J&K STATE CONSUMER DISPUTES REDRESSAL COMMISSION, JAMMU

C.C.: 4099 OF 2025
DT OF INSTITUTION: 14/01/2019
DATE OF DISPOSAL: 15/07/2026
Case Title:

AJAB SINGH S/O SH. AMAR SINGH, R/O MADHA CHENANI, DISTRICT UDHAMPUR, J&K

--- COMPLAINANT

Versus

1. **IFFCO TOKIO GENERAL INSURANCE CO. LTD., REGD. OFFICE, SADAN C1, DISTRICT CENTRE, SAKET, NEW DELHI – 110017**
2. **BRANCH MANAGER, IFFCO-TOKIO GENERAL INSURANCE CO. LTD., SERVICE OFFICE, BS-45/6, SECTOR – B, SAINIK COLONY, JAMMU.**

--- OPPOSITE PARTIES

Coram:
Smt. Nighat Sultana, President (O)
Sh. Maheep Gupta, Member

PARTIES REPRESENTED BY:
Adv. SUDESH SHARMA, Ld. Counsel for the complainant.
Adv. DIWAKAR SHARMA, Ld. Counsel for the opposite Parties.

15/07/2026 PER: MR. MAHEEP GUPTA, MEMBER.

1. Shorn of details, the dispute involves the repudiation of the insurance claim of the complainant by the O.P. Insurance Company on account of the alleged overloading of the vehicle at the material time of accident.
2. Heard the Counsels, perused the records, appreciated the evidences.
3. As per the O.P. Insurance Company, the insured vehicle had a registered load capacity of 13500 Kgs whereas it was allegedly carrying 15050 Kg (350 Cu feet of sand) at the material time of accident.

It was contended by the O.P. Insurance Company that as per NHAI circular no. NHAI/CO/03/2016 dt 06/02/2016 a tolerance limit of only 5% is permissible in the gross vehicle weight of the vehicle.

The relevant extract of the circular is reproduced below:

> ***"Explanation – For the purpose of this notification, the tolerance upto five percent in the gross vehicle weight and the safe axle weight as specified above may be allowed for the purpose of compliance to sub section (3) of Section 113 of the Motor Vehicle Act, 1988 (59 of 1988)"***

It is contended that in the instant case the variation translates to 11.48% which is beyond the permissible tolerance limit of 5% and as such it is a case of gross violation of the Motors Vehicle Rules and as such it is not liable under the policy terms and conditions.

4. It is an admitted fact that the Surveyor had assessed the loss to the tune of Rs.28,63,500/- on net of salvage basis. The claim, however, was repudiated by the O.P. Insurance Company on the ground as discussed above.
5. We have also perused the R.C. of the vehicle as annexed with the complaint by the complainant and find that the unladen weight of the vehicle is mentioned as 11500 Kgs and the laden weight is mentioned as 25000 Kgs. Front Axle & rear axle weight has been mentioned as 6000 Kgs & 19000 Kgs respectively.
6. By the own admission of the O.P. Insurance Company, the vehicle was carrying an excess load to the tune of 1550 Kgs (15050 Kgs as alleged to have been carried – permissible load of 11500 Kgs).
7. It is not the case of the Insurance Company that there was some violation of the safe axle load limits as well. The only contention of the Insurance Company is that the vehicle was carrying 1550Kgs of load in excess of the permissible load.

   It is also worthwhile to note here that the aforesaid circular speaks of the gross vehicle weight and the safe axle weight and not the weight of load being carried.

   The actual variation thus comes to 6.42% [1550/25000 X 100]as against 11.48% as alleged by the Insurance Company, which is marginally above the permissible tolerance limit of 5%.

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8. We are not inclined to buy the argument of the Complainant that the Company had taken the river sand as base for weight conversion instead of dry sand as not only the company had clearly mentioned the base for the weight conversion to be dry sand through its evidence affidavit filed by Sh. Vikram Singh, Asstt. Manager read with annexure R5 as annexed with the written statement of O.P. insurance Company.

   It is clearly mentioned in annexure R5 that the density of the beach sand is 1800Kg per Cu meter whereas the density of the dry sand is 1602 Kg per cu ft. and the density of the dry sand has been taken as the basis for the weight conversion.
9. It is, therefore, clear that the insured vehicle was overloaded at the material time of accident.
10. Now, we are left with the only question as to whether the Insurance Company is justified in repudiating the claim on the ground of overloading of vehicle.
11. It is a settled legal preposition that any breach of policy condition on standalone basis cannot be taken as a justified ground for denying the liability in toto by the Insurance Company.

   For denying the liability in toto not only the breach has to be substantial but it should have direct proximity to the cause of accident.

   It has not been the case of the Insurance Company that the overloading of the vehicle was responsible for the accident, neither could we find any information on records that could suggest so.
12. **Under these circumstances, we find the repudiation of the claim to be unjust and hold the Insurance Company guilty of deficiency in service.**

   We direct the O.P. Insurance Company to pay Rs.32,50,026/- to the complainant calculated as under:

Particulars	**Amount**
Amount as assessed by the Surveyor	28,63,500
Less: 25% on a/c of overloading	7,15,875
Balance	21,47,629
Add: Compensation for delay {calculated @6% on 21,47,629 for 2981 days from 17/05/2018, i.e., the date of survey report to the date of instant order, i.e., 15/07/2026}	10,52,397

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Compensation for mental agony & litigation expenses	50,000
Total	**32,50,026**

It may be noted that in awarding the above compensation, we have been guided by the ratio laid down by the Hon'ble Supreme Court in the case title, "Amlendu Sahoo V/S Oriental Insurance Company Ltd." [Civil Appeal No. 2703 of 2010, Dt of order: 25/03/2010]

<u>Judgment:</u>

A. Complaint is partially allowed and the O.P. Insurance Co. is directed to pay Rs.32,50,026/- to the complainant within 30 days of this order, failing which the O.P. Insurance Company shall be further liable to pay interest @6% p.a. on the entire amount of Rs.32,50,026/- to be calculated from 16/07/2026 till the final deposition of the award.

B. Since the claim has been assessed by the Surveyor on net of salvage value, the Insurance Company shall not have any lien on the wreck/salvage of the insured vehicle & the same shall be absolute property of the Complainant.
Complainant is at liberty to dispose of the wreck/salvage of the insured vehicle in whatsoever manner he deems fit.

C. Parties to bear their own costs.

D. Office is directed to provide a certified copy of this order to all the stakeholders & consign the case file to records after due compilation.

Announced: 15/07/2026

(Maheep Gupta)
Member, JKSCDRC

(Nighat Sultana)
President (O), JKSCDRC

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