STATE CONSUMER DISPUTES REDRESSAL COMMISSION
WEST BENGAL
FIRST APPEAL NO. SC/19/A/265/2023

HASANUR ZAMAN. .....Appellant(s)
PRESENT ADDRESS - HADIPORE JHIHRA, ABJANAGORE, PS- DEGANGA, BASIRHAT, DISTRICT- NORTH 24 PARGANAS, WEST BENGAL. PIN- 743445,WEST BENGAL.

Versus

THE CHIEF CUSTOMER SERVICE EXECUTIVE ICICI LOMBARD GENERAL INSURANCE COMPANY LIMITED & ANOTHER .....Respondent(s)
PRESENT ADDRESS - APEEJAY HOUSE, BLOCK-B, 7TH FLOOR, PS- PARK STREET, KOLKATA-700016,WEST BENGAL.
ICICI LOMBARD GENERAL INSURANCE COMPANY LIMITED
PRESENT ADDRESS - ICICI LOMBARD GENERAL HOUSE, AT 414, VEER SAVARKAR MARG, P.S.- SIVAJI PARK, NEAR SIDDHI BINAYAK TEMPLE, PRABHADEVI, MUMBAI-400025,WEST BENGAL.

BEFORE:
HON'BLE MR. RAJES GUHA RAY , JUDICIAL MEMBER
HON'BLE MR. SANTANU SAHA , MEMBER

FOR THE APPELLANT: HASANUR ZAMAN., SAIKAT MALI (Advocate)

FOR THE RESPONDENT: THE CHIEF CUSTOMER SERVICE EXECUTIVE ICICI LOMBARD GENERAL INSURANCE COMPANY LIMITED & ANOTHER, Debojit Dutta. (Advocate)

DATED: 28/10/2026

ORDER

Hon'ble Mr. Santanu Saha, Member

1. This appeal under Section 41 read with Section 47(1)(a)(iii) of the Consumer Protection Act, 2019 is directed against the order dated 18 April 2023 passed by the District Consumer Disputes Redressal Commission, Hooghly (hereinafter referred to as District Commission), in Complaint Case No. CC/15/2021, whereby the complaint concerning repudiation of a motor insurance claim was dismissed. For convenience, the parties are referred to as the complainant and the insurer.

2. The controversy principally concerns whether carriage of one person beyond the registered seating capacity of a goods vehicle justified repudiation of the entire own-

damage claim. Questions also arise concerning the complainant's status as a consumer, the effect of hypothecation, delayed intimation, non-production of the survey report and proof of the amount recoverable.

3. The complainant is the registered owner of a Mahindra Bolero pick-up van bearing registration No.WB25K 2274. The vehicle was insured with the insurer for the period from 28 January 2020 to 27 January 2021. The present claim concerns accidental damage to the vehicle itself and not compensation payable to its occupants or to any third party.

4. On 2nd September 2020, during the currency of the policy, the vehicle met with an accident. FIR was lodged on the same date, and Case No. 92/2020 dated 2nd September 2020 was registered under Sections 279, 338 and 427 of the Indian Penal Code. According to the complainant, the accident occurred because of negligent driving of the other vehicle involved.

5. The insurer was informed on 14th September 2020, and the claim was registered under No.MOT10216714. The complainant states that the vehicle was taken to a service centre on 16 October 2020 and that the estimated cost of repair was Rs.6,42,544/-.

6. By communication dated 1st November 2020, the insurer repudiated the claim on the ground that the vehicle was carrying persons beyond its registered seating capacity. It is admitted that three persons, including the driver, were travelling in the vehicle, whereas the registration certificate permitted two persons.

7. The complainant made a further representation on 4th December 2020. The claim having remained unsettled, he instituted the complaint before the District Commission. The insurer contested the proceeding by filing its written version. The complaint was dismissed by the impugned order, leading to the present appeal.

8. In support of the appeal, the complainant submits that carriage of one additional person did not constitute a fundamental breach disentitling him to indemnification. He maintains that the additional occupant had no causal connection with the accident and that the District Commission treated the admitted excess occupancy as sufficient, by itself, to defeat the claim.

9. The complainant further submits that the insurer appointed a surveyor, Mr. Niladri Paul, but neither supplied the survey report to him nor produced it before the District Commission. He asserts that the surveyor assessed the repair cost at Rs.6,46,928/-. On that basis, he alleges deficiency in service and unfair trade practice.

10. The complainant disputes the objection that the vehicle was purchased for a commercial purpose. His case is that he owns only this vehicle and uses it to earn his livelihood through self-employment. He also submits that hypothecation does not extinguish his right to maintain the complaint and that the provisions relied upon by the insurer concerning payment to the financier do not govern an ordinary repair claim.

11. Regarding delayed intimation, the complainant relies upon the Supreme Court decision referred to in his submissions as "(2017) 11 SCR". The proposition invoked corresponds to Om Prakash v. Reliance General Insurance, (2017) 9 SCC 724 : (2017) 11 SCR 893.

He seeks payment of the repair charges, compensation for loss of income at Rs.20,000/- per month from 1st November 2020, compensation of Rs.5,00,000/- for mental agony and harassment, and litigation costs of Rs.50,000/-.

12. The insurer submits that excess occupancy is admitted and constitutes violation of the policy conditions. It relies upon the FIR and charge-sheet, Section 58 of the Indian Evidence Act, 1872, and Oriental Insurance Co. Ltd. v. Premlata Shukla, reported in 2007 (3) TAC 11 (SC). It also relies upon the National Commission decisions reported in II (2007) CPJ 97 (NC), I (2007) CPJ 23 (NC), and Revision Petition No. 3228 of 2012.

13. The insurer additionally contends that the vehicle was hypothecated to ICICI Bank and that, by reason of IMT-7, any amount payable must be paid to the financier. The bank having not been impleaded, the insurer questions the complainant's locus standi. It further submits that no completed repair or actual expenditure has been proved, that the estimate was not issued by an authorised dealer and that the estimated repair cost indicates a case of total loss.

14. Upon consideration of these rival submissions, the following points arise for determination: first, whether the complaint is maintainable notwithstanding the commercial use of the vehicle and its hypothecation; secondly, whether the admitted carriage of one additional person justified total repudiation; thirdly, whether delayed intimation independently sustains the repudiation; fourthly, what consequence follows from non-production of the survey report and absence of proof of completed repairs; and fifthly, what relief can properly be granted.

15. On the first point, the character of the insured vehicle as a goods carriage does not, without further examination, determine whether the insurance service was obtained for a commercial purpose. The transaction complained of is the hiring of insurance services to obtain indemnification against an insured loss.

16. In National Insurance Co. Ltd. v. Harsolia Motors, (2023) 8 SCC 362, the Supreme Court explained that the relevant inquiry concerns the dominant purpose of obtaining the service and its nexus with profit generation. The commercial character of the insured's underlying activity is not conclusive. Here, the insurance was obtained to protect against accidental loss; the claim seeks indemnification for damage. The objection founded merely upon commercial use of the vehicle is therefore rejected. This reasoning is consistent with the material language of Section 2(7) of the 2019 Act.

17. Consequently, it is unnecessary to rest maintainability exclusively upon the complainant's alternative plea of livelihood through self-employment. Equally, an assertion that the complainant owns several vehicles cannot be treated as an established fact without supporting evidence.

18. Hypothecation does not, by itself, deprive the registered owner and insured of the right to challenge repudiation. IMT-7 protects the financier's interest in specified insurance proceeds. Its payment provision concerns loss or damage which cannot be made good by repair or replacement of parts. It does not declare that the insured ceases to possess enforceable rights under the policy. Indeed, the endorsement preserves the parties' other rights and liabilities except to the extent expressly modified.

19. The complainant's submission that hypothecation provisions are wholly irrelevant is, however, too broad. Their effect depends upon the nature of the loss and the subsistence of the financier's interest. If settlement is ultimately made on a total-loss or constructive-total-loss basis, the applicable endorsement and the bank's interest must be addressed before disbursement. Conversely, the mere existence of hypothecation does not establish that a repair claim is payable exclusively to the bank.

20. Non-joinder of the bank therefore does not warrant outright dismissal of the complaint. If determination or disbursement of the proceeds requires adjudication affecting the bank's interest, its presence can be secured. The first point is therefore answered in favour of maintainability, subject to protection of the financier's established rights at the appropriate stage.

21. On the second point, no further proof is required of the admitted fact that three persons, including the driver, were travelling against a registered seating capacity of two. The principle concerning admitted facts, invoked through Section 58 of the Evidence Act, assists the insurer to that extent. It does not determine the legal consequence of that fact.

22. In Oriental Insurance Co. Ltd. v. Premlata Shukla, (2007) 13 SCC 476 : 2007 (3) TAC 11 (SC), the Supreme Court addressed reliance upon an FIR in motor accident compensation proceedings and disapproved selective reliance upon a document brought into evidence. We accept that the police papers must be considered fairly and as a whole. The decision does not establish that every excess occupant automatically defeats an own-damage insurance claim. The admitted occupancy is accepted here; the question remaining is whether it justified complete forfeiture of indemnification.

23. The closely applicable authority is Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 100. That case concerned an own-damage claim for a goods vehicle carrying persons beyond the permitted capacity. The Supreme Court held that the insurer had not established that excess carriage caused the accident or amounted to a breach sufficiently fundamental to avoid liability. Importantly, the Court restored the District Forum's award on a non-standard basis up to 75%; it did not direct unconditional payment of the entire repair claim.

24. On the material relied upon in the present case, the insurer establishes excess occupancy but does not identify evidence showing that the additional person obstructed the driver, affected control of the vehicle or otherwise contributed to the collision. Nor is any comparable circumstance demonstrated from which such contribution must reasonably be inferred. A bare numerical breach cannot substitute for examination of its nature and effect.

25. Registration of the criminal case does not, by itself, conclusively establish the other driver's negligence. Nevertheless, the complainant is not required to obtain a criminal conviction against that driver before challenging repudiation. The relevant deficiency in the insurer's defence is its failure to establish that the admitted additional occupant constituted a fundamental breach contributing to the accident.

26. The National Commission decision reported in II (2007) CPJ 97 (NC) is Oriental Insurance Co. Ltd. v. Rishi Jaiswal, decided on 11 January 2007. It concerned a passenger bus carrying substantially more passengers than permitted, including passengers on its roof, which fell into a river while negotiating a hilly route. The

Commission found that the overloading contributed to the accident. Those circumstances materially differ from carriage of one additional person in the present goods vehicle without demonstrated contribution to the collision.

27. The decision reported in I (2007) CPJ 23 (NC), National Insurance Co. Ltd. v. Suresh Babu, decided on 3 November 2006, likewise concerned gross excess carriage in a passenger vehicle, together with discrepancies concerning insured and permitted capacity. The Commission considered the adverse effect of such carriage upon driving and its possible contribution to the accident. It expressly distinguished cases involving a few additional persons in a goods vehicle. Its reasoning does not justify treating every instance of excess occupancy as an equivalent fundamental breach.

28. Revision Petition No. 3228 of 2012 is Delhi Assam Roadways Corporation Ltd. v. United India Insurance Co. Ltd., decided on 3 September 2013. The truck there carried 68,670 kilograms against a registered goods-carrying capacity of 38,700 kilograms. The National Commission expressly found a nexus between approximately 80% excess loading and the accident, referring to braking distance and steering control. The insurer's submission that this decision dispenses with causal connection does not correctly reflect its reasoning. It is distinguishable on its facts and should be read consistently with the subsequent Supreme Court decision in Lakhmi Chand.

29. Accordingly, the admitted excess occupancy does not sustain repudiation of the entire claim in the circumstances established here. At the same time, the admitted breach should not simply be ignored. Following the disposition in Lakhmi Chand, settlement at 75% of the otherwise admissible own-damage loss is appropriate. This percentage applies to the loss established under the policy after permissible assessment and adjustments; it does not automatically apply to the workshop's unverified gross estimate. The second point is answered accordingly.

30. On the third point, the interval between 2 September and 14 September 2020 is twelve days. Whether described in argument as eleven days or otherwise, its legal effect cannot be decided merely by counting days. The actual policy condition, explanation for the interval and circumstances of investigation would ordinarily require examination.

31. The complainant's reliance upon Om Prakash is relevant but requires contextual qualification. That decision concerned theft and explained why a genuine claim should not be rejected mechanically where delay was satisfactorily explained. The three-Judge Bench in Gurshinder Singh v. Shriram General Insurance Co. Ltd., (2020) 11 SCC 612, approved that approach where theft was promptly reported to the police and the claim was found genuine. These decisions do not abolish notification requirements for every accidental-damage claim.

32. More fundamentally, the repudiation dated 1st November 2020 proceeded on excess occupancy alone. In Saurashtra Chemicals Ltd. v. National Insurance Co. Ltd., Civil Appeal No. 2059 of 2015, decided on 13 December 2019, the Supreme Court held that an insurer could not introduce delayed intimation as a new ground when it had not formed part of the repudiation. Applying that principle, the insurer cannot sustain the present repudiation by subsequently adding delay as an independent ground of forfeiture. This does not dispense with proof of the occurrence or amount of insured loss.

33. The third point is therefore answered against the insurer. Appointment of a surveyor is not treated as an automatic waiver of every policy condition; the conclusion follows from the stated ground of repudiation and the absence of delay from that decision.

34. On the fourth point, the complainant's proposition that no claim can ever be repudiated without a survey report is too widely stated. A question of coverage or an independently established exclusion may arise separately from assessment of loss. Nevertheless, where the insurer acknowledges appointment of a surveyor and disputes the repair assessment and classification of loss, the resulting report and related records are plainly material.

35. Section 64UM of the Insurance Act, 1938 provides for survey assessment of claims falling within the prescribed framework, while preserving the insurer's right to settle at an amount different from the surveyor's assessment. A survey report is therefore important evidence, but neither an automatic admission of liability nor an invariably conclusive determination of quantum.

36. The assertion that the surveyor assessed Rs.6,46,928/- cannot be accepted as an established assessment without the report or other reliable proof of its contents. Equally, the insurer cannot withhold material assessment records and expect its objections concerning quantum to be accepted without scrutiny. Production should be directed, with an opportunity to the complainant to respond. Unexplained failure to comply may justify an appropriate adverse inference, although it would not automatically prove every amount claimed.

37. Absence of a completed repair invoice does not establish absence of accidental damage. An insured may lack funds to undertake repairs after repudiation. The amount recoverable must nevertheless be proved through reliable material, which may include survey evidence, photographs, inspection records, a supported repair estimate and invoices where repairs were actually undertaken. The fact that an estimate originates from a workshop other than an authorised dealer affects its evidentiary weight in the circumstances; it does not, by itself, make the estimate inadmissible or the loss irrecoverable.

38. Nor can total loss or constructive total loss be inferred merely because the repair estimate is said to approximate the vehicle's purchase price. The relevant comparison is with the policy IDV and the applicable contractual test. Under the conventional motor policy formulation, constructive total loss arises where the aggregate retrieval and repair cost, subject to policy terms, exceeds 75% of IDV. The policy actually issued must govern the assessment. The 75% threshold used for classifying constructive total loss is distinct from the 75% non-standard settlement directed in paragraph 29.

39. The complainant's description of the demand as repair charges is not conclusive of the classification of loss, neither is the insurer's description of it as total loss. Without the policy schedule, IDV and a reliable assessment, this Commission cannot responsibly determine the classification or direct payment of the entire sum of Rs.6,42,544/-. The fourth point is answered by holding that further evidence is necessary for quantification, rather than for reopening the validity of the repudiation already decided.

40. On the fifth point, the impugned dismissal cannot be sustained. The admitted excess occupancy was treated as sufficient to defeat the claim without the necessary

examination of fundamental breach and causal contribution. The authorities relied upon by the insurer do not support that approach on the facts of this case.

41. A limited remand is warranted because the omissions concern the foundation for quantification and disbursement. It would be inappropriate either to deny all relief because assessment remains incomplete or to award the entire estimate as though its admissibility had been established. The remand must therefore preserve the conclusions reached in this appeal and confine further adjudication to the remaining matters.

42. The demand for Rs.20,000/- per month as loss of income cannot be accepted merely on assertion. Any such award requires examination of actual net loss, causation, the period reasonably attributable to the insurer's deficiency, mitigation, and the distinction between a policy claim for consequential loss and compensation for deficient service. Likewise, compensation for harassment and interest require a reasoned determination avoiding duplication. These matters shall be decided on the evidence and pleadings in the restored proceeding. No separate finding of unfair trade practice follows merely from the conclusion that repudiation was unjustified.

43. Consequently, the appeal is allowed in part. The order dated 18th April 2023 passed by the District Consumer Disputes Redressal Commission, Hooghly, in CC/15/2021 is set aside. The complaint is restored to its original number for limited adjudication in accordance with this judgment.

44. It is reiterated that the objections founded merely upon commercial use of the vehicle and the complainant's lack of locus standi by reason of hypothecation do not defeat the complaint. The repudiation dated 1st November 2020 cannot be sustained on the ground of carriage of one additional person in the circumstances established in this case. Delayed intimation shall not be introduced as an additional ground to sustain that repudiation.

45. The complainant shall be entitled to settlement on a non-standard basis at 75% of the otherwise admissible own-damage loss, to be quantified under the applicable policy. The District Commission shall determine the proper basis of assessment, permissible deductions and adjustments, and the person or persons entitled to receive the resulting proceeds. No duplicate recovery or payment exceeding the applicable contractual limit shall be permitted.

46. Within thirty days of passing of this order, the insurer shall file before the District Commission, with copies to the complainant, the complete policy schedule, terms and endorsements, IDV particulars, surveyor's appointment records, every available survey or assessment report, photographs, relevant inspection records and the material claim-processing correspondence. If any directed document is unavailable, the insurer shall explain its absence by affidavit.

47. The District Commission shall permit the complainant to file the original estimate and available supporting evidence concerning damage, repairs, towing and consequential relief. Any further evidence shall be confined to the matters left open by this judgment. Where necessary, the District Commission may summon the surveyor and relevant records or obtain a reasoned technical assessment, ensuring that both parties have an opportunity to address that material.

48. If adjudication or disbursement on a total-loss or constructive-total-loss basis affects the subsisting interest of ICICI Bank, the District Commission shall secure its impleadment and hear it before passing directions affecting that interest. The bank's interest shall be determined from the endorsement and relevant financing records; no direction imposing an obligation upon the bank shall be made without hearing it.

49. The District Commission shall determine the admissible indemnity and the claims for interest, compensation and costs by a reasoned order, preferably within six months from receipt of the records. The issues finally decided in paragraphs 44 and 45 shall not be reopened. The insurer shall pay the complainant Rs.10,000/- towards costs of this appeal within thirty days of receipt of this judgment.

50. The parties shall appear before the District Commission on 25.11.2026. Let copy of this judgment be transmitted to the District Commission forthwith for information and taking necessary action. Pending applications, if any, stand disposed of. A copy of this judgment shall be supplied to the parties free of cost in accordance with law.

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RAJES GUHA RAY

JUDICIAL MEMBER

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SANTANU SAHA

MEMBER