

**IN THE HIGH COURT OF HIMACHAL PRADESH AT  
SHIMLA**

**RFA No. 6 of 2021**

**Reserved on: 22.07.2026**

**Date of decision: 20.08.2026**

**Date of uploading on website:  
20.08.2026**

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New India Assurance Company Limited & another  
.....Appellants.

Versus

Satish Kumar Vij  
.....Respondent.

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*Coram*

**The Hon'ble Mr. Justice Sushil Kukreja, Judge.**

<sup>1</sup> *Whether approved for reporting?* Yes.

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| For the appellants: | Mr. Raman Sethi, Advocate. |
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| For the respondent: | Mr. Ashok Sood, Senior Advocate, with Mr. Rajat Rana, Advocate. |
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**Sushil Kukreja, Judge.**

The instant appeal has been preferred by the appellants, who were defendants before the learned Trial Court (hereinafter referred to as “the defendants”), under Section 96 of the Code of Civil Procedure (for short “CPC”), against judgment and decree passed by learned Additional District Judge(I), Shimla (hereinafter referred to “the learned Trial Court”), dated 27.08.2020, in Civil Suit No. 5-S/1 of 2018, whereby the suit filed by the plaintiff, who is

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<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment?*

respondent herein, for recovery under Section 26 read with Order 7, Rules 1 to 3 CPC, was partly decreed for a sum of Rs.26,27,300/- alongwith interest @ 9% per annum from the date of filing of the suit till its realization in favour of the plaintiff.

2. The facts giving rise to the instant appeal are that the plaintiff was A-Class Government Contractor with PWD and used to undertake various construction projects and for the execution of the work he had kept all kinds of heavy and small machinery. He was owner of a L&T excavator PC200, which he had purchased in the year 2007 for Rs.39,07,562/- and since its purchase it was insured with the defendants-Insurance Company under the contractor's plant and machinery insurance policy. The plaintiff further averred in his recovery suit that the above excavator was insured on 08.03.2017 for Rs.36,00,000/-, after receipt of premium of Rs.36,00,000/-, which insurance was valid till 07.03.2018. As per the plaintiff, he took the work of up-gradation of Sainj-Deha-Chopal road from Executive Engineer, Theog, Division, HPPWD District Shimla. The said work was in progress and on 07.04.2017, around 03:30 p.m., the machine was working on the site where previously excavation was undertaken.

Shri Prem Lal Operator was operating the machine and he alongwith the machine got buried under huge debris, which resulted into death of Shri Prem Lal and total loss of the machine. Report qua the mishap was lodged in the local police station and defendant No. 2-New India Assurance Company Limited, Branch Office Shimla, was requested for settling the claim, but only 6,22,700/- was deposited in the account of the plaintiff on 17.11.2017. The plaintiff received the salvage value of Rs.3,00,000/-. The plaintiff further contended that he was not informed in what manner reduced assessment was made, which was never accepted by him. As per the plaintiff, there could not be any deduction and depreciation by the defendants on the amount, which they had received as premium on the amount for which the defendants had insured the machinery of the plaintiff.

2(a). The plaintiff contended that the value of the insured machine was assessed by the defendants on 07.03.2017, after receipt of the premium, on the said amount of Rs.36,00,000/- and the accident took place just after one month from such assessment value of Rs.36,00,000/-, therefore, the defendants could not have deducted any amount from Rs.36,00,000/-. The defendants even could not

have applied depreciation, as there was no necessity of any depreciation within one month because it was the insurance company to take the premium on the depreciated value. The plaintiff contended that he was entitled to Rs.29,54,444/- after adding interest @ 15% per annum.

2(b). As per the plaintiff, he issued notice to the defendants on 06.01.2018, which was replied by the defendants on 16.01.2018 alleging that 75% depreciation has been deducted, whereas, there was no term in the insurance policy to deduct the depreciation. Thus, the plaintiff was entitled for full amount of Rs.36,00,000/- . The plaintiff prayed for a decree of Rs.29,54,444/- in his favour alongwith pendent-lite interest from the date of filing of the suit till final payment.

3. The defendants contested the suit by filing a written statement, wherein they took preliminary objections that the plaintiff had not come to the Court with clean hand, estoppel, suit was not maintainable and also not properly valued. The defendants, on merits, contended that the excavator was insured by them/insurance company from 08.03.2017 to 07.03.2018, however, it was denied that the aforesaid excavator was purchased for Rs.39,07,562/-. As

per the defendants, immediately after the mishap Shri Prashant Kumar Sood, Surveyor and Loss Assessor was appointed, who conducted spot survey in presence of Munshi (clerk) of the plaintiff and submitted a detailed report on 04.06.2017. Subsequently, Shri Dinesh Kumar was deputed to conduct the final survey. He conducted survey in presence of Shri Manoj Kumar, Supervisor, who was representative of the plaintiff and final survey report was given on 25.07.2017 by assessing net loss.

3(a). As per the defendants, surveyor/loss assessor had applied depreciation, average clause and policy excess, as per the well settled norms and principles of the insurance which were permissible under law and final survey report was legal and valid. The defendants further contended that the at the time of the accident the excavator was under insured and was ten years old. The defendants denied that the plaintiff was entitled for interest @ 15% per annum. It was contended that the plaintiff had already been paid full and final amount, as admissible, and the claim had already been settled.

4. The plaintiff filed replication to the above written statement, wherein the averments made in the plaint by the

plaintiff were reiterated and claim of the defendants was denied.

5. On the basis of the pleadings of the parties, the learned Trial Court framed the following issues on 01.09.2018:

- “1. Whether the plaintiff is entitled for recovery of Rs.29,54,444/- including future interest @ 15% per annum and cost (Rs.25,77,300/- + 15% interest + Rs.3,74,941/- up till the filing of the suit + cost of notice) on account of total loss of vehicle LNT Excavator which was insured for Rs.36 lacs (Rs.36,00,000/- - 9,22,700=25,77,300), as alleged? OPP***
- 2. Whether the plaintiff has not come to the court with clean hands, as alleged? OPP***
- 3. Whether the plaintiff is estopped from filing the present suit on account of his own acts, conduct and acquiescence, as alleged? OPD***
- 4. Whether the present suit is not maintainable, as alleged? OPD***
- 5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction, as alleged? OPD***
- 6. Whether the defendant-insurance company has rightly paid the compensation to the tune of Rs.6,22,700/- on the basis of surveyor reports, as alleged? OPD***
- 7. Relief.”***

6. After hearing the learned counsel for the parties and examining the records, the suit of the plaintiff was partly allowed and a decree of Rs.26,27,300/- was passed in favour of the plaintiff and against the defendants with interest @ 9% per annum from the date of filing of the suit till its

realization.

7. The learned counsel for the appellant-Insurance Company contended that the respondents' (defendants') case is that of under insurance where the insured had paid premium on the insured sum of Rs.36,00,000/- as against Rs.57,80,000/-, which fact has been substantially proved on record by the appellants. He further contended that the learned Trial Court has failed to appreciate the terms and conditions of the insurance policy. He also contended that the loss assessed by the independent surveyor-cum-loss assessor by applying depreciation @ 75% and policy excess is strictly on the basis of the policy conditions qua indemnity, as envisaged in the All India Tariff on Contractor Plant and Machinery Insurance Policy Ex.DW-3/B and the same is legal and fully justified.

8. Conversely, the learned Senior Counsel for the respondent (appellant) supported the impugned judgment passed by the learned Trial Court by contending that the same is the result of proper appreciation of both facts and law and the same does not need any interference of this Court.

9. I have heard the learned counsel for the

appellant, learned Senior Counsel for the respondent and carefully examined the entire records.

10. In order to prove his case, the plaintiff, himself stepped into the witness-box as PW-1 and deposed that he was A-Class Contractor with HPPWD and he had labourers, workers, skill and unskilled staff. He also deposed that he had small as well as big machinery to complete the work assigned to him. Since 1977 he had been doing the work of contractor and in the year 2007 he had purchased L&T excavator PC 200, vide bill, Ex.PW-1/A, which was insured with the defendant/insurance company. As per this witness, last insurance of the above excavator was Ex.PW-1/B. He further deposed that he had taken over a contract of road from Sainj-Deha-Chopal by HPPWD, Theog, and during the execution of the work, the excavator and its driver-Shri Prem Lal got buried under the debris. He had informed the local police qua the accident and also informed the defendant/company, vide letter, Ex.PW-1/D. He also deposed that he had got the excavator insured for Rs.36,00,000/-, but on 17.11.2017 the defendant/company had paid him Rs.6,22,700/-, as insurance claim, which was very less. This witness deposed that he had paid salvage

value of the machine amounting to Rs.3,00,000/-, vide receipt, Ex.PW-1/E. As per this witness, he was entitled to get Rs.36,00,000/-, as he had paid premium on Rs.36,00,000/-, but the defendant/company paid him only Rs.9,22,700/- for the aforesaid excavator. The defendant had no right to reduce the amount. He further deposed that he was entitled for Rs.25,77,300/-, i.e., remaining amount alongwith the interest. He had sent notice, Ex.PW-1/G, through postal receipt, Ex. PW-1/H, endorsement of which is, Ex. PW-1/J, and reply whereof, which was sent by defendant, Ex.PW-1/K.

11. On the other hand, defendant/company examined Shri Prashant Kumar, the then Surveyor, as DW-1, who had assessed the loss. He deposed that he had received information to carry out survey on 07.04.2017 from Branch Office, New India Assurance Company, the Mall Shimla and thereafter he went there on 08.04.2017. He surveyed the spot and prepared the report, Ex. DW-1/A. He also took photographs of the spot, which are Ex. DW-1/B to Ex. DW-1/K. As per this witness, he had contacted the son of the plaintiff, who had sent his Munshi (Clerk) and operator with him. He deposed that he had asked for the documents

of the machine, which were supplied to him on 29.05.2017. Thereafter, he prepared the estimate of the loss. Shri Tanmay Diwedi appeared in the witness-box as DW-2 and he had corroborated the statement of DW-1 to the extent that the survey was done by DW-1 and his report was Ex.DW-1/A. He further deposed that final survey was done by Shri Dinesh Kumar, Surveyor, and his report was Ex.DW-2/A and he had assessed loss in the sum of Rs.6,22,700/-. He also deposed that payment of the assessed loss was made to the plaintiff. As per the report of the Surveyor, Rs.50,000/- had been deducted, as loss excess, as per the policy, which was mentioned in policy, Ex.PW-1/B. This witness, admitted that the excavator was under the plant and machinery and Ex. PX was the contract plant and machinery guidelines. He had admitted that as per these guidelines, there was no provision of reducing the depreciation.

12. The defendant/company also examined Shri Dinesh Kumar, as DW-3, he did final survey and had prepared the loss assessment report, Ex.DW-2/A. He had stated in his report, on the basis of total loss, assessment was made, whereupon recommendation was made. He had assessed the loss of Rs.6,72,700/-, wherefrom excess

clause amount of Rs.50,000/- was reduced and total amount of Rs.6,22,700/- was paid. He further deposed that he had mentioned about the excess deduction of Rs.50,000/-, as per CPM policy terms and conditions and on Rs.25,00,000/- to Rs.50,00,000/-, Rs.50,000/- had to be deducted as excess loss. He also deposed that in case of loss assessment on total loss basis in CPM policy, the parameters of insurance had to be considered. As per this witness, in Ex.DW-3/B, as per clause-1 B, in case of total loss, the actual value of the machine, at the time of the loss, had to be deducted, as per the provisions. He had deposed that depreciation of 10% scale was deducted per year and 75% of the machine was to be deducted.

13. I have carefully scrutinized the entire evidence on record led by both the parties. The perusal of insurance policy, Ex.PW-1/B, shows that the excavator in question was insured on 8<sup>th</sup> March, 2007, for Rs.36,00,000/- and the policy was valid till 07.03.2018. Ex. PX is Contract Plant and Machinery Policy Terms and in this document, it has not been mentioned anywhere that the depreciation value is to be deducted while granting the compensation in case of total loss. Admittedly, the accident took place on 07.04.2017

around 03:30 p.m.. Ex.DW-1/A is the accident survey report of Shri Prashant Kumar Sood and Ex. DW-1/B is photograph, which corroborated the version of the plaintiff that the excavator had met with an accident due to land slide and was damaged under debris. As far as the salvage is concerned, admittedly, the amount of Rs.3,00,000/-, as salvage value, has been received by the plaintiff, which is liable to be deducted from the gross estimated loss. As far as policy excess is concerned, as per the terms of the insurance policy, it was deductible in the sum of Rs.50,000/-. The main dispute between the parties is as regards the under-insurance and depreciation.

14. In ***I.C. Sharma vs. Oriental Insurance Company Limited, (2018) 2 SCC 76***, the Hon'ble Supreme Court has held that under-insurance is harmful to the policyholder and not to the Insurance Company. The relevant portion of the aforesaid judgment is reproduced as under:

***“8. The only legal issue which arises for consideration is “what is underinsurance- and the effect thereof?” Underinsurance basically means that the insured has taken out an insurance policy in which he has valued the insured items for a sum which is less than the actual value of the insured item. In a country like India this is normally done to pay a lesser premium. This is, in fact, harmful to the policyholder and not to the Insurance Company because even if the entire insured property is lost, the policyholder will only get the maximum sum for which the property has been insured and not a paisa more than the***

***sum insured. To give an example, in case a person takes out the householder policy covering fire insurance and gives the value of the structure of his house and goods stored therein at Rs.50,00,000 even though the value of the same is Rs.1,00,00,000 then even if the entire house and goods are completely lost in a fire, he cannot get an amount above Rs.50,00,000 even though the value may be more."***

15. Thus under-insurance is harmful to the policyholder and not to the Insurance Company because even if the entire insured property is lost, the policyholder will only get the maximum sum for which the property has been insured and not a paisa more than the sum insured. Thus, even if the excavator in question was under insured, as alleged by the defendants, in view of the aforesaid decision of the Hon'ble Supreme Court, their claim regarding the under-insurance of excavator is of no consequence.

16. Ex.DW-2/A is the final survey report, which was done by Shri Dinesh Kumar, Surveyor/Loss assessor which shows that the policy was a Contract Plant and Machinery Insurance Policy. The plaintiff had contested Ex.DW-2/A on the ground that deduction of depreciation value had been wrongly done. The perusal of Ex.DW-2/A demonstrates that while assessing the valuation, the present replacement cost of the excavator was determined at Rs.57,80,001/-. The surveyor had assessed the loss on repair basis after deduction of 75% on every part of the machinery, which is

contrary to his own findings, as he had recommended the loss on total loss basis. The question as to how the depreciation is to be deducted in such matters came up for the consideration of the Hon'ble Supreme Court in a recent decision in ***Sumit Kumar Saha vs. Reliance General Insurance Company Limited, (2019) 16 SCC 370***. In the said case, appellant had purchased an excavator on 27.03.2007 for Rs.51,74,000/- and had accordingly, obtained an insurance cover in respect of the said excavator. The insurance policy was thereafter, got renewed, the last policy being for the period from 22.07.2009 to 21.07.2010 for a sum insured of Rs.46,56,600/-. The excavator having got damaged in a fire, a claim was lodged and assessment of the loss was made by the surveyor at Rs.25,24,273/-. The damage being a case of total loss, the question which arose was as to what amount or value the complainant was entitled. The excavator, as noted earlier, was purchased in 2007 at a price of Rs.51.74 lacs whereas it was last insured for Rs.46,56,600/-. The Hon'ble Supreme Court rejected the case of under-insurance pleaded by the insurer, noticing that as against the sum of Rs.46,56,600/-, the depreciated value, according to the insurer was only Rs.34,42,500/- and

observed that if at all it was a case of over-insurance.

Coming to the deduction of depreciation, the Hon'ble

Supreme Court inter-alia observed and held as under:

16. *The relevant stipulation in the present case, namely clause (b) of Provision -Basis of Indemnity speaks of calculation of actual value by deducting "proper depreciation". The Surveyor of the Insurance Company has worked the figure of depreciation by starting with the figure of Rs.51 lakhs as the cost of a new Excavator and then deducting 32.5% by way of depreciation assuming the life of Excavator to be 10 years. In his assessment, therefore, the stipulation of the figure of Rs.46,56,600/- on the day the contract was entered into, had no significance. Was he right and justified and how could he assume the life of the Excavator to be 10 years? If that was the understanding between the parties, the figure of sum insured could have been different. If the surveyor was calculating the depreciation from the day when the policy was entered into till the date when the accident occurred, such exercise could certainly be justified. But the exercise undertaken was in the nature of not only considering the depreciation post the policy but even including the period prior thereto. That exercise was already undertaken by the parties and in their assessment the real value of the Excavator as on the day when the policy was taken out was Rs.46,56,600/-. In the face of such agreement and understanding, the surveyor could not have calculated depreciation for a period prior to the date of policy or contract. The purport of aforesaid clause was to arrive at proper valuation as on the day when there was total destruction. He could have undertaken the exercise post the date of policy to assess the real value of the insured property as on the date when the fire actually took place. And for such purposes, the assessment must start with the amount described as "sum insured" on the day when the contract was entered into. It was not open to the Surveyor or to the Insurance Company to disregard the figure stipulated as 'sum insured'. The loss had to be assessed in the present case, keeping said figure in mind.*
17. *Having considered the entire matter, in our view, except in cases where the agreement on part of the Insurance Company is brought about by fraud, coercion or misrepresentation or cases where principle of uberrima fide is attracted, the parties are bound by stipulation of a particular figure as sum insured. Therefore, the surveyor and the Insurance Company were not justified in any way in questioning and disregarding the amount of "sum insured". Further depreciation, if any, can always be computed keeping the figure of "sum insured in mind. The starting figure, therefore, in this case had to be the figure which was stipulated as "sum insured". Since excavator, after the policy was taken out was used for eleven months, there must be some reasonable depreciation which ought to be deducted from "sum insured". The surveyor appointed by the insured was right in deducting 10% and in arriving at the figure of Rs.41,90,940. The other issue which weighed with*

***the surveyor appointed by the Insurance Company regarding deduction of salvage value was rightly answered by the National Commission and as such does not require any elaboration. We, thus, find that the assessment made by the State Commission was quite correct and that made by the National Commission was completely incorrect.”***

17. In the present case, the insurer accepted the proposal for insuring the excavator for a sum of Rs.36,00,000/- after receiving the premium on said amount. There was no fraud or misrepresentation on the part of the insured in obtaining the insurance policy, since the purchase value of the excavator was known to the insurer from the very beginning, when the first policy in respect of the said excavator was issued. If the actual value of the excavator as on 08.03.2017 was less than Rs.36,00,000/-, the insurer ought not to have accepted the valuation disclosed by the insured and ought to have insisted on insuring the excavator at its depreciated value. Admittedly the accident took place within one month of the renewal of insurance policy for the said assessed value of Rs.36,00,000/-. There is no term in the contract plant and machinery policy terms Ex. PX that the depreciation value is to be deducted while granting the compensation in case of total loss. Since it is a case of total loss, the question of depreciation does not arise and the insurer is not entitled to deduct any amount from Rs.36,00,000/- or apply any depreciation. Hence, in view of

**Sumit Kumar Saha's** case (supra), the defendants are bound to pay to the plaintiff an amount of Rs.36,00,000/- for which the excavator was insured vide insurance policy Ex. PW-1/B. After deducting the amount of Rs.50,000/- as policy excess, Rs.3,00,000/- as salvage value, the total amount for which the plaintiff is entitled comes to Rs.32,50,000/-. Since the plaintiff had already received a sum of Rs.6,22,700/-, therefore, by deducting this much amount, the learned Trial Court has rightly decreed the suit of the plaintiff for a sum of Rs.26,37,300/- along with interest @ 9% per annum from the date of filing of the suit till its realization.

18. In view of what has been discussed hereinabove, the impugned judgment and decree passed by the learned Trial Court does not require any interference. The instant appeal, which sans merits, deserves dismissal, and is accordingly dismissed.

Pending applications, if any, shall also stand(s) disposed of.

( **Sushil Kukreja** )  
Judge

**20<sup>th</sup> August, 2026**  
(virender)