J&K STATE CONSUMER DISPUTES REDRESSAL COMMISSION, SRINAGAR

C.C. 603 OF 2015, DT. OF FILING: 26/08/2015, DT. OF DISPOSAL: 29/07/2026

ABDUL RASHID SUMJI, S/O ABDUL SATTAR SUMJI, R/O QAMARWARI, SRINAGAR

--COMPLAINANT

VERSUS

1. **UNITED INDIA INSURANCE COMPANY LIMITED, DIVISIONAL OFFICE, REGAL CHOWK, SRINAGAR THROUGH ITS DIVISIONAL MANAGER.**
2. **UNITED INDIA INSURANCE CO. LTD., BRANCH OFFICE, WANI BUILDING, COMMERCIAL COMPLEX, MAIN BUS STAND, BATMALOO, SRINAGAR THROUGH ITS BRANCH MANAGER.**

--OPPOSITE PARTIES

Coram:
Smt. Nighat Sultana, President (O)
Sh. Maheep Gupta, Member
Present:
Sh. SAJOOD AMIN, Ld. counsel for the Complainant.
Ms. RIFAT KHALIDA, learned Counsel for the O.P. INSURANCE CO.

Order dated 29/07/2026 (Per Mr. Maheep Gupta, Member)

1. Shorn of details, the complainant is before us being aggrieved of repudiation of his claim.

   It is claimed by the Complainant that during the currency of the insurance policy issued by the O.P.s on 23/02/2015 his excavator machine accidently got submerged into river Jhelum and remained submerged in water and was extensively damaged.

   It is further submitted by the complainant that the O.P. Insurance Company vide its letter Dt. 10/08/2015 repudiated his claim on the ground of loss occurring due to the normal wear and tear.

As per the Complainant, the loss was accidental in nature and covered under the policy terms and conditions, therefore, the company is liable to indemnify him to the extent of Rs.18,82,353/- on account of expenses incurred by him towards the repair of the machine.

He further prays for a relief in shape of interest @18% p.a. on the aforesaid amount besides compensation for Rs.26.00 Lakhs under different heads.

2. The case of the O.P. Insurance Company, as per the repudiation letter dated 10/08/2015, is that the insured machine was duly inspected by IRDA authorized Surveyor who concluded the loss to have been caused by the normal wear and tear under the policy which is a named exclusion under the policy and therefore it cannot be held guilty of deficiency in service.
3. Heard the Counsels, perused the records.
4. Perusal of the written statement & final written arguments submitted by the Insurance Co. would reveal that an additional ground as to the validity of the driving license has also been raised by the Insurance Company.

   It is a settled legal position that it is not permissible for the insurance company to take any additional ground in addition to the grounds taken in the repudiation letter.

   The ground of validity of driving license was, therefore, not considered by us.
5. As far as the loss caused by the "normal wear & tear" is concerned, it is undisputed that the same is not payable under the policy terms and conditions.
6. **Now the only point that needs to be determined by us as to whether the loss was accidental in nature as would qualify for being classified as "admissible" under the policy or was due to "normal wear and tear" as would render the claim to be non-admissible under the terms and conditions of the policy.**
7. Pertinently, the O.P. Insurance Company failed to adduce any evidence and its right to lead evidence was closed.
8. **It is a settled legal preposition that onus to prove the operation of exclusion clause lies squarely with the Insurance Company & as the insurance company did not lead any evidence to prove its contention of loss having**

occurred due to normal wear and tear, the stand taken by the Company is not tenable.

Justice demands that under such circumstances, the benefit of doubt must be passed to the complainant.

We, therefore, are left with no other option but to hold that the loss was caused by the submerging of the machine in water and the Complainant needs to be indemnified for the loss suffered by him.

9. It is not under dispute that the Complainant incurred an amount of Rs.18,82,353/- on repairs but the same is not enough for ascertaining the exact quantum of loss payable under the policy.

   It was, therefore, deemed proper to call for the claim file from the O.P. Insurance Company for a fair adjudication of the dispute.

10. Needless to mention that we had confined ourselves only to the assessment part and did not consider any other observations made by the surveyor &/or arguments made by the Ld. Counsel for the Insurance Company as to the non-admissibility of the claim under the policy terms and conditions as the same could not be proved by the O.P. Insurance Company/Surveyor.

11. The extract of the assessment is as under:

Particulars	**Amount**
Amount Incurred by the Insured/Complainant [16,58,461 + VAT @ 13.5%]	18,82,353
Gross Assessment by the Surveyor (after deduction of inadmissible items) [16,21,631 + VAT @ 13.5%]	18,40,551
Less: Depreciation @ 60% on Rs.18,40,551/-	11,04,331
Less: salvage @ 5% on Rs.16,21,631/-	81082
Net assessed loss	6,55,138
Less: Under Insurance @ 18.34%	1,20,152
Net Adjusted Loss	5,34,986
Less: Excess Clause	50,000
Net liability of the Company.	**4,84,986**

The surveyor has justified the deduction on account of under insurance and depreciation in his report. The relevant extract of the report is as below:

<u>VALUE AT RISK</u>
The insured has submitted quotation of M/s North Zone Traders for new excavator for Rs.6123000/-. The insured is covered to the extent of Rs.50 Lacs for above. Therefore, under insurance would operate and the under insurance factor comes to 18.34%.
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<u>ASSESSMENT OF LOSS</u>
………… The machine was purchased in the year 2011 and used for about three & nine months. The life of the machine is considered to be five years only. Therefore, dep. @ 20% per year subject to maximum 60% would apply.

As the deductions made by the surveyor are backed by proper justification, we do not find any reasons to interfere with the net assessment of the Loss to the tune of Rs.4,84,986/- as arrived at by the surveyor.

12. We, therefore, direct the Insurance Company to pay an amount of Rs.8,53,084/- to the complainant calculated as under:

Particulars	**Amount**
Loss as assessed by the Surveyor	4,84,986
Compensation for delay calculated @ 6% p.a. on Rs.4,84,986/- from the date of institution of complaint, i.e., 26/08/2015 to the date of instant order, i.e., 29/07/2026 – total 3990 days	3,18,098
Compensation for mental agony & litigation expenses	50,000
Total	**8.53,084/-**

<u>Order:</u>

1. Complaint is allowed and the O.P. Insurance Company is directed to pay Rs.8,53,084/- to the complainant within 30 days of this order failing which it shall be further liable to pay interest @6% p.a. on the entire amount of Rs.8,53,084/- to be calculated from 30/07/2026 till the final deposition of amount.

2. Parties to bear their own costs.

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

Announced on 29/07/2026.

(Maheep Gupta)	**(Nighat Sultana)**
Member, JKSCDRC	President (O), JKSCDRC

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