NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

RESERVED ON : 26.05.2025
PRONOUNCED ON : 12.06.2025

REVISION PETITION NO.599 OF 2019

(Against the Order dated 28.09.2018 in F.A. No. 531/2012 of the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai)

M/s. Bharti Axa General Insurance Co. Ltd.
965, Second Floor, Avinash Road,
Coimbatore -641 037.
Through:

Bharti Axa General Insurance Co. Ltd.
Mercantile House, 7th Floor,
15, Kasturba Gandhi Marg,
Connaught Place,
New Delhi-110 001. ….. Petitioner

Versus

K. Subbulakshmi
Proprietrix of Dhanalakshmi Machine Tools,
A-36, Srivastsa Garden,
Mettupalayam Road,
Coimbatore-641 034. ..... Respondent

BEFORE:

HON'BLE AVM J. RAJENDRA, AVSM, VSM (RETD.), PRESIDING MEMBER
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER

For Petitioner : Mr. S.M. Tripathi, Advocate
For Respondent : Mohd. Aman Alam, Proxy Counsel

JUDGMENT

AVM J. RAJENDRA, AVSM, VSM (RETD.), PRESIDING MEMBER

1. This Revision Petition is filed under Section 21(b) of the Consumer Protection Act, 1986 ('the Act') challenging the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai ('State Commission') order dated 28.09.2018 partly allowing FA No.531 of 2012 and setting aside the District Consumer Disputes Redressal Forum, Coimbatore ('District Forum') order dated 27.06.2012.

2. As per the Registry report, there is 18 days delay in filing this Revision Petition. For the reasons stated in IA/5000/2019, the delay is condoned.

3. For convenience, the parties in the present matter are referred to as stated in the complaint before the District Forum. K. Subbulakshmi is the Complainant (Respondent herein) while M/s. Bharti Axa General Insurance Co. Ltd. is the Opposite Party (OP) (Petitioner herein).

4. Brief facts of the case, as per the Complainant, are that the complainant is the owner of vehicle Eicher Van No. TN38W1708 which was insured by the Opposite Party (OP) insurer vide Policy No. FCV/1228504/T1/03/C2T111 valid from 30.03.2010 to 29.03.2011. This was a Comprehensive Policy for indemnifying the loss which may be suffered by the Complainant. The said vehicle had met with an accident on 10.02.2011 at 11.00 PM near Vellore and sustained damages. On being reported, the vehicle was inspected by a Motor Vehicle Inspector on 11.02.2011 and the Motor Vehicle Inspector had rendered an inspection report. Thereafter, the complainant had preferred a claim with the OP insurer on 17.02.2011 and all necessary documents were submitted. However, the OP illegally repudiated the claim vide letter dated 21.03.2011 on the ground that the permitted capacity of the vehicle was 9.2 Tons, but at the time of the accident

the vehicle was carrying the load of 11.2 Tons thereby violating the terms of the policy. Alleging deficiency in service by the insurer for repudiating the claim for Rs.4,04,205 (out of claimed Rs.5,14,205) towards repairs of the insured vehicle, the Complainant contended that the reasons cited for repudiation are false and that the vehicle had carried only normal load, and that the repudiation is a tactic to evade liability, constituting deficiency in service causing loss and mental agony to her. The Complainant had caused issue of a legal notice dated 09.05.2011, which the insurer rebutted maintaining the stand of overloading. She filed the Consumer Complaint before the District Forum seeking payment of Rs.4,04,205 along with interest, Rs.50,000 as compensation and costs.

5. On being issued notice, the OP insurer filed its written version, contesting the complainant's claims and the OP contended that the vehicle was carrying approximately 11,880 kgs of goods at the time of the accident, exceeding its permitted carrying capacity by over 2.5 Tons. OP contended that this action had violated the policy terms, as the vehicle's registration certificate and policy specified a Gross Vehicle Weight (GVW) of 16,200 kgs and an unladen weight of 7,000 kgs, resulting in a permitted carrying capacity of 9,200 kgs. Although their surveyor assessed the loss at Rs.2,51,723, they maintained that the significant overloading constituted a fundamental breach of the

terms of the policy conditions. Consequently, they contended the repudiation was valid, made with due application of mind, and did not amount to deficiency in service under the Act, 1986.

6. The District Forum, vide Order dated 27.06.2012, dismissed the complaint as under:

3. The points that arise for consideration in this complaint are:-

1. Whether the OP committed deficiency in service?
2. Whether the complainant is entitled to compensation?

4. On behalf of the complainant, the Proof Affidavit of the complainant was filed and Exhibits A1 to A13 was marked.

5. On the side of opposite party, the Proof Affidavit of the OP was filed and Ex Point B11 was marked,

6. The grievance of the complainant is that the OP committed deficiency in service by repudiating her claim for reimbursement of the repair etc. expenses to the extent of Rs.5,14,205 (limited to Rs.4,04,205) for her vehicle Eicher Van bearing regn.No.TN 38W1078 with sustained damages in a road accident

7. Per contra, the Insurance company / opposite party contends that, the complainant's vehicle carried excess weight than the permitted carrying capacity at the time of the accident thereby violating the terms and conditions of the Policy leading to the repudiation of the claim of the complainant and, there is no deficiency in service on the part of the opposite party.

8. Undisputed facts are:-

a. the complainant is the owner of the Eicher Goods Commercial Lorry bearing regn.No.TN 38W 1708;
b. the above vehicle is insured with the opposite party under Policy N0.FCV/1U22 8504/T1/03/C2 T111 for Rs.4,78,500 for the period from 30.3.10 to 29.3.11;
c. on 10.2.11 the vehicle met with an accident at about 23 hrs near Sembakkam, Vellore District and sustained damages;

d. the Vellore Taluk Police station registered a case In this regard on 11.2.11 in cr.No.54/11 u/s,279 IPC against the driver of the above lorry of the complainant;

e. the complainant submitted her claim form to the insurer;

f. the insurer appointed an IRDA approved surveyor who inspected the vehicle and assessed the loss at Rs.2,51,723 and

g. The insurer repudiated the claim of the complainant on 21.3.11 stating that the vehicle carried excess weight than the permitted carrying capacity thereby violating the terms and conditions of the Insurance Policy.

9. However, it is the claim of the complainant that the vehicle was carrying only a normal weight and It was not more than the permitted weight. Hence according to her, the insurance company has taken an arbitrary stand viz. that the vehicle carried excess weight than the permitted capacity only in order to escape from its legal liability thereby committing deficiency in service and causing loss to her.

10. Ex.AI (=B4) is the copy of the Registration Certificate relating to the insured vehicle. It clearly states that the vehicle is permitted to carry the following weight:-

GWV(C) : 5,950 kgs,
GWV(R): I6200kgs

In Ex.B4 it is stated as below:-

Unladen weight: 7000kgs. Laden weight 18,200kgs.

11. Therefore, the maximum permitted carrying capacity is 9,200 kgs only. Ex.A2 the Certificate of Insurance for the vehicle also states that the gross vehicle weight is 16,200kgs.

12. With regard to limitation as to use of the vehicle, the Policy further states that it covers use, only for carrying of goods within the meaning of Motor Vehicles Act.

13. Ex.B5 is the copy of the Goods Consignment Note relating to the vehicle. It shows that the vehicle carried 11,880kgs of consignment. It is, therefore, evident that the insured vehicle

has carried nearly more than the permitted carrying capacity thereby violating the terms and conditions of the Policy of Insurance. Hence, insurer is entitled to repudiate the claim of the complainant on the ground of violation of the terms and conditions of the policy of insurance relating to the vehicle and accordingly it has repudiated the Insurance claim of the complainant.

14. It is pertinent to note that Ex.A13 the FIR has also been filed against the driver of the complainant's vehicle under Section 279 IPC. Mr.C.Shivaji who has filed the complaint before the Vellore Taluk Police Station regarding the accident has stated that the complainant's Lorry Driver drove the vehicle in a rash and negligent manner violating the rules of the road leading to the accident. Inasmuch as there is nexus between the accident and the vehicle carrying more than the permitted capacity the repudiation of the claim of the complainant by the insurance Company is justified and it cannot be termed as deficiency in service.

15. In its order in RP No.3176/ 2011 dt. 28.11.11 the Hon'ble National Consumer Disputes Redressal Commission, New Delhi has held as below:-

OROER

Anupam Dasgupta

This revision petition challenges the order dt. 17.3.1l of the Karnataka State Consumer Disputes Redressal Commission, Bangalore in appeal No.2925 of 2010, by this order, the State Commission allowed the appeal of the respondent/Opposite party (OP) Insurance Company and set aside the order dt.ll.6.10 passed by the District Consumer Disputes Redressal Forum, Bellary (In short, "the District Forum") by which the District Forum had partly allowed the complaint.

I have heard the learned counsel for the petitioner/complainant by its letter dt.7.10.O9, the respondent Insurance Company repudiated the claim of the petitioner/complainant for indemnification of the loss due to damage of his motor vehicle which met with an accident on 27.4.09. The ground cited by the respondent for repudiation of the claim was as under:

"The said goods carrying vehicle was registered for twelve in all seating capacity. It has been gathered and also confirmed in the police complaint that at the time of accident there eighteen

people traveling in the abovementioned vehicle. This exceeds the seating capacity of the vehicle and is a violation of limitation to use clause (pl. refer No.3 of the said clause) which states that:

"The policy does not cover:

"Use for carrying passengers in the vehicles; except employees (other than the driver) not exceeding the number permitted in the registration document and coming under the purview of Workmen's Compensation Act, 1923".

Moreover, during the hearing, We learned counsel for the petitioner did not dispute that the motor vehicle was registered for carriage of passengers not exceeding to 12 (including the driver) and at the time of accident the vehicle was instead carrying 16 persons. Therefore, there was an explicit and admitted violation of one of the conditions of the insurance policy as rightly pointed out in the letter of repudiation of the claim Issued by the insurance company.

In view of the foregoing, the impugned order of the state Commission is substantively valid to the extent it has set aside the order of the District Forum allowing the insurance claim of the petitioner/complainant and dismissed the complaint.

The revision petition, is therefore, dismissed with no order as to cost."

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(Anupam Dasgupta)
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The ratio of the above order of the Apex Commission applies to the facts of the case.

16. In the present case also, the complainant has violated the terms and conditions of the Policy by carrying excessive weight in the insured vehicle than the permitted capacity thereby violating the terms and conditions of the Policy of insurance. Hence, the opposite party has not committed any deficiency in service and the complainant is not entitled to claim any compensation. The points 1 and 2 are answered accordingly.

In the result, the complaint is dismissed. No costs."

7. Being aggrieved, the First Appeal No. 531 of 2012 filed by the complainant was partly allowed by the State Commission vide order dated 28.09.2018, with following observations:

"5. <u>Points for Consideration in this Appeal are as follows:-</u>

1) Whether there was any deficiency in service on the part of the opposite party?
2) What relief the complainant is entitled to?

6. Before the learned District Forum, the complainant had filed the proof affidavit and exhibits Ex.Al to Ek.A13 were marked. On the side of the opposite party, the proof affidavit of opposite party was filed and exhibits Ex.B1 to Ex.B11 were marked.

7. Point:- The learned District Forum had dismissed the complaint on the sole ground that the complainant had permitted excess load being carried in the lorry involved in the accident over and above the permitted load in violation of the policy condition No.2 and hence not entitled to get the insured amount. But perusal of records would show that the permitted capacity of the vehicle as per the registration certificate is 9 .2 tones. But the truck carried 11.2 tones i.e., 2 tones in excess. It comes to 12% of the permitted capacity. As per the observation of the Hon'ble Supreme Court of India in AIR 1996 SC 2054, AIR 20O4 Supreme Court 1531 and AIR 2005 Supreme Court 2850, We hold that the excess weight carried by the truck at the time of the accident is not so a fundamental breach so as to absolve the insurer or its liability. Hence we hold that the repudiation of claim is not proper and hence the opposite party had committed deficiency in service.

8. The complainant claimed of Rs.4,04,205/- being the cost of repairs and Rs.50,000/- as compensation for mental agony and the cost. The complainant had deducted Rs.1,10,000/- being the salvage value from the total cost of repairs of Rs.5,14,205/-. But the IDV itself was Rs.4,78,500/-. The surveyor had filed his final report Ex.B6 and assessed the value of damage/cost required to carry out the repairs at Rs.2,51,723/- after making necessary deductions. The correctness and the validity of the surveyor report under

Ex.B6 has not been challenged by the complainant. Hence we are of the view that the complainant is entitled to get Rs.2,51,723/- only. Though there was deficiency in service on the part of the opposite party as there was some debatable point regarding the admissibility of the claim, we are of the view that there is no need for award of any compensation for mental agony allegedly suffered by the complainant.

In the result, the appeal is partly allowed, the order of the learned District Forum dated 27.06.2012 is set aside and the complaint is partly allowed, directing the opposite party to pay Rs.2,51,723/- (Rupees Two Lakh Fifty One Thousand Seven Hundred and Twenty Three only) to the complainant with interest @9% p.a. from the date of complaint till payment.

Time for compliance:- 4 weeks from the date of receipt of copy of this order.

Parties shall bear their own cost throughout."

8. Being dissatisfied from the impugned State Commission order, the Petitioner/OP filed the instant Revision Petition.

9. In his arguments, the learned counsel for the Petitioner/ OP reiterated the grounds for filing the present Revision Petition and the contentions made in the written version filed before the District Forum. He asserted that the repudiation of the claim is justified on the grounds that there is no deficiency in service on the part of the Petitioner. He sought setting aside the State Commission's order, arguing that it erroneously overturned the District Forum's dismissal of the complaint which rightly found no deficiency of service. The undisputed facts show that the insured vehicle, covered for a Gross Vehicle Weight (GVW) of 16,200 kg and a registered carrying capacity of 9,200 kg,

was involved in an accident while carrying 11,880 kg of cargo, resulting in a laden weight of 18,880 kg. This constituted a breach of the Motor Vehicles Act, 1988, the policy's specified GVW limit, and the 'Limitations as to Use' clause restricting use to carriage of goods 'within the meaning of the Motor Vehicles Act'. The policy's General Exception Clause 3 and an exclusion for damage caused by overloading explicitly bar liability for such breaches. The State Commission incorrectly calculated the excess load as only 12% (2 Tons) when it was actually 29% (2.68 tons) over the registered capacity, and wrongly deemed this substantial overloading a non-fundamental breach, ignoring binding Supreme Court precedents e.g. ***United India Insurance Co. Ltd. vs. Harchandrai Chandanlal, 2004 8SCC 644, *Oriental Insurance vs. Sony Cheriyan, AIR 1999 SC 3252*** mandating strict interpretation of policy terms without alteration. He asserted that the State Commission's order suffers from illegality and material irregularity, and the Petitioner prayed for it to be set aside while restoring the District Forum's order dismissing the complaint.

10. On the other hand, the learned counsel for the Petitioner/ Complainant reiterated the facts of the complaint and supported the order passed by the State Commission. He argued that the original complaint was filed against the OP due to a deficiency in service, as the OP wrongfully repudiated a legitimate claim. He contended that the

revision petition deserves dismissal as it fails to satisfy any jurisdictional parameters under Section 21(b) of the Consumer Protection Act, 1986, since the State Commission's order dated 28.09.2018 was neither passed in excess of jurisdiction, nor due to failure/exercise of jurisdiction illegally or with material irregularity. The core issue whether carrying 11.2 Tons (merely 2 Tons or 12% over the permitted 9.2 Tons capacity) constitutes a "fundamental breach" absolving the OP insurer of liability is settled law: Supreme Court precedents e.g. ***Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan, B.V. Nagaraju v. Oriental Insurance Co. Ltd., Divisional Officer, Hassan and Lakhmi Chand v. Reliance General Insurance*** unequivocally holds that such marginal overload does not amount to a fundamental breach voiding the policy, absent proof it directly caused the accident. The insurer must "read down" exclusion clauses to serve the policy's main purpose of indemnification; its failure to settle this legitimate claim despite collecting premiums constitutes clear deficiency in service. Consequently, the State Commission's order directing compensation is legally sound and merits affirmation, warranting dismissal of the present revision petition.

11. We have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by learned Counsels for both the parties.

12. The main issue to be determined is, whether the overloading of the insured vehicle carrying 11,880 kgs against a registered capacity of 9,200 kgs constitutes a "fundamental breach" of the insurance policy terms and statutory requirements, thereby absolving the liability of OP insurer?

13. The OP/Petitioner's Claim is that the overloading by 29% over registered capacity, exceeding GVW breaches the Motor Vehicles Act, the policy's "Limitations as to Use" clause, and triggers General Exception Clause 3/exclusion for overloading. This is a fundamental breach voiding coverage. On the other hand, Complainant's Claim is that the overload is 12% as per State Commission, which is marginal and not fundamental, especially in the absence of proof that it caused the accident. Exclusion clauses must be "read down" to uphold the policy's purpose.

14. The Hon'ble Supreme Court in ***Ashok Kumar versus New India Assurance Co. Ltd., 2023, LiveLaw (SC) 587*** has held as under*:*

> *"14) It is well settled in a long line of judgments of this Court that any violation of the condition should be in the nature of a fundamental breach so as to deny the claimant any amount. [see* ***Manjeet Singh vs. National Insurance Company Limited and Another, [(2018) 2 SCC 108]; B.V. Nagaraju vs. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, [(1996) 4 SCC 647], National Insurance Co. Ltd. Vs. Swaran Singh and Others, [(2004) 3 SCC 297] and Lakhmi Chand vs. Reliance General Insurance, [(2016) 3 SCC 100]]***

15) It is an admitted position in the Repudiation Letter and the Survey Report that the theft did happen. What is alleged is that the Claimant was negligent in leaving the vehicle unattended with the key in the ignition. Theft is defined in Section 378 of the IPC as follows:-

> *"378. Theft.—Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."*

As will be seen from the definition, theft occurs when any person intended to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking. It is not the case of the Insurance Company that the Claimant consented or connived in the removal of the vehicle, in which event that would not be theft, in the eye of law. Could it be said, as is said in the repudiation letter, that the theft of the vehicle was totally the result of driver Mam Chand leaving the vehicle unattended with the key in the ignition? On the facts of this case, the answer has to be in the negative. It is noticed in the repudiation letter that the driver Mam Chand had, after alighting from the vehicle, gone to enquire about the location of Mittal's Farm and that after he went some distance, he heard the sound of the starting of the vehicle and it being stolen away. The time gap between the driver alighting from the vehicle and noticing the theft, is very short as is clear from the facts of the case. It cannot be said, in such circumstances, that leaving the key of the vehicle in the ignition was an open invitation to steal the vehicle.

16) The Court of Appeal in England, in the case of ***David Topp vs. London Country Bus (South West) Limited, [1993] EWCA Civ 15*** *had occasion to consider the issue, though in the context of liability of the owner of the vehicle for a fatal accident. The facts as set out in the judgment are as follows:-*

> *"In accordance with usual practice, the driver, Mr. Green, left the bus in that lay-by at the bus stop at about 2.35 p.m. on 24th April 1988. He left it unlocked, with the ignition key in it. He had then a 40 minute rest period before resuming his duties, driving a different bus. There was an arrangement under which the drivers could spend their rest period in the hospital. 23 The expectation was that another driver, about eight minutes after*

Mr. Green had left the bus in the lay-by, would pick the bus up and drive the same route. But the other driver, who should have picked the bus up at about 2.43 p.m., did not do so because he was feeling unwell. His shift would have been non-compulsory overtime, and he did not report for his overtime. The bus therefore remained in the lay-by. Mr. Green saw it there later and reported that it was still standing there. Therefore, there is no doubt that the depot knew that the bus was there. But, possibly because of shortage of drivers or available staff, nothing was done to pick the bus up that evening. It was taken by somebody who has never been traced just before 11.15 at night, driven for a relatively short distance until the point where Mrs. Topp was knocked down and killed, and it was abandoned round the corner from there."

Referring to the judgment of Lord Justice Robert Goff in P. Perl (Exporters) Ltd. vs. Camden London Borough Council [1984] QB 342, the Court of Appeal held as under:-

"In so far as the case is put on the basis that to leave the bus unlocked and with the key in the ignition on the Highway near a public house is to create a special risk in a special category, it is pertinent to refer to a passage in the judgment of Lord Justice Robert Goff (as he then was) in P. Perl (Exporters) Ltd. V. Camden London Borough Council [1984] QB 342 at page 359E-F where he said:

"In particular, I have in mind certain cases where the defendant presents the wrongdoer with the means to commit the wrong, in circumstances where it is obvious or very likely that he will do so – as, for example, where he hands over a car to be driven by a person who is drunk, or plainly incompetent, who then runs over the plaintiff…"

But the sort of cases to which Lord Justice Robert Goff was there referring are far different from the present case. It may be added that that there is no evidence that the malefactor had been frequenting the public house that is shown in the picture; we do not know who he was, nor is there any evidence or presumption that persons who do frequent that particular public house are particularly likely to steal vehicles and engage in joy-riding." (underlining is ours)

The above reasoning appeals to us to conclude that the present case was an eminently fit case, where the claim at 75% ought to have been awarded on a non-standard basis. Even if there was some carelessness, on the peculiar facts of this case, it was not a fundamental breach of Condition No.5 warranting total repudiation. It was rightly so ordered by the District Forum and affirmed by the State Commission.

17) Learned counsel for the Insurance Company, in his written submissions, has placed before us an unreported order dated 29.03.2022 passed by this Court in SLP (C) No. 6518 of 2018 titled ***Kanwarjit Singh Kang vs. M/s ICICI Lombard General Insurance Co. Ltd. & Anr.*** *to support his case on the breach of Condition No.5. We have carefully perused the order. In the said order, it is recorded that concurrently the Claimant lost before the fora below and it is also recorded that the State Commission did not find the ground of leaving the ignition keys in the vehicle to be a valid reason to repudiate the claim. However, on the ground of unexplained and inordinate delay in lodging the FIR, the repudiation was upheld. In that case, while the loss was on 25.03.2010, the intimation to Police was only on 02.04.2010 so clearly it was a breach of Condition No.1. No doubt, in the penultimate paragraph of the order it is recorded that the want of reasonable care on the part of the petitioner in that case operated heavily against the petitioner and it was concluded that the repudiation could not be faulted. However, the primary reason for repudiation was the violation of condition No.1 viz. the delay in intimation to the Police. Further since there was a fundamental breach of Condition No.1, there was no occasion to raise points for settlement of claim on non-standard basis. There is no whisper about the breach of Condition No.5 being not a fundamental breach. We find the present case, on facts, completely different as there is no breach of Condition No.1 because the intimation to the police was immediate. There have been concurrent awards by the District Forum and State Commission on non-standard basis by applying* ***Nitin Khandelwal (supra)*** *and Amalendu Sahoo (supra). Hence, the order will in no manner assist the respondent-Company.*

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 use.*	*Pay up to 75% of admissible claim."*

*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."*

15. In the present case, it is undisputed that the vehicle in question was duly registered by the owner. It has a valid insurance policy as on the date of the accident and the driver had valid Driving License and the accident is covered within the policy scope. The only contentious issue between the parties is the aspect of overloading of the vehicle. At the same time, there is nothing on record to indicate that such overloading has any nexus with the accident that occasioned.

16. Applying the said reasoning, the Overloading of vehicles beyond licensed carrying capacity, does not by itself constitute a fundamental breach of the insurance policy entailing the repudiation of the claim.

17. In view of the above deliberations and after due consideration of the entire facts and circumstances of the case, we consider it appropriate to allow the claim to the Complainant to the extent of 75% of the Net Assessed Loss by the surveyor i.e. Rs.1,88,792 (i.e. 75% of Rs.2,51,723). The OP insurer is directed to pay the Complainant Rs.1,88,792 along with simple interest @ 7% per annum from the date of claim repudiation till the date of final payment, within two months form the date of this order. In the event of delay, the simple interest payable for the entire period shall be @ 10% per annum. Considering the circumstances of the case, there shall be no order as to costs.

18. With the above orders, the present Revision Petition No.599 of 2019 is disposed of accordingly.

19. Pending application(s), if any, are disposed of accordingly.

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(AVM J. RAJENDRA, AVSM, VSM (RETD.)
PRESIDING MEMBER

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(ANOOP KUMAR MENDIRATTA, J)
MEMBER

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