

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

WP (C) No. 2885/2023

*Reserved on: 07.10.2025
Pronounced on: 16.10.2025
Uploaded on: 16.10.2025
Whether the operative part or full
judgment is pronounced: Full*

United India Insurance Company Limited, ...Petitioner(s)
through its Deputy Manager, Divisional Office-I,
Opposite Presentation Convent School,
National Highway, 21/C/B Gandhi Nagar,
Jammu.

Through :- **Mr. Dinesh Singh Chauhan, Advocate with
Ms. Damini Chauhan, Advocate**

v/s

Gurcharan Singh, ...Respondent(s)
S/o Mr. Amar Singh,
R/o 39/2 Parbhat Colony, Peer Baba Road,
Tehsil & District Jammu.

Through :- **Mr. Lawanaya Sharma, Advocate**

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

J U D G M E N T

(Sanjeev Kumar J)

1. The United India Insurance Company Limited [**“the petitioner-insurance company”**] invokes extraordinary writ jurisdiction of this Court, vested under Article 226 of the Constitution of India, to set aside an order/judgment dated 18.01.2019 passed by the Jammu & Kashmir State Consumer Disputes Redressal Commission, Jammu [**“the Commission”**] in an appeal No. 4096/19 titled *“Gurcharan Singh Vs. United India Insurance Company Ltd.”*, whereby the Commission has overturned the decision of District Consumer Disputes Redressal Forum, Jammu (Constituted under J & K Consumer Protection Act, 1987) [**“the Forum”**] dated

18.12.2018 and directed the petitioner-insurance company to pay the assessed amount of loss of 9.017 KL HSD in the accident i.e. ₹ 4,71,906/- with interest @ 7% per annum from the date of its payment i.e. 17.08.2016 within six weeks from the date of the order. The respondent has also been held entitled to a sum of ₹ 20,000/- as litigation cost.

2. The impugned order of the Commission is assailed on multiple grounds. However, before we consider these grounds urged by Mr. Dinesh Singh Chauhan, learned counsel appearing on behalf of the petitioner-insurance company in support of his case set up in the petition, we deem it appropriate to state few facts, as are germane, to the disposal of this petition.

3. The respondent, being registered owner of an oil tanker bearing Registration No. JK02AC-9345, took two different insurance policies viz. 'comprehensive insurance policy' and 'Carrier's Legal Liability Policy' from the petitioner-insurance company after making payment of ₹ 28,812/- and ₹ 4,927/-, respectively. This is evidenced by the Insurance Policy Nos. 1106033115P116188184 and 1106032716P106823453. The risk covered was w.e.f. 28.03.2016 to 27.03.2017 and w.e.f. 12.08.2016 to 11.08.2017. The vehicle in question, which was loaded with 10 Kilo Liters of HSD, departed from IOC Jalandhar on 17.08.2016 vide Challan No. 55219408 and while it was proceeding towards Srinagar, it met with an accident at Morh Camp Bali Nalla, Udhampur. The accident took place at about 4:30 PM on 20.08.2016. In the

accident, not only the tanker suffered extensive damage but the HSD loaded in the vehicle was also lost. FIR No. 271/16 was registered at the Police Station Udhampur with regard to the incident. The petitioner-insurance company was informed regarding the accident and the loss occurred to the vehicle and product carried therein. The petitioner-insurance company after registering the claim appointed Mr. Rajesh Gupta, Surveyor for assessment of loss caused to the vehicle and oil product carried therein. The assessment of loss of oil product calculated was 9.017 KL out of 10 KL by the Indian Oil Corporation [“IOC”] and an amount of Rs. 4,78,744/- was paid to IOC vide a receipt dated 17.09.2016. The respondent deposited the receipt of said payment to the petitioner-insurance company. The petitioner-insurance company did not settle the claim for some time and later, on 27.10.2017, rejected the same. Faced with the rejection of the claim, the respondent filed a complaint before the Forum seeking, *inter alia*, a sum of ₹ 5,78,744/- by way of indemnification of the loss caused to the vehicle and the oil product carried therein.

4. The complaint was objected by the petitioner-insurance company on the ground that since the respondent had violated the terms and conditions of the policy of insurance and provisions of Motor Vehicle Act, 1988, as such, the petitioner-insurance company was well within its right to repudiate the claim. It was claimed that since the tanker was not being plied in accordance with its “limitations as to use”, in that, it was carrying passengers, as such, the liability of

the insurance company was excluded in terms of General Exception (3) (a) of the policy condition. To elaborate, it was contended before the Forum that the tanker was registered and insured as a goods carrying commercial vehicle (Petrol Tanker) for carrying petroleum products and, therefore, was not meant for carrying passengers. However, at the time of accident, the tanker was carrying two passengers namely Lok Nath and Preetam Chand in addition to the driver. The parties led their respective evidences in support of their case.

5. The Forum, after having considered the rival case in light of the evidence on record, came to the conclusion that the vehicle in question was comprehensively insured and it met with an accident during the currency of insurance policy and, therefore, the petitioner-insurance company was not expected to avoid its liability incurred under the policy on technical grounds. The Forum also found that the breach of contract of insurance was not a fundamental breach so as to allow the insurance company to be absolved of its liability to indemnify the insured.

6. Relying upon a couple of judgments from the Hon'ble Supreme Court, the Forum came to the conclusion that the petitioner-insurance company, in the given facts and circumstances of the case, was obliged to settle the claim of the respondent on "non-standard basis". The Forum, thus, held the respondent entitled to be indemnified by the petitioner-insurance company by a sum of

₹ 3,52,429.50/- i.e. 75% of the liability on total loss i.e. ₹ 4,69,906/-
. The Forum vide its order dated 18.12.2018 settled the complaint.

7. Feeling aggrieved by the order of the Forum, the respondent filed an appeal before the Commission. The petitioner-insurance company tried to avoid its liability on the ground that the respondent by carrying passengers in the commercial vehicle had violated the terms and conditions of the insurance policy and, therefore, the petitioner-insurance company was absolved of its liability to indemnify the respondent for the loss caused during accident.
8. The Commission, after considering the facts and circumstances of the case, vide the order impugned dated 18.01.2019 directed the petitioner-insurance company to pay a sum of ₹ 4,71,906/- with interest @ 7% per annum w.e.f. the date of its payment i.e. 17.08.2016 along with litigation cost of ₹ 20,000/-. It is this order which is called in question before us.
9. The facts in this case are not much in dispute. The vehicle in question, which is an oil tanker carrying 10 KL of HSD, owned by the respondent, is insured by the petitioner-insurance company by way of two different insurance policies viz. 'comprehensive insurance policy' and 'Carrier's Legal Liability Policy' covering the risk w.e.f. 28.03.2016 to midnight 27.03.2017 and w.e.f. 12.08.2016 to midnight 11.08.2017. The accident, in which the oil tanker in question got completely damaged along with loss of 9.017 KL HSD out of 10 KL HSD contained in it, has occurred during the currency

of the policy. The official surveyor and loss assessor Mr. Rajesh Gupta assessed the damages caused to the vehicle on different modes and recommended the net loss and leakage of 9.017 KL of oil product to the tune of ₹ 4,69,906/-. On investigation and perusal of the charge-sheet filed by the Police authorities with regard to the accident involving the vehicle in question, it was found by the petitioner-insurance company that at the time of accident, the vehicle was carrying two passengers in contravention of the terms and conditions of the policy. Keeping in view the aforesaid breach of the policy condition, the petitioner-insurance company did not settle the claim and ultimately made the claim “No claim”. This was not accepted by the respondent. The petitioner-insurance company closed the claim as “No-Claim” and the decision was conveyed to the respondent.

10. As is apparent from the reading of the order of the Forum, that the claim was required to be settled on “non-standard basis”, was accepted. In the appeal, the award of the Forum was overturned by the Commission. It is in these circumstances, the petitioner-insurance company is before us in these proceedings.

11. It is contended by Mr. Chauhan that the award passed by the Forum was correct and in consonance with the settled legal position and that the judgment passed by the Commission, impugned in this petition, is contrary to law and deserves to be set aside.

12. **Having heard learned counsel for the parties and perused the material available on record, we find that the questions which need determination in this petition can be put as under:**

i. Whether the insurance company can repudiate the claim of the insured for indemnification of the loss caused to the insured vehicle on the ground of breach of any term or condition of the insurance policy?

and

ii. Whether the insurance company is well within its right to settle the claim on “non-standard basis” where the breach of a term and condition of the insurance policy is not fundamental?

13. The answer to the questions aforesaid is not far to seek. The issue has already been dealt with by the Hon’ble Supreme Court in its latest judgment rendered in the case of **Ashok Kumar Vs. New India Assurance Co. Ltd. [Civil Appeal No. 4758/2023]** decided on **31.07.2023**, approving its view in the case of **National Insurance Company Limited Vs. Nitin Khandelwal, [(2008) 11 SCC 259]** and **Amalendu Sahoo Vs. Oriental Insurance Company Limited, [(2010) 4 SCC 536]**. It is held that where there is contributory factor, proportionate sum from the assured amount would be all that the insurance company can aspire to deduct. Para(s) 18 and 19 of the judgment are relevant and, therefore, set out below:

“.....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.”

14. The issue was considered by the Hon’ble Supreme Court in the case of **Jitendra Kumar Vs. Oriental Insurance Co. Ltd. & Anr.** [(2003) 6 SCC 420]. In paragraphs 9 & 10 of the judgment, the Hon’ble Supreme Court held thus:

“.....09 The question then is; can the Insurance Company repudiate a claim made by the owner of the vehicle which is duly insured with the company, solely on the ground that the driver of the

vehicle who had nothing to do with the accident did not hold a valid licence? The answer to this question, in our opinion, should be in the negative. Section 149 of the Motor Vehicles Act, 1988 on which reliance was placed by the State Commission, in our opinion, does not come to the aid of the Insurance Company in repudiating a claim where the driver of the vehicle had not contributed in any manner to the accident. Section 149(2)(1)(ii) of the Motor Vehicle Act empowers the Insurance Company to repudiate a claim wherein the vehicle in question is damaged due to an accident to which driver of the vehicle who does not hold a valid driving licence is responsible in any manner. It does not empower the Insurance Company to repudiate a claim for damages which has occurred due to acts to which the driver has not, in any manner, contributed i.e. damaged incurred due to reasons other than the act of the driver.

.....10 It is the case of the parties that the fire in question which caused damage to the vehicle occurred due to mechanical failure and not due to any fault or act, or omission of the driver. Therefore, in our considered opinion, the Insurance Company could not have repudiated the claim of the appellant.”

15. This was the view followed by the Hon'ble Supreme Court in the later judgment passed in **Nitin Khandelwal** (supra). The issue came up for consideration, yet again, before the Hon'ble Supreme Court in **Amalendu Sahoo** (supra), wherein the Hon'ble Supreme Court took note of guidelines issued by insurance company about settling cases where there is element of contributory negligence on “non-standard basis”. Para(s) 14, 15 and 16 of the judgment are reproduced herein below:

“.....14 In this connection reference may be made to a decision of the National Commission in the case of New India Assurance Co.

Ltd. Vs. Narayan Prasad Appaprasad Pathak, (2006) CPJ 144 (NC). In that case also the question was whether the insurance company can repudiate the claims in a case where the vehicle carrying passengers and the driver did not have a proper driving licence and met with an accident? While granting the claim on non-standard basis the National Commission set out on its judgment the guidelines issued by the insurance company about settling all such non-standard claims. The said guidelines are set out below:

Sr 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 per cent of claim amount, whichever is higher.
(ii)	Overloading of vehicles beyond licensed carrying capacity	Pay claims not exceeding 75 per cent of admissible claim.
(iii)	Any other breach of warranty/condition of policy including limitation as to use.	Pay up to 75 per cent of admissible claim.

.....15 From a perusal of the aforesaid guidelines it is clear that one of the cases where 75 per cent claim of the admissible claim was settled was where condition of policy including limitation as to use was breached.

.....16 In the instant case the entire stand of the insurance company is that claimant has used the vehicle for hire and in the course of that there has been an accident. Following the aforesaid guidelines, this court is of the opinion that the insurance company cannot repudiate the claim in toto.”

16. The legal position as adumbrated in **Nitin Khandelwal** (supra) and **Amalendu Sahoo** (supra) has been consistently followed by the Hon’ble Supreme Court in its later judgments as also in various judgments rendered by this Court. It is, thus, a trite law that the principle of “non-standard basis” to settle the insurance claim can

be applied to the cases where condition of policy including “limitation as to use” is found breached by the insured. It is equally well settled that if breach of insurance policy condition is fundamental in nature, the insurance company would be absolved of its liability to indemnify the insured.

17. In a given case, what is required to be determined is whether the breach of policy condition alleged by the petitioner-insurance company to repudiate the insurance claim is a breach of fundamental condition or an ancillary condition. In case, the breach is of the fundamental condition of the contract of the insurance which is in the nature of contract of indemnity, the insurance company would be well within its right to wriggle out of his liability of indemnification. However, the trivial breach of an ancillary condition would not absolve the insurance company of its liability to indemnify the insured. In such a case, the guidelines issued by the insurance company to settle the claims on “non-standard basis” would be applicable. In case, the breach is of the warranty or condition of policy including “limitation as to use”, the claim is to be settled by making payment of up to 75% of the admissible claim.

18. The reliance placed by the Commission on the judgment of Hon’ble Supreme Court in the case of **B.V. Nagaraju** (supra) may not be inappropriate, however, having regard to the evolution of law on the subject since 1996 when the judgment in **B.V. Nagaraju** (supra) was rendered, it is now well settled that if the breach of policy

condition has not directly or indirectly contributed to the accident in which the insured vehicle is damaged, such condition is required to be taken as an ancillary condition of contract of indemnity and the breach thereof shall not absolve the insurance company of its liability to indemnify the insured for the damage caused to such vehicle in the accident. However, if breach of such ancillary condition is pleaded and proved by the insurance company, it can plead for settlement of the claim on “non-standard basis”. The formula of “non-standard basis” which was reproduced in the judgment of **Amalendu Sahoo** (supra) has been accepted with approval by the Hon’ble Supreme Court in several judgments. However, if the breach of the condition of contract of insurance is fundamental and has directly or indirectly contributed to the accident, the insurance company would be well within its right to repudiate the claim and get itself absolved of the liability to indemnify the insured.

19. In the instant case, there was a breach of condition of policy as to the use of vehicle. The vehicle in question was admittedly an oil tanker (a commercial vehicle) and, therefore, the insured was not entitled to carry passengers. At the time of accident, there were two gratuitous passengers travelling in the vehicle and, therefore, there was a breach of condition as to use of the vehicle. It has, however, not come on record by way of evidence or otherwise that these two passengers who were sitting in the oil tanker contributed, in any

manner, or were responsible for the accident in which the oil tanker was totally damaged and the product carried therein was destroyed.

20. In view of the aforesaid admitted position emerging from the material on record, we are of the considered opinion that the award passed by the Forum is in consonance with law, whereas, the order impugned passed by the Commission does not reflect correct position of law.

21. For the foregoing reasons, **we allow this petition and quash the impugned order and judgment dated 18.01.2019 passed by the Commission. The judgment passed by the Forum dated 18.12.2018 is upheld.**

JAMMU
16.10.2025
Manan

