

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

OWP No. 67/2011

Oriental Insurance Co. Ltd.

.....Applicant(s)/Petitioner(s)

Through :- Mr. Parveen Kapahi, Advocate

v/s

J & K Consumer Dispute and Anr.

.....Respondent(s)

Through :- Mr. Rajeev K. Sangotra, Advocate

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**ORDER
11.09.2025**

1. This petition, by the Oriental Insurance Company filed under Article 226 of the Constitution of India, is directed against an order and judgment dated 11.11.2010 passed by the J & K State Consumer Disputes, Redressal Commission [**“the Commission”**] in Appeal No. 3135/2008 titled “M/S Shambu Oil Company vs. Divisional Manager, OIC and Ors”, whereby the Tribunal has reversed the order of Divisional Forum, Jammu [**“the Forum”**] dated 25.01.2010 and held the respondent no. 2 herein entitled to the balance payment of Rs. 75,000/-, deducted by the petitioner company on account of salvage, along with interest @ 8% per annum. The respondent no. 2 has also been held entitled to cost of litigation and a sum of Rs. 4,000/- has been awarded in lieu thereof.
2. The impugned judgment is challenged by the petitioner primarily on the ground that the Commission has not appreciated that as per

the policy of insurance, it was the duty of the insured to protect the salvage and also that the salvage retrieved from the spot was retained by the insurer. It is submitted that the Commission, while overlooking aforesaid aspect, has fastened the liability to make the payment even for the salvage, which was retrieved and taken possession of by the insurer.

3. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the Commission is well-reasoned and does not call for any interference by us in these proceedings.
4. Briefly stated the facts, which have led to the filing of the instant petition, are that a petrol tanker loaded with 9,000 litres of petroleum product owned by respondent no. 2 met with an accident on Kullu-Manali-Kelyong road on 21.08.2005 at Patsio. As a result of this accident, the vehicle in question rolled down and fell in river Bhaga. In this regard, a case was registered in the Police Station Kelyong under Sections 279/337/34-A IPC. Insurance claim was lodged by respondent no. 2 with petitioner-Insurance Company. With a view to process the claim, the petitioner-company in the first instance deputed one Mr. Sanjay Viadya to make spot survey. Mr. Sanjay Viadya, surveyor, visited the spot on 23.08.2005 and submitted his report. In the report Mr. Sanjay Viadya admitted that the vehicle was lying in scattered position and that the tank of the vehicle along with its chassis frame had fallen in the riverbed. It was also reported by the surveyor that due to heavy current of

water, the tank and the chassis was pushed further downstream about half a kilometer from the site of accident. He, therefore, stated that it was not possible even to verify the chassis number of the vehicle.

5. This was followed by final/last assessor and surveyor Mr. Mohinder Kumar Sharma. The final surveyor visited the spot on 21.09.2005 and broadly concurred with the findings of the preliminary investigator. He also found that the chassis frame, cowel assembly and oil tanker were lying in the middle of river Bhaga about 500 meters downstream from the spot of accident. The bonnet, bare front excel beam, bare banjo assembly and engine block (without fuel pump, cylinder head, transmission, starter and alternator) were lying on the spot. The tyres with wheel rim were also missing. Mr. Mohinder Kumar Sharma, the second surveyor, assessed the vehicle at a total loss of Rs. 2,70,000/-, but provided for deduction of salvage of Rs. 75,000/- and also a sum of Rs. 1000/- as excess value. Acting upon the report of the final assessor and surveyor an amount of Rs. 1,94,000/- was found payable by the petitioner Insurance Company.
6. The complaint filed by respondent no. 2, seeking payment of Rs. 75,000/- before the Forum, was dismissed accepting the stand of the petitioner-Insurance Company.
7. Feeling aggrieved, respondent no. 2 filed an appeal before the Commission, which has been allowed by the Commission, in terms of the judgment impugned before us in this petition.

8. In the backdrop of the aforesaid facts and regard being had to the manner in which the accident has taken place and the topography of the area where it has taken place, we are of the considered opinion that salvaging of broken parts scattered all over the hillock was not possible. As per the reports of both the surveyors, it is abundantly clear that not only the chassis of the oil tanker had been swept away by the river Bhaga about half a kilometer downstream, but other parts like bonnet, bare front excel beam, bare banjo assembly etc. were also lying scattered on the spot. Even the tyres with wheel rim were found missing on the spot.
9. We are, therefore, at loss to understand as to how and what parts of the damaged vehicle could have been salvaged. Having regard to the topography of the spot of accident, we are also of the view that the cost of retrieving the broken parts, which were scattered all over, would have been much more than the value of the scrap retrieved.
10. That apart, we clearly find that the major portion of the oil tanker stood swept away in the river and was not retrievable. This is clearly supported by the reports of both the surveyors. The Commission has taken note of both the reports as also the police report with regard to the accident and has come to the conclusion that in the given circumstances, respondent no. 2 could not have retrieved salvage worth 75,000/-. Much stress was laid by Mr. Parveen Kapahi, learned counsel for the petitioner on the release of vehicle by the Court, pending investigation in the matter. In absence

of any such report on record, with regard to the release of the vehicle parts, we are not in a position to examine this issue. We are, however, of the opinion that what was released by the Court was the vehicle on the basis of registration number, else how could vehicle be released by the Court of law whose chassis and the body has swept away in the river and could not be retrieved.

11. Viewed from any angle, we do not find any illegality or infirmity in the judgment passed by the Tribunal. The petitioner-Insurance Company was bound to indemnify respondent no. 2 for the entire loss suffered by him and by deducting Rs. 75,000/- on account of salvage without any justification was definitely deficiency of service.
12. Learned counsel for the petitioner-Insurance Company has relied upon the judgments to impress upon the argument that insurer cannot claim any amount contrary to the terms and conditions of the contract of insurance. The judgment relied upon by the learned for the petitioner in “*Sri Venkateswara Syndicate vs. Oriental Insurance Co. Ltd. And Anr. (2009) 8 SCC 507*” on facts do not advance the case of the petitioner-Insurance Company in any manner. The instant case was a case of total loss of the vehicle and, therefore, respondent no. 2 was entitled to be indemnified for the entire loss as assessed by the surveyor.
13. It is true that if respondent no. 2 had opted to retain the salvage, the amount of salvage could have been deducted. However, in the instant case as we have observed clearly hereinabove, the vehicle

was not in a position to be salvaged and, therefore, there was no question of respondent no. 2 having opted for retaining the salvage.

14. For all these reasons, we concur with the view taken by the Commission and find this petition devoid of any merit, as such, the same is, accordingly, dismissed.

15. The amount deposited in this Court shall be released in favour of respondent no. 2.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
11.09.2025
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