

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION
PUNJAB, DAKSHIN MARG, SECTOR 37-A, CHANDIGARH.**

First Appeal No.667 of 2024

Date of Institution : 08.11.2024

Date of Reserve : 16.07.2025

Date of Decision : 06.08.2025

Baldev Singh Bhatti aged about 50 years, son of S.Dharam Singh, R/o H.No.428, VPO Lohat Baddi, Raikot, District Ludhiana, C/o # 295, Village Saikandarpura, Malerkotla. (Aadhaar Card No.8455 3243 4020).

.....Appellant/Complainant

Versus

United India Insurance Company Limited, Branch Office, above Bank of Baroda, Thandi Sarak, Malerkotla through its Branch Manager.

.....Respondent/Opposite Party

Appeal under Section 41 of the Consumer Protection Act, 2019 to challenge the order dated 13.06.2024 passed by the District Consumer Disputes Redressal Commission, Malerkotla in RBT/CC.No.139 of 2023.

Quorum :-

**Hon'ble Mrs. Justice Daya Chaudhary, President
Ms. Simarjot Kaur, Member**

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| 1) Whether Reporters of the Newspapers may be allowed to see the Judgment? | Yes/No |
| 2) To be referred to the Reporters or not? | Yes/No |
| 3) Whether judgment should be reported in the Digest? | Yes/No |

Present :-

For the appellant	:	Sh.Sparsh Chhibber, Advocate
For the respondent	:	Sh.Ravinder Arora, Advocate for Sh.Neeraj Khanna, Advocate

SIMARJOT KAUR, MEMBER :-

The Appellant/Complainant has filed the present Appeal under Section 41 of the Consumer Protection Act, 2019, (in short the 'Act') for setting aside the order dated 13.06.2024 of the **District Consumer Disputes Redressal Commission**, Malerkotla whereby the Complaint filed by the Complainant had been **dismissed**.

2. It would be apposite to mention that hereinafter the parties will be referred, as were arrayed before the District Commission.

3. Briefly, the facts of the case as made out in the Complaint before the District Commission are that the Complainant had purchased one Tata Prima LX 3125 K8X4 BS-IV with Registration No.PB-13 BB 7045. It was Goods Carrier. Said vehicle was financed with OP vide policy No.201904043119P115592119 w.e.f. 04.03.2020 to 03.03.2021. The Complainant had paid an amount of Rs.61,984/- as premium for the said policy for the insured declared value of Rs.35,00,000/-. Unfortunately the vehicle of the Complainant had collided with another vehicle as a stray cattle came in front of the vehicle on 02.10.2020. The vehicle of the Complainant was damaged in the said accident. The matter was reported to the Police Station Garshankar. DD No.23 dated 02.10.2020 was lodged. Compromise had been effected between both the parties, who had suffered during the accident. There was no negligence on the part of either of the drivers of both the vehicles. It was mentioned in the Complaint that intimation with regard to the accident was sent to the OP on

05.10.2020. On receipt of intimation, the claim was registered with the OPs vide claim Registration No.2019043120C05023001. OP had appointed Surveyor to assess the loss of the vehicle of the Complainant. He had supplied all the requisite documents to the OP. He had received a letter dated 16.04.2021 from the OP vide which the claim of the Complainant was declared as No Claim by the competent authority due to 21.9% overloaded vehicle at the time of accident. The gross weight of the vehicle was 31000 and unladen weight of the vehicle was 14800. At the time of accident the vehicle of the Complainant was carrying load within permissible limits i.e. 300 CFT as per the Tax Invoice dated 02.10.2020. It was averred that it had been clearly mentioned in the tax invoice that the vehicle was carrying weight as per the capacity passed by the relevant authority. The Complainant had approached OP for release of Insurance Claim but they had refused to do so. The act of OP tantamounts to be a case of 'deficiency in service' and 'unfair trade practice'. Hence, the Complaint was filed by the Complainant by seeking directions to be issued to the OP to pay an amount of Rs.13,00,000/- being the Insurance amount of the damaged vehicle along with interest @ 18% per annum till its realization. OP be also directed to pay an amount of Rs.50,000/- as compensation for causing mental agony and harassment and to pay Rs.22,000/- as litigation expenses.

4. Upon issuance of notice to the Complaint, OP had filed written statement by raising certain preliminary objections. No cause had arisen to the Complainant to file the Complaint and to drag the

OP into unnecessary litigation. The Complainant did not fall under the definition of 'Consumer' as per CP Act. It was also stated in the written reply by the OP that complicated questions of law/facts were involved in the Complaint. The same could not be decided in summary proceedings thus, on this ground also, the District Commission had got no jurisdiction to try and decide the Complaint.

5. On merits, it was admitted that at the time of accident the vehicle of the Complainant was insured with OP subject to terms and conditions of the policy. The sum insured was only Rs.35,00,000/- (Less deductible). The vehicle had met with accident on 02.10.2020 at about 4:00 am. Upon receipt of intimation from the Complainant, the OP had appointed Er. Sukhvinder Singh Notra as spot Surveyor. He had inspected the vehicle on 02.10.2020 and submitted his report as per the terms and conditions of the policy. After receiving the sport survey report, the OP had also appointed Er.Rajesh Aggarwal to assess the final loss. Said Surveyor had personally inspected the vehicle in question and had assessed the loss for an amount of Rs.5,15,000/- as net loss after deducting 25% depreciation on metal parts, 50% on plastic parts, Rs.22,603.78 for salvage value and Rs.1500/- excess as per policy clause/T&C. He had submitted his report dated 18.01.2021 subject to terms and conditions of the policy. He was not entitled to claim an amount of Rs.2500/- as toeing charges as per terms and conditions of the policy. At the time of accident, the Tipper/vehicle was loaded with 500 cubic feet crusher material. Its carrying capacity was 22935 Kg against the permitted

load capacity of 16940 Kg at the time of accident. Therefore, the Tipper was overloaded with capacity of 6795 Kg i.e. 21.9% more load which was in violation of the terms and conditions of the policy and Motor Vehicle Act/Rules.

6. It was further stated by the OP that the insured had breached the mandatory terms and conditions of the policy. Therefore, the OP had rightly closed his claim as “No Claim”. It was denied that the vehicle was carrying the load within limits i.e. 300 CFT as per tax invoice dated 02.10.2020 issued by M/s Singla Transport Company Khanpur Khuhi Noorpurbedi Punjab. It was alleged that the said invoice was the forged document and the same had been procured after the date of accident to certify that said vehicle was carrying load within limit.

7. Further, the OP had stated in the written reply that the Complainant had submitted Invoice No.2692 dated 01.10.2020 of M/s Bhinder Stone Crusher, Village Algran, District Ropar. As per the said invoice the vehicle was carrying 500 of 10 mm crusher at the time of accident/when the claim was lodged. The accident had taken place on 02.10.2020 at about 4:00 am at Village Rormajra, GSH Anandpur Sahib Road while the vehicle was going to Malerkotla after loading the crusher of 500 CFT of 10 mm. Therefore, the question of loading the crusher from M/s Singla Transport Company on 02.10.2020 did not arise at all. The Complainant had submitted a forged bill dated 02.10.2020 issued by M/s Singla Transport Company. The dispute

regarding forging of documents could not be decided in summary proceedings as detailed evidence was required for the same. There was no 'deficiency in service' on the part of OP. All other averments had been denied by the OP and it had prayed for dismissal of the Complaint.

8. By considering the averments made in the Complaint, the Complaint filed by the Complainant **was dismissed vide order dated 13.06.2024** passed by the District Commission. The relevant part of said order is reproduced as under:-

“12. Therefore, as per our above discussion we have the view that the present complaint should be examined by an appropriate court of law and not by this Commission, hence we dismiss the present complaint with no costs. The complainant has the liberty to approach the Competent Court/Commission/Fora in regard to his grievances. Copy of the order be supplied to the parties free of costs as per rules. File be consigned to the record room.”

9. The Appellant/Complainant has filed the present Appeal being aggrieved by the order dated 13.06.2024 passed by the District Commission by raising a number of arguments.

10. **Sh.Sparsh Chhibber, Advocate, learned Counsel for the Appellant/Complainant** has argued on the similar lines as per the averments mentioned in the Complaint. He has submitted that the Complaint was allowed by the President of the District Commission and dismissed by the two Members vide order dated 13.06.2024. The Complaint of the Appellant/Complainant had been dismissed in the

ration 2:1. Therefore, said order is an unjust and illegal. The Complaint was dismissed on the ground that vehicle was overloaded and Complainant was not a Consumer and he should have approached appropriate Court for redressal of his grievance. Learned Counsel has further submitted with regard to document Ex.C-9 which reflects that the vehicle was not overloaded and it was carrying load within permissible limits. The onus of proof was upon the OP to prove that the document was false/forged. But the OP Insurance Company had failed to prove the alleged contradiction. Furthermore, learned Counsel has also submitted that in case the vehicle was overloaded even then it would not have made any difference as the accident did not take place due to the overloaded vehicle. Therefore, there was no breach of contract. In this context the learned Counsel has relied upon the judgment of Hon'ble Apex Court of case titled as ***"B.V.Nagaraju V. M/s Oriental Insurance Co. Ltd."* [AIR 1996 Supreme Court 2054 : 1996 (3) RCR (Civil) 304 (SC)]**. Learned Counsel has also submitted that there is no violation of any terms and conditions in the case the accident takes place due to stray animal. The Supreme Court of India has decided the issued in this regard of case titled as ***"National Insurance Company Ltd. Vs. Swaran Singh & Ors."*, 2004 (2) RCR (Civil) 114: (2004) 3 SCC 297 a three judge bench.**

11. Learned Counsel has further submitted that the order passed by two Members of the District Commission is not correct/justified as they had failed to address the issue that

overloading of vehicle could not be a sole ground for an Insurance Company to reject the claim. The Respondent/OP had failed to prove that accident had occurred on account of overloading. The OP had also failed to prove that the tax invoices produced by the Appellant/Complainant were forged and fabricated. Factually, the accident had occurred when one of the vehicles had struck a stray animal/cattle and had collided with each other. Due to impact of collision, the vehicle of the Complainant was damaged. There was no negligence on the part of the driver in the said accident. The Respondent/OP had wrongly rejected the claim of the Appellant/Complainant. He has prayed for acceptance of the Complaint as well as Appeal. Learned Counsel has relied upon the judgment/order of this Commission of case titled as **“Balwinder Singh & Anr. Vs. Axis Travel Advisors Pvt. Ltd. & Ors.”** in FA No.60 of 2024, decided on 06.05.2024 and judgment of Hon'ble National Commission of case titled as **“M/s. Ahaar Feeds V. Future Generali India Insurance Company”**, 2019 (1) CPR 561: 20219 (2) CPJ 210: 2019 (3) CLT 292, in support of his arguments.

12. **Sh.Ravinder Arora, Advocate, learned Counsel for the Respondent/OP** has argued on the similar lines as mentioned in the written reply. Learned Counsel has submitted that the District Commission had rightly held that the tax invoice Ex.OP/3 reveals that the vehicle of the complainant was overloaded with quantity of 500 CFT (10 mm) crusher but the tax invoice dated 02.10.2020 (Ex.C-9) reflects that the load was of 300 CFT (10 mm) crusher in the vehicle.

There was a dispute regarding genuineness of both tax invoices with regard to the overload in the vehicle. By taking this view, the District Commission had rightly dismissed the Complaint of the Complainant being not maintainable as there were disputed facts in the Complaint. Learned Counsel has also submitted that the District Commission had rightly passed the order and no interference is required. He has prayed for dismissal of the Appeal.

13. We have heard the oral arguments raised by learned Counsel for the parties. We have also perused the order dated 13.06.2024 as well as all the relevant documents available on the file.

14. Facts relating to the filing of the Complaint by the Complainant before the District Commission issuance of notice, raising of oral arguments by learned Counsel for the parties and passing of impugned order dated 13.06.2024 by the District Commission, thereafter filing of present Appeal before this Commission by the Appellant/Complainant are not in dispute.

15. The issues for adjudication before us is as to whether the order passed by the two Members of the District Commission Malerkotla had rightly dismissed the Complaint of the Complainant or not?

16. Before the adjudication of the aforesaid issue, it is pertinent to mention that in the case in hand there was a dissent between the President of District Commission and two Members. We

have proceeded as per the provision of CP Act, 2019 with regard to dissent which is reproduced as under:

Section 39 (3)

(3) In any proceeding conducted by the President and a member and if they differ on any point or points, they shall state the point or points on which they differ and refer the same to another member for hearing on such point or points and the opinion of the majority shall be the order of the District Commission.

In light of above, we have considered the order dated 13.06.2024 passed by two Member of the District Commission.

17. Further, we have gone through the following documents:-

- i. Ex.C-1 Repudiation/No claim letter,
- ii. Ex.C-2 Insurance Policy issued by OPs,
- iii. Ex.C-4 GD lodged at Garshanker,
- iv. Ex.C-5 Certificate of fitness,
- v. Ex.C-7 Certificate of Registration,
- vi. Ex.C-8 Goods Permit issued by Govt. of Punjab.
- vii. Ex.C-9 Tax Invoice issued by M/s Singla Transport Company, Nurpurbedi,
- viii. Ex.OP/3 Invoice issued by Bhinder Stone Crusher, Vill. Algran, Distt. Ropar,
- ix. Ex.OP/7 Surveyor Report dated 18.01.2021
- x. Ex.OP/11 Guidelines related to overloading of goods carrying vehicles.
- xi. Ex.OP/12 Repudiated letter dated 16.04.2021

A perusal of aforesaid documents particularly Ex.C-9 and Ex.OP/3, show that the overload carried by the said vehicle is disputed. As per Ex.C-9, the overload was within limit i.e. 300 CFT, whereas in

Ex.OP/3 load was mentioned 500 CFT. The OP had repudiated the Insurance Claim of the Complainant vide letter dated 16.04.2021. The relevant content of the said letter is reproduced as under:

“This is reference to Loss Intimation of subject cited vehicle and further Survey has been done on various levels by different Surveyors and on going through the claim papers found that the vehicle was overloaded @ 21% at the time of accident. Accordingly, the Competent Authority has filed the claim as No Claim due to overloaded vehicle as per the terms and conditions of the Insurance Policy.”

A perusal of aforesaid letter transpires that the claim of the Complainant was repudiated on the ground of overload. In the said context overloading of vehicle, we are fortified by the judgment of Hon’ble Supreme court of India in case “**Ashok Kumar Vs. New India Assurance Co. Ltd.**”, **Civil Appeal No.4758 of 2023, decided 31.07.2023.** The relevant part of the judgment is reproduced as under:-

“18) In Amalendu Sahoo (supra), this Court noticed the guidelines issued by the New India Assurance Co. Ltd. in settling claims on non-standard basis. The guidelines read as under:-

Sl.No.	Description	Percentage of settlement
(i)	Under declaration of licensed carrying capacity.	Deduct 3 years’ difference in premium from the amount of claim or deduct 25% of claim amount, whichever is higher.
(ii)	Overloading of vehicles beyond licensed carrying capacity.	Pay claims not exceeding 75% of admissible claim.
(iii)	Any other breach of warranty/condition of policy including limitation as to	Pay up to 75% of admissible claim.”

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*The above guidelines were followed by this Court in **Amalendu Sahoo (supra)** as is clear from para 14 of the said judgment.*

*The District Forum and the State Commission have rightly applied **Amalendu Sahoo (supra)** to the facts of the present case and awarded 75% on non-standard basis.*

*19) **Nitin Khandelwal (supra)** and **Amalendu Sahoo (supra)** lay down the correct formula that where there is some contributory factor, a proportionate deduction from the assured amount would be all that the Insurance Company can aspire to deduct. We are inclined to accept the plea of the appellant that in the case at hand, on the facts governing the scenario, Clause (iii) of the table set out in para 14 of **Amalendu Sahoo (supra)** is attracted and the District Forum and the State Commission were justified in awarding the entire 75% of the admissible claim.*

20) For the aforesaid reasons, the Appeal is allowed. We set aside the judgment of the National Commission and restore that of the District Forum as affirmed by the State Commission.”

As per the aforesaid judgment, the case of the Complainant falls in description (ii) of the above mentioned table.

18. We have also gone through the Surveyor Report submitted by Er.Rajesh Aggarwal, Insurance Surveyors & Loss Assessor (Ex.OP/7), wherein the assessment to the loss has been mentioned as Rs.5,15,000/-. The Surveyor has clearly incorporated in his Surveyor report that the said claim settlement is recommended as per the assessment made by him after going through the damaged to the parts/labour charges/toeing charges etc., less salvage value and excess policy clause. Therefore, it is held that the Complainant is

entitled to a claim settlement on non-standard basis i.e. 75% of admissible claim of Rs.5,15,000/- in light of the aforesaid of Hon'ble Supreme Court.

19. Finding force in the arguments raised by learned Counsel for the Appellant/Complainant, **we partly allow the Appeal of the Appellant and set aside the order dated 13.06.2024 passed by the District Commission. The Complaint stands partly allowed.**

20. Since the main case has been disposed off, so all the pending miscellaneous applications, if any, are accordingly, disposed off.

21. The Appeal could not be decided within the statutory period due to heavy pendency of court cases.

**(JUSTICE DAYA CHAUDHARY)
PRESIDENT**

**(SIMARJOT KAUR)
MEMBER**

August 06, 2025
(Rupinder 2)