, and judicious considerations. In this regard, the Property Insurance Directive, 2075 issued by the regulatory authority, the Insurance Board, provides that while determining the amount of indemnity, the insurer shall calculate the compensation after making a deduction for depreciation. The Directive further stipulates that, in the case of buildings, depreciation shall be deducted at the annual rate of two percent, and in the case of other properties, depreciation shall be deducted in accordance with the prescribed rules. It also expressly provides that, in any circumstance, depreciation shall not be deducted in an amount exceeding fifty percent of the total sum insured.¹¹
19. In the present matter, the insured, Venkatesh Printing Press, is seen to have fixed the sum insured at a total value of NPR 15,100,000 for machinery and other materials, and to have paid the premium amounts to the insurer, Prudential Insurance Company Limited, inclusive of value added tax, amounting to NPR 54,607.25 for the initial two years and NPR 49,147.09 for the subsequent two years. It further appears from the documentary evidence on record that the sum insured was determined on the basis of the market value of the said property.

¹⁰ Jeffery W. Stempel, *Principles of Insurance Law*, Carolina Academic Press, 2020, p. 944

¹¹ Section 21 of Property Insurance Directive, 2075

20. Among the insured properties, the machines of the insured's printing press sustained damage amounting to NPR 6,385,955 as a result of the great earthquake of 2072/01/12. Accordingly, the petitioner is seen to have submitted a claim to the insurer, in accordance with the provisions of the insurance policy, seeking payment of indemnity. Thereafter, for the purpose of assessing the damaged property and the liability, the insurer pursuant to Rule 32 (2) of the Insurance Regulation, 2049, is seen to have jointly appointed Mr. Basanta Devkota and M/s Protocol Insurance Surveyor's Loss Assessors Pvt. Ltd. of India as licensed insurance surveyors. Under the provision prescribed in Rule 32 (3) of the same Regulations, the surveyors report is recognized as the primary basis for valuation. In the survey report prepared by the evaluators on 2072/03/18, the loss to the printing press machinery caused by the earthquake was assessed at NPR 6,043,297. From this amount, deductions of 70 percent for depreciation, 10 percent for salvage, and NPR 297,500 as policy excess were applied, resulting in the determination of the payable loss (indemnity) at NPR 1,335,489. The fire insurance policy of the appellant company, annexed as evidence, in Chapter 3, Paragraph 4, expressly states that **"the insurer shall not pay any claim for depreciation arising from the use of the property under this policy."** While the application of depreciation deduction falls within the accepted norms for insurance claim settlement, the surveyor's report does not appear to disclose any basis or methodology as to how the 70 percent depreciation deduction was determined. Although the surveyor's report indicates that a 70 percent depreciation deduction was applied on the insured machinery on the basis that it was twenty years old, the report does not identify fundamental facts necessary for loss assessment, such as where were the printing press machines manufactured, in which year, of which model, their original cost, and the market value established. It appears that the depreciation deduction was applied merely on the presumption that the machines were old at the time of initial insurance of the printing press.
21. From the letter written by the Nepal Printing Industry Federation to the Insurance Board, dated 2072/10/10 (Ref. No. 826), enclosed in the case file, it is stated that **"if periodic servicing and maintenance are carried out, production can be obtained from these machines even up to the second and third generations; therefore, no definite useful life of such machines and equipment has so far been determined."** In view of this statement, it is evident that printing machines, if regularly serviced and properly maintained, can remain in effective use for many years. Accordingly, a fair and just valuation ought to have been made on the basis of the prevailing market value of such printing machines. However, treating the machines as old and making an excessive deduction towards depreciation does not appear to be proper or justified. From Paragraph 10 of Chapter 2 of the Fire Insurance Policy of the appellant company, enclosed in the case file, has defined market value as: **"market value" means the net value arrived at after deducting depreciation at the prevailing rate from the cost required, at the time of loss or damage, to construct or newly purchase the insured property under this policy, or from the price required to replace the same at the prevailing market value."** Thus, once the insurance policy, being an integral part of the contract, has accepted market value as the standard for valuation of the property and the appellant has already received the premium accordingly, it would not be just or lawful for the appellant to now deny the reinstatement value. **With regard to depreciation, determining depreciation in a unilateral and arbitrary manner, going beyond what is stipulated in the insurance policy, appears to be contrary to the accepted principles of insurance law as well as contract law.**
22. In the present insurance dispute, although the surveyor's report mentions that, in addition to depreciation, a deduction of ten percent as salvage value and a sum of NPR 297,500 as policy excess have been made, no document on record, including the insurance policy of the appellant

company enclosed in the case file, clearly provides that the insurer is entitled to make deductions towards salvage value or policy excess while settling the insurance claim. Under the principle of utmost good faith inherent in the insurance process, both the insurer and the insured are required to repose trust in each other. Accordingly, the insured has the obligation, at the time of effecting the insurance, to disclose the true and material facts relating to the property to the insurer, to furnish the insurer with details of any loss or damage to the insured property as promptly as possible, and to extend all necessary cooperation to the insurer for settlement of the claim until its final disposal. Correspondingly, the insurer is required to inform the insured, through the insurance policy of all terms and conditions applicable to the payment of premium and settlement of claims, and to carry out a realistic assessment of the loss sustained by the property and to settle the claim promptly, fairly, and in a simple and expeditious manner. The principle of utmost good faith is not confined merely to the stage of proposal, acceptance, or the issuance of the policy, but remains equally applicable throughout the entire period of insurance as well as at the time of settlement of the claim.

23. Although the insurance business is fundamentally regulated by state laws (public law), it is at the same time a matter of bilateral contract (private law). Therefore, the rights and obligations of both parties are primarily governed by the terms and conditions expressly stipulated in the contract itself. In such circumstances, deductions made towards excessive depreciation, salvage value, and policy excess, where such deductions are not provided for in the insurance policy and are made beyond the accepted principles governing depreciation cannot be sustained. Consequently, the payable claim amount determined after making such deductions does not appear to be maintainable either under the accepted norms of prevailing insurance practice or on the touchstone of justice.
24. As regards the ground of appeal taken by the appellant company that the respondent-petitioner, having already received the insurance claim amount and signed a consent letter, is not entitled to raise any further claim. Upon examination of the record it is seen that the insurer company received the surveyor's report containing the actual details of the loss sustained by the insured printing machines on 2072/03/18, corresponding to 2015/07/03. However, prior to that, on 2072/03/14, corresponding to 2015/06/29, it appears that the surveyor obtained the insured's signature on the consent letter and proceeded to settle and pay the insurance claim. Thus, it is evident that the surveyor obtained the consent letter from the insured and disbursed a sum of NPR 1,335,489 even before submitting a report setting out the actual particulars of the loss sustained by the printing press. In this regard, the case file reveals that the insured printing press had lodged a complaint with the insurer at the earliest point in time. Considering the duties and responsibilities of a surveyor, Rule 32 (3) of the Insurance Regulation, 2049 provides that **"the surveyor appointed pursuant to sub-rule (2) shall, after conducting the necessary inspection and inquiry, determine the liability of the insurer within fifteen days and submit a report containing detailed particulars thereof to the insurer, and shall also inform the insured of the amount receivable by the insured subject to the terms and benefits of the insurance policy."** In light of this legal provision, the principal responsibility of the surveyor is to assess and determine the liability payable by the insurer and to inform the insured accordingly. However, as the surveyor, acting beyond the scope of the authority so conferred, prepared a consent letter and obtained the insured's signature thereon, it cannot be held that, by virtue of the amount paid by the surveyor, an estoppel was created so as to preclude the petitioner from making any further insurance claim. It does not appear just or reasonable to hold that the insured, who was under pressure to restore

and operate the printing press damaged by the earthquake, waived or relinquished the right to claim the remaining amount equivalent to the loss reflected in the survey report, merely because the insured accepted a partial amount disbursed by the surveyor on behalf of the insurer, in respect of the loss caused by the insured event covered under the insurance policy, or that the insured was thereby estopped from claiming such remaining amount. It appears that only the amount actually received by the petitioner is to be recognized. Apart from that, and in view of the fundamental principles of insurance and the applicable legal framework no other acts or actions undertaken by the surveyor appointed on behalf of the appellant company, which tend to curtail the insurance claim otherwise payable to the petitioner, can be said to have any legal sanction.

25. With regards to the third issue, as to whether not the decision of the High Court, Patan, is legally and judicially sustainable, and as to whether or not the appeal filed by the opponent appellant insurer is tenable? It is noted that the petitioner claimed a loss of NPR 6,385,955 in respect of the insured printing press machinery and equipment due to the earthquake. In response, the surveyor appointed by the appellant insurance company prepared a valuation report assessing the loss at NPR 6,043,297. However, the evaluators after applying 70% depreciation, 10% salvage value, and a policy excess deduction of NPR 297,500, assessed the actual payable loss to the petitioner at NPR 1,335,489, and that amount was disbursed to the petitioner. The petitioner, however, filed an application with the Insurance Board, contending that the full claimed amount was payable. The Board upheld that, in accordance with the surveyor's report, only the amount of NPR 1,335,489, after applying the aforementioned deductions, was payable as insurance compensation. Aggrieved, the petitioner filed an appeal under Section 37 of the Insurance Act, 2049, before the High Court, Patan. The High Court, while modifying the initial decision to some extent, directed that the insurer pay the petitioner the amount assessed in the surveyor's report, namely NPR 6,043,297, as insurance compensation for the loss. It is a well-accepted principle in the insurance industry that in the settlement of a property insurance claim, depreciation must be applied based on the period of use of the insured property. The insurance policy of the appellant, Prudential Insurance Company Ltd., also provides that claims shall be settled after applying depreciation. In this context, the decision of the High Court, Patan, directing that the petitioner receive the full amount as assessed in the surveyor's report, does not appear to have been fully consistent with this principle. Moreover, while applying depreciation, the insurer is required to do so, on a reasonable basis in accordance with the policy terms and accepted norms of insurance practice. It cannot be considered proper that the appellant insurance company, without any reasonable justification and in an arbitrary and unilateral manner, applied 70% depreciation, along with 10% salvage value and a policy excess of NPR 297,500, which were not provided for in the policy or any other written agreement between the insurer and the insured in settling the insurance claim. Similarly, the decision of the Insurance Board, which upheld such action, also cannot be regarded as legally correct.
26. The record shows that, at the time of insurance on 2068/12/27, the insurer collected an insurance premium of NPR 54,607.25 based on the sum insured. Two years later, the same premium was reduced by ten percent to NPR 49,147.09, and the insurance premium was collected accordingly. This indicates that the appellant insurance company had adopted a policy of reducing the premium by ten percent every two years. Since the insurance policy contains provisions regarding depreciation in claim settlement, and given that a ten percent reduction in premium was applied every two years and four years' premium was collected accordingly, it follows that while assessing the loss to the printing press machinery, depreciation must be calculated proportionately at the rate of ten percent for every two years. The evaluators therefore, assessed the loss at NPR 6,043,297, and applying twenty percent depreciation for four

years amounts to NPR 1,208,659.40. After deducting this depreciation, and without making any further deduction for other direct or indirect expenses, the net payable loss comes to NPR 4,834,637.60 (forty-eight lakh thirty-four thousand six hundred thirty-seven rupees), which the appellant company is obliged to pay to the petitioner as the insurance claim.

27. Accordingly, the initial decision of the Insurance Board, which held that the appellant, Prudential Insurance Company Limited, was liable to pay NPR 1,335,489 to the petitioner, Venkatesh Printing Press, in respect of the insurance claim, was modified by the High Court, Patan, in its decision dated 2073/09/12, directing that the entire amount of NPR 6,043,297, as assessed in the surveyor's report, be paid to the insured without applying any depreciation. Since the High Court's decision did not account for depreciation, it cannot be regarded as fully consistent with the principles governing insurance claim settlement. Accordingly, after applying depreciation as required, the appellant, Prudential Insurance Company Limited, is held liable to pay the petitioner/claimant, Venkatesh Printing Press, a sum of NPR 4,834,637.60 (forty-eight lakh thirty-four thousand six hundred thirty-seven rupees and sixty paisa) as the insurance claim. To this extent, the appellant's appeal to have the High Court, Patan's decision set aside and the initial decision of the Insurance Board upheld cannot be deemed to be tenable. It is hereby directed to proceed as per the particulars.

Particulars

- (a) As stated in the foregoing decision, the High Court, Patan's ruling was modified to the extent that the insured, petitioner Venkatesh Printing Press, through its proprietor Bhagwat Dhakal, is entitled to receive NPR 4,834,637.60 (forty-eight lakh thirty-four thousand six hundred thirty-seven rupees and sixty paisa) from the appellant insurer, Prudential Insurance Company Limited, as insurance claim. Accordingly, if the petitioner submits an application along with a copy of this order requesting payment of the said amount, the appellant insurer, Prudential Insurance Company Limited, shall be directed, in writing, to pay the petitioner the said sum within fifteen (15) days. This decision is hereby directed to be communicated to the Insurance Board, Kathmandu.
- (b) It is hereby ordered to enter the decision into the electronic system and to remove the case from the case registry and accordingly submit the case file to the Record Section.

Consenting with the above Opinion

Honorable Justice Nahakul Subedi

Justice Tanka Bahadur Moktan

Bench Office: Shiva Wagle (Under-Secretary)/Anu Yakami

Section Officer: Sadiksha Nepal

Computer: Amir Ratna Maharjan

Dated: Year 2079 of the Month of Asoj Date 6 Day 5 (Corresponding to Year 2022 of the Month of September Date 22 Day 5)