

Date of filing : 16.02.2023

**IN THE TAMIL NADU STATE CONSUMER DISPUTES  
REDRESSAL COMMISSION, CHENNAI.**

Present: **Hon'ble Thiru Justice  
Thiru.**

**... PRESIDENT  
... MEMBER**

**C.C. No. of**

**Orders pronounced on: 20.04.2023.**

**... Complainant**

**VS.**

**... Opposite Parties**

✓ For Complainant : M/s. Shabnam Banu  
For Opp. Parties : M/s. Maheswaraiyah

This Complaint came up for final hearing on 17.11.2022 and, after hearing the arguments of the counsels for the

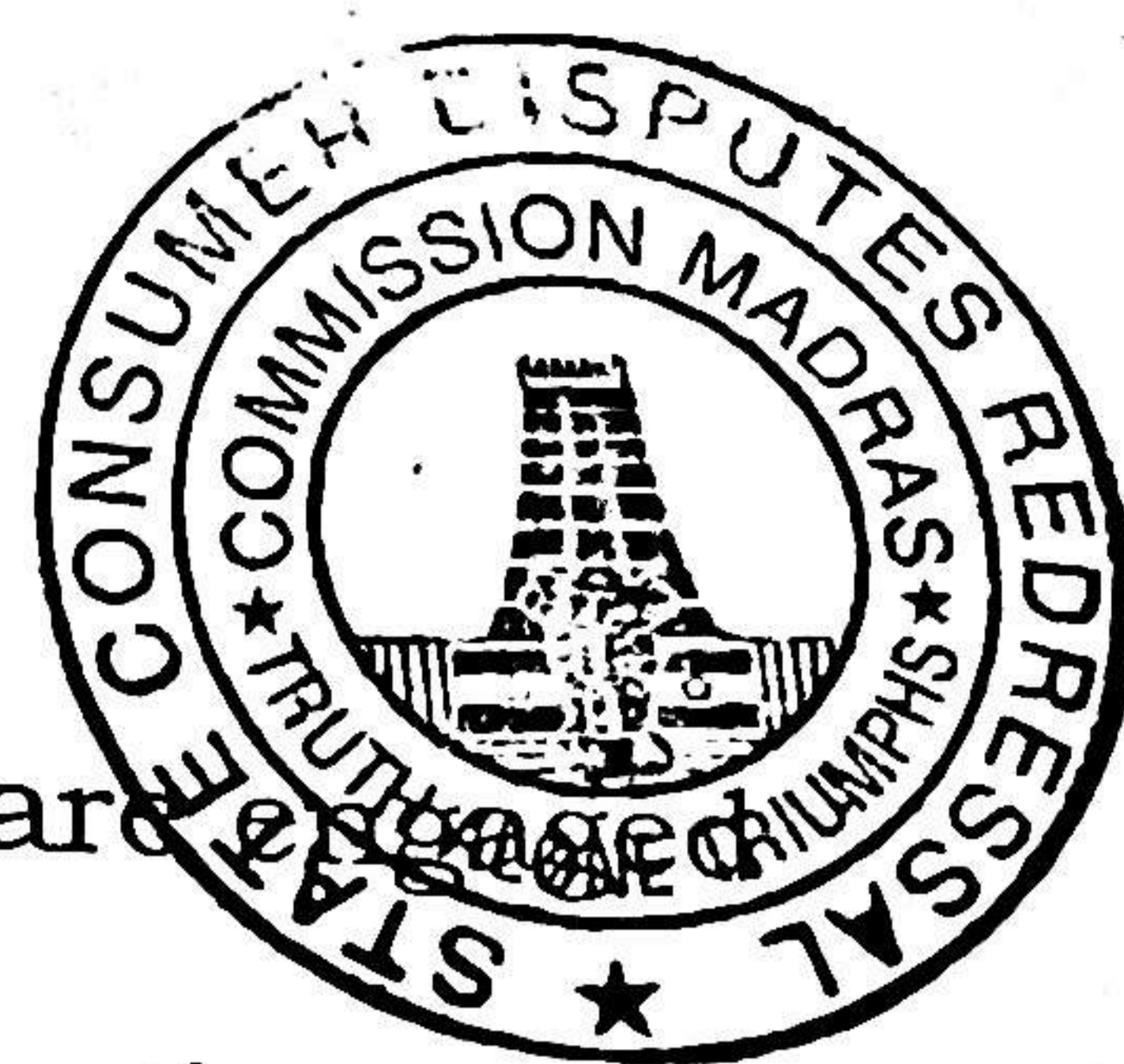
parties and perusing the materials on record and having stood over for consideration till this day, this Commission passes the following:-

**ORDER**

R.Subbiah, J. – President.

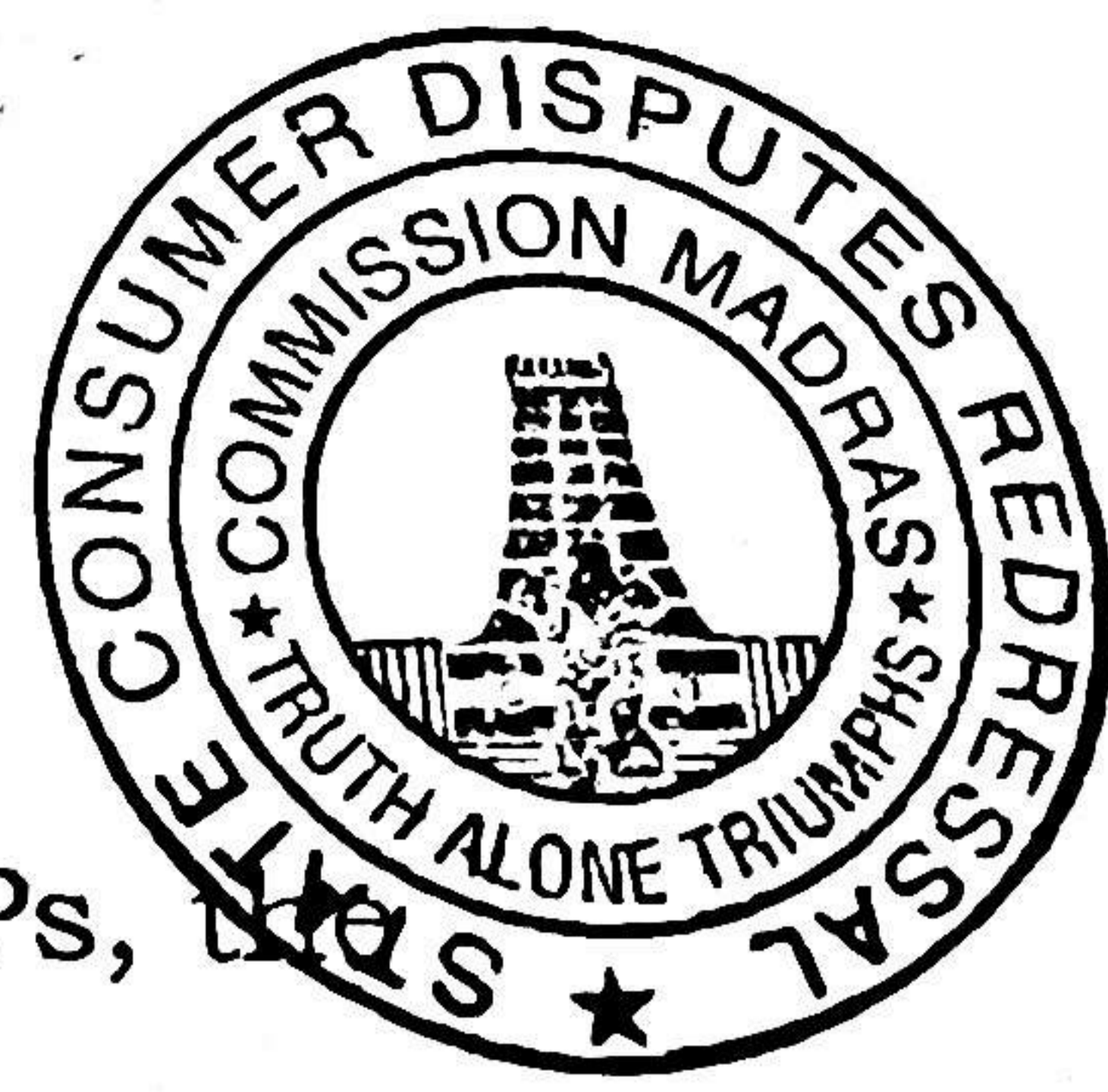
Alleging service deficiency on the part of the Insurance Company/OPs-1 and 2 in repudiating the insurance claim connected to their Heavy Vehicle insured with the 1st OP, the complainant herein seeks to direct the OPs to pay to them a sum of Rs.11,48,256/-, along with interest, towards replacement of spare parts/repair of the insured vehicle, Rs.1,75,000/- per month from 26.04.2014/date on which the insured vehicle met with an accident to the date of filing the complaint towards loss of business along with future interest and Rs.15 lakh as compensation/damages for the humiliation suffered & mental agony caused to them by the OPs, besides costs of the complaint.

2. The case of the complainant, as averred in the Complaint, is concisely narrated below:-



The complainant- who are in the business of hiring equipments and executing work orders for companies, insured their vehicle bearing registration with the OPs/Insurance Company as per Policy No. , covering the period between 05.05.2013 and 04.05.2014. The said vehicle, while transporting mixed cement by plying on the hilly terrain from the complainant's plant to the wind erection mill site located at Rajachekurle Hills, met with an accident on 26.04.2014, whereupon, an FIR was lodged on the same date and due intimation was also given to the Insurance Company. The repair estimate was for Rs.11,48,256/- and, after the survey commenced on 04.07.2014, the report of the Insurance Surveyor was given on 08.07.2014, however, subsequent thereto, there was no action at all on the part of the 1st OP. Despite submitting all requisite documents and making regular enquiries, there was no progress in the matter and hence, by letters, dated 04.12.2014 and 31.12.2014, the complainant explained to the Insurance Company the facts and events and requested

them to take quick action over their insurance claim. While so, to their dismay, the complainant received a letter, dated 20.01.2015, from the Claims Hub of the 1st OP, repudiating the claim on the ground that the Policy had not been extended for IMT 47 and that, during the time of accident, the vehicle was used as a 'Tool of Trade' (In short '**TOT**'). When the vehicle was not at all used as a TOT during the time of accident, the impugned letter, whereby, the repudiation was done 6 months after the Survey Report is a clear instance of service deficiency on the part of the Insurance Company. The fact revealed from the FIR registered upon the accident is that the vehicle was being used for the purpose of transport and the Concrete Mixer which was attached to the truck that was in motion met with the accident while in transit and not at the time of its operation so as to term it as a TOT. Very conveniently, the 1st OP had estimated the loss for a meager sum of Rs.1.5 lakh. Further, the efforts taken by the complainant by writing letters and making representations to persuade and clarify the Insurance Company that the repudiation was



unjust, ended in vain. Due to the unfair act of the OPs, complainant had to suffer huge loss in their day-to-day business as the vehicle was not put to use and further, the complainant had to arrange for alternate means to restore their daily activities at the cost of added expenditure. Since the accident took place much before completion of the work order received from the Developer concerned, the complainant suffered further loss which is estimated from the date of accident. The 1st OP re-affirmed the repudiation vide letter, dated 14.07.2015, whereupon, a legal notice was issued to the Insurance Company on 07.10.2015, but, there was no response to the said notice. Hence, the present complaint.

3. OPs-1 & 2 resist the claim of the complainant by filing a common version, wherein, among other things, it is stated thus:-

The complainant is engaged in the business of hiring equipments and executing work orders for various companies and those transactions correspond to commercial

purpose, as such, the present complaint is not maintainable. It is true that the subject policy was taken regarding the insured vehicle and that a claim was made to these OPs on 21.05.2014 for the damages suffered by the said vehicle that met with an accident on 26.04.2014. The Policy was not extended for IMT-47 and, during the time of the accident, the insured vehicle was used as TOT only. The accident had occurred while transporting the Cement Mixer on the hilly terrain from the complainant's plant to the wind erection mill site located at Rajachekurle Hills. After receipt of the claim papers, the OPs appointed Surveyors, who submitted the Report on 08.07.2014 and, after due application of mind to the said report, the claim was rejected. As per the FIR, at the time of accident, the vehicle was loaded with concrete and the plant was in operation. Therefore, the Vehicle was used as TOT at the crucial time. Since the risk/Overturning was not covered by the said Policy as per IMT-47, the claim was treated as 'No Claim'. All other allegations of the complainant are denied and inasmuch as the OPs acted as per the terms and



conditions of the policy, there is no scope for any service deficiency; thus, they sought for dismissal of the complaint.

4. To substantiate the claim and counter claim, both sides have filed their respective proof affidavits and, while the complainant has marked 27 documents as Exs.A1 to A27, 11 documents have been marked on the side of the OPs as Exs.B1 to B11.

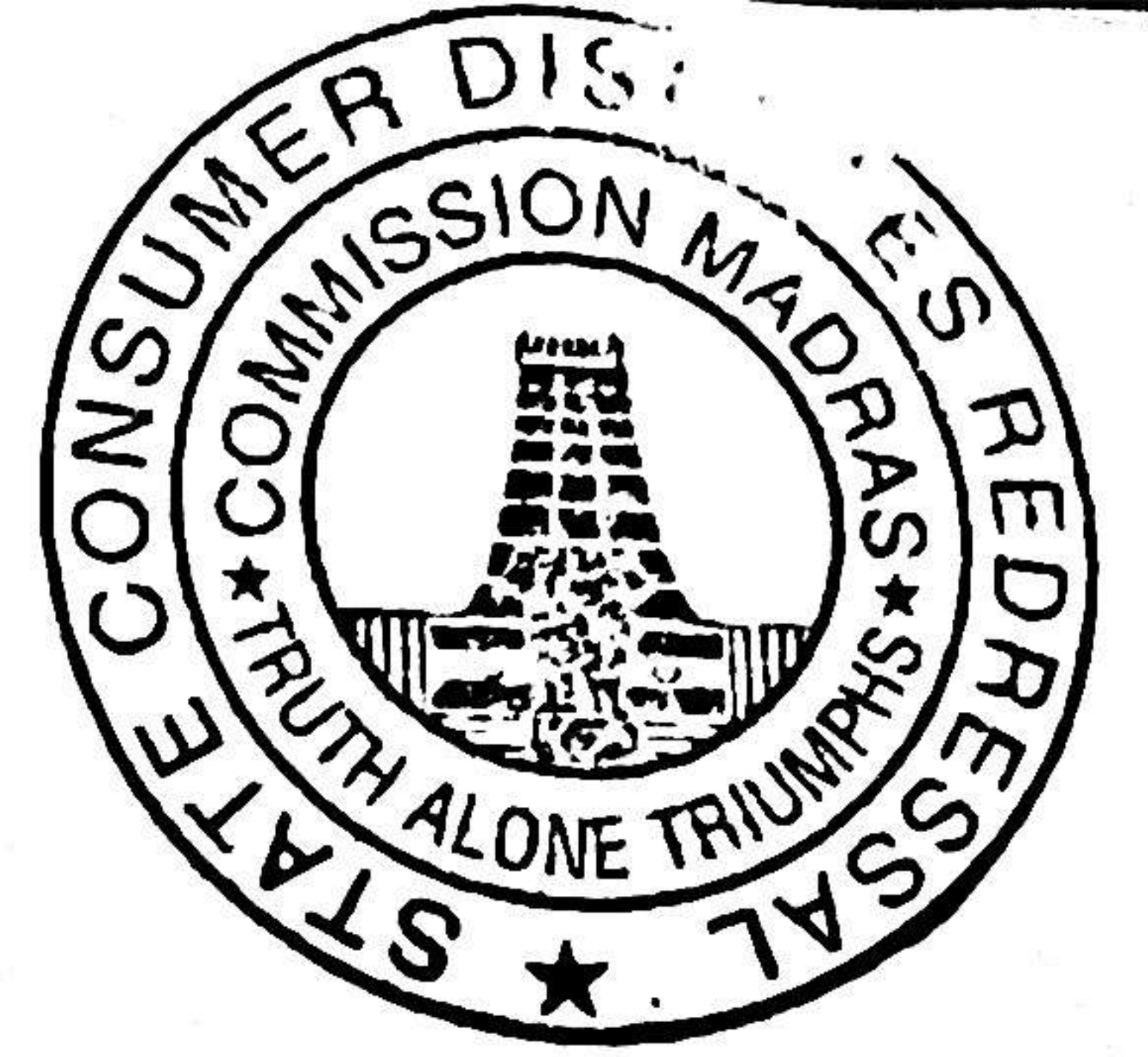
5. Having heard the submissions of both sides made by referring to the respective pleadings in the Complaint and the Written Version, we are of the view that the only question that needs to be decided for the disposal of this Complaint is:

***"Whether transportation of concrete materials or cement mix that was meant for supply at the Destination Mill from the plant of the complainant***

*through the tool attached to the overturned Vehicle/MAN FORCE can be said to be deployment of the device as TOT; or, in other words, whether the provisions of IMT-47 can be applied to an instance like the present one where the tool or device that formed part of the Vehicle was only carrying the load at the time of accident and it was obviously not under deployment?"*

6. At the first instance, it would be useful to quote below IMT.47 that finds place in Ex.B1:-

**"IMT 47: Mobile Cranes/  
Drilling Rigs/ Mobile Plants/**



**Excavators/ Navvies /  
Shovels/ Grabs/ Rippers.**

It is hereby declared and agreed notwithstanding anything to the contrary contained in this Policy that in respect of the vehicle insured \* the insurer shall be under no liability-

a) Under Section I of this policy in respect of **loss or damage resulting from overturning arising out of the operation as a tool** of such vehicle or of plant forming part of such vehicle or attached thereto except for loss or damage arising directly from fire, explosion self ignition or lightning or

burglary housebreaking or theft.

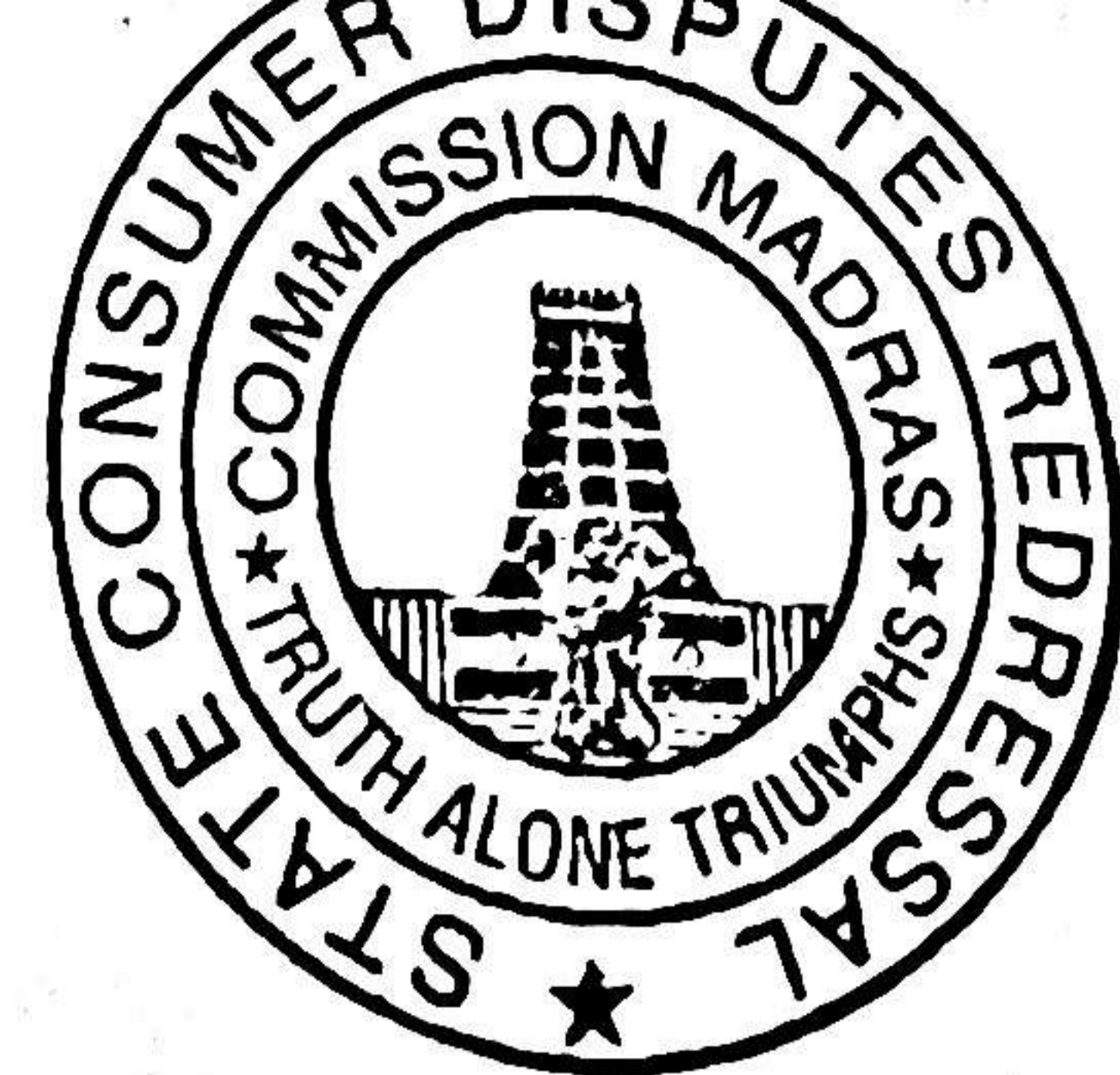
b) Under Section II except so far as is necessary to meet the requirements of the Motor Vehicles Act, 1988, in respect of liability incurred by the insured arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto.

N.B.:

Omit paragraph (a) for :-

\* Insert make, number or some other means of identification.

Where a premium reduction is allowed for exclusion of damage when in use as a tool



of trade omit from paragraph  
(a) the words "resulting from  
overturning" and "except for  
loss ... or theft".

A bare reading of the above provision makes it clear that the Insurer shall be under no liability where demand or loss results from overturning arising out of the operation as a tool of the insured vehicle or of the Plant forming part of such vehicle or attached thereto. Therefore, we have to necessarily examine as to in what manner the tool was in use when the vehicle had suffered overturning.

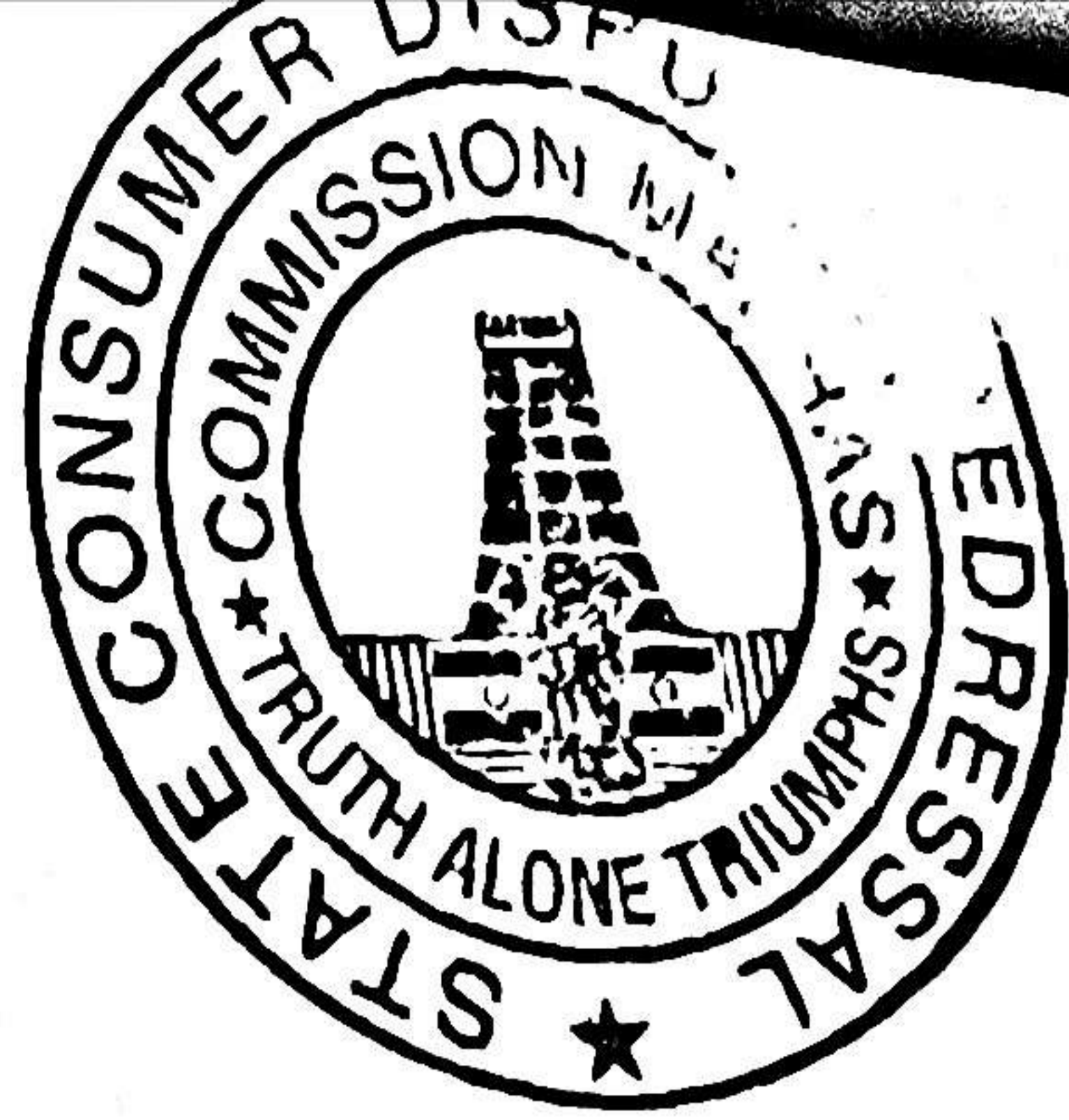
7. In this regard, it is pertinent to point out here that, from a perusal of the repudiation letter, we find that what weighed much with the repudiating authority and influenced its mind was the contents of the FIR as translated in the Survey Report; hence, primarily, the same needs to be looked at carefully. In this regard, it is useful to have a glance at Ex.B6/Survey Report, dated 08.07.2014, wherein, after extracting IMT.47, the Surveyor has

reproduced the FIR and the relevant portions there-from are given below:-

**"REPRODUCED AS IT IS**

Today on 26.04.2014, at 11.00 A.M. Company's Mixture Truck fully loaded with cement concrete material, carrying the material from mixture plant to company's wind mill plant was moving on Rajachekurle Mountain....

During the Driving, the Road was on Height and having zick zack turn. When Truck Driver found difficulty in moving the vehicle on height, he gave accelerator and the truck was on speed. While turning speedily on the next zick zack turn, the truck got



turned over and the part of driving cabin was damaged ....

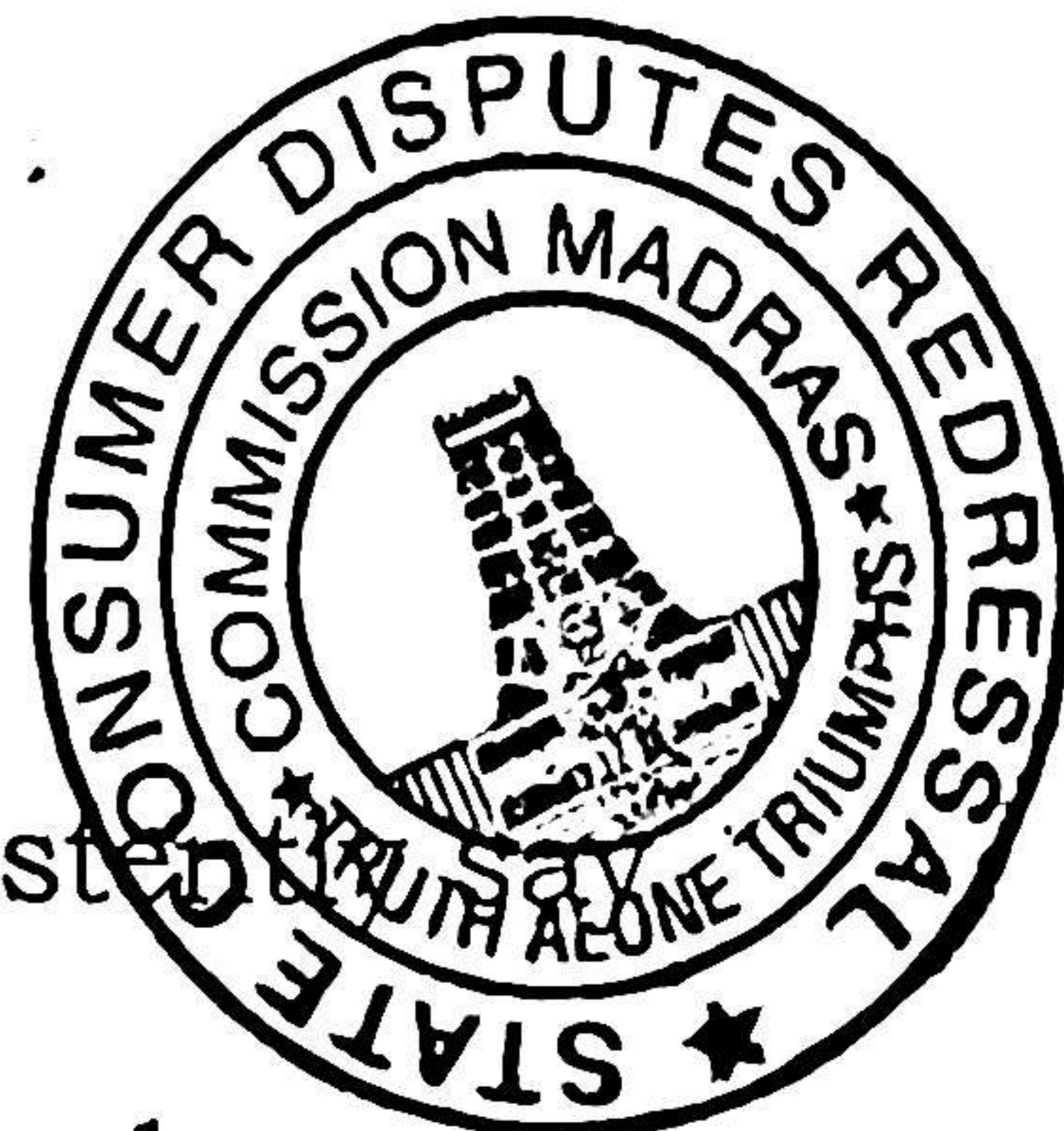
... The Vehicle under reference got overturned and capsized on the right side. Thereby, the insured's truck's front cabin and the load body cement concrete mixture got damaged. That is during the course of tool of trade on the insured."

Now, let us quote below the reasoning given by the Insurance Company in Ex.B8, dated 21.01.2015, for repudiating the claim:-

" We observe from the FIR, the vehicle at the time of accident, was loaded with concrete and plant was in operation. Therefore, vehicle has been used as tool of trade at the time of

accident. Further, the vehicle had turned over which resulted in claim under the policy and which the policy is not extended to cover risk of overturning as per IMT 47. "

8. Though a specific text finds place in the Surveyor Report at the portion where he has quoted the FIR contents under the caption 'REPRODUCED AS IT IS' to the effect "*That it is during the course of tool of trade of the insured*", the said text does not find place at all in the FIR Translation Copy under Ex.B4. At any rate, from a perusal of the impugned repudiation, we find that the repudiating authority had presumed the factum that the vehicle was loaded with concrete material as if, the plant was in operation. In our view, drawing such a conclusion is highly fallacious as there is a vast difference between the device/tool, attached to the Truck, carrying the cement mix and the deployment of the Device at the Work Site, etc. where it would be put to utility. In this case, even as per the

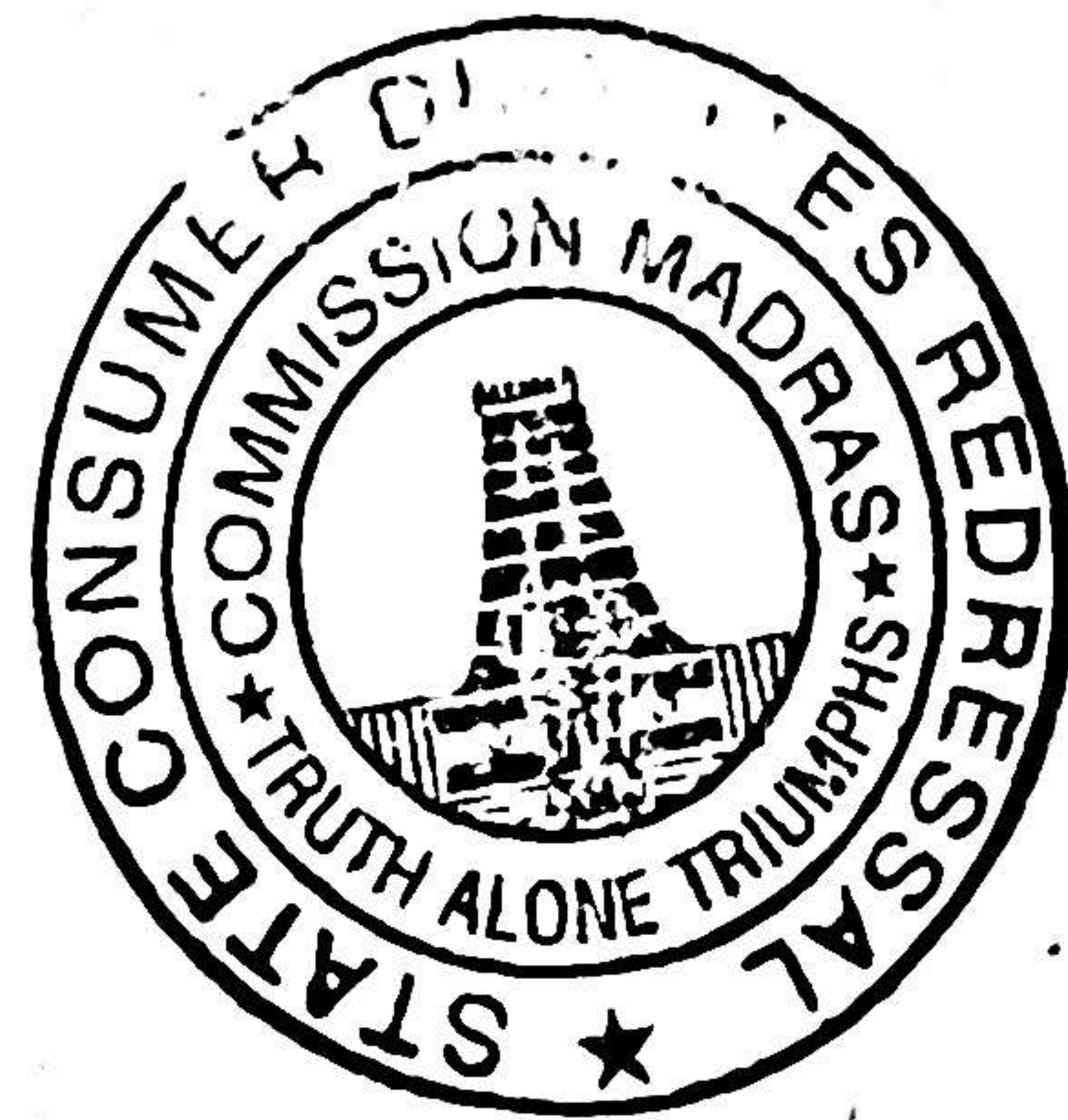


statements of the OP at various places, they consisted that the device was not under any actual deployment, rather, the device, which was attached to the Moving Truck, was only carrying the cement mix, as such, it was not subjected to any actual utility so as to describe it as a TOT at the relevant point of time. Strikingly, the repudiation order refers to the Vehicle only in general terms and it does not specify about the actual tool that was used for making cement mix. There is no deliberation in the repudiation letter to precisely conclude that the vehicle remained to be a TOT at the time of overturning. We have already pointed out that, to apply IMT.47 for repudiation, the prerequisite is that the overturning should have arisen out of the operation as a tool of the vehicle in question. But, we find, such prerequisite is totally absent in the present instance. It is the own version of the OPs/Insurance Company, as could be seen from para No.6 thereof, that the accident/overturning had occurred while "**transporting**" the Mixed Cement on the hilly terrain. Even the FIR version as given in the Survey Report only says that the Mixer Truck was "**carrying the**

**material**" from the Plant to the Wind Mill and it "**was moving**" on Rajachekurle Mountain. It is further stated therein that the Driver faced difficulties in moving the vehicle on height and, while giving accelerator and negotiating the snaky curve, the truck got turned over. Therefore, a cumulative reading of the Survey Report reflecting the contents of the FIR and the version of the OPs as well as the repudiation letter would go to show that -

*i) the vehicle with the attached device, while on its way to the Destination Point, had met with an accident, due to which, it suffered overturning before even reaching the Destination Point where the device would be deployed as TOT;*

*iii) obviously, the device attached to the moving insured vehicle, at the relevant time,*



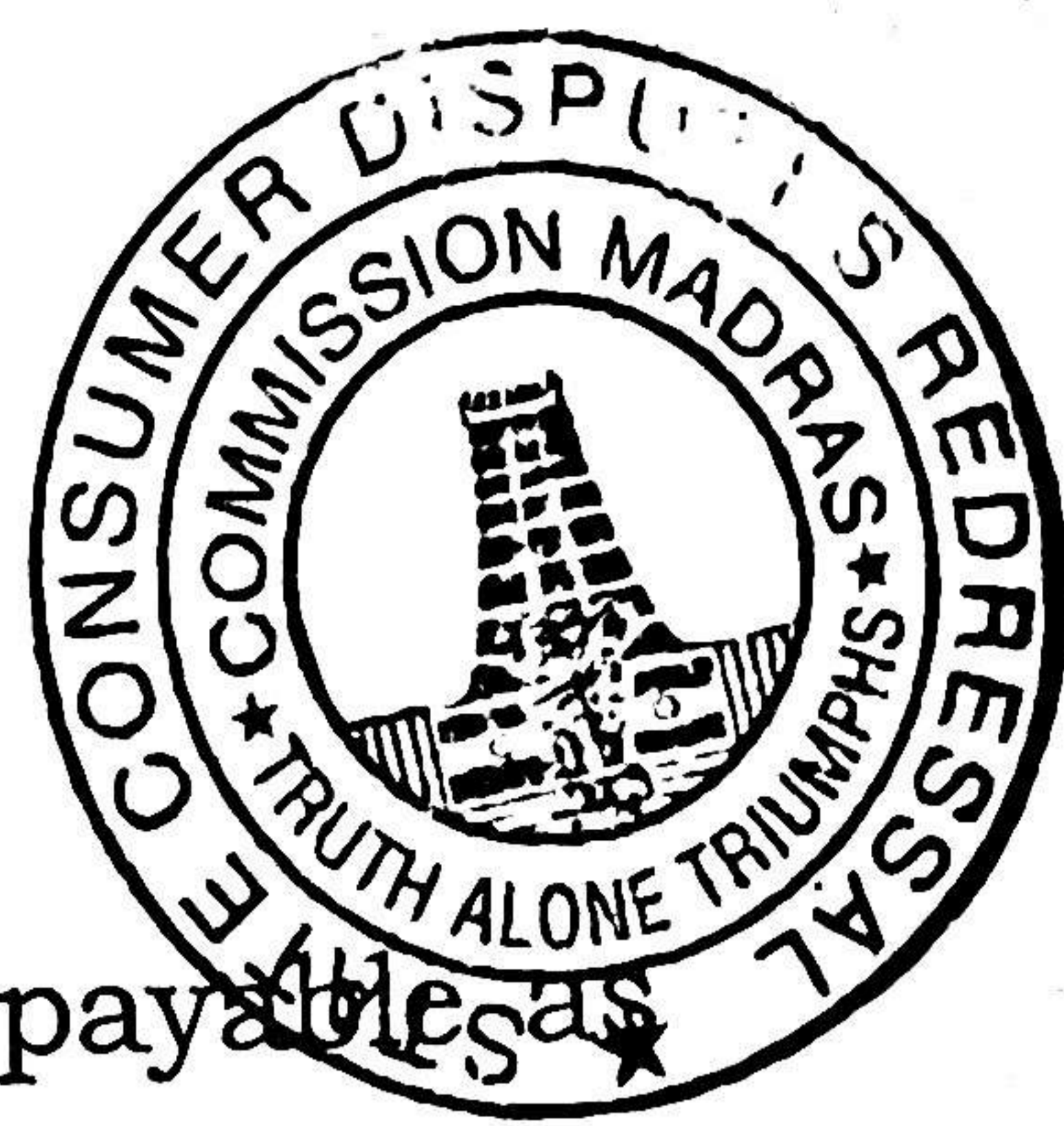
*was only filled with load and it was not put to any actual deployment.*

*ii) the overturning of the vehicle was not due to operation of the tool; on the contrary, it was, admittedly, due to the slim and squiggly pattern of passage through which it was plying on the hilly terrain.*

9. In the above circumstances, when the device was not under operation as a tool and it was only carrying the load, we re-state, it cannot be overstretched to project as if that the device was put to actual utility. Again we add, when the tool attached to the moving Vehicle was not under deployment and, in other words, when the overturning did not occur during or as a result of the tool's operation, IMT-47 has no application at all. Inasmuch as the records clearly

show that the accident which caused overturning of the vehicle was prima facie due to the flexuous type of the hilly terrain through which the Vehicle had to ply and obviously, the tool was only loaded with the concrete material, we are unable to find any logic or rationale behind the reason given by the Insurance Company for repudiation that the vehicle was used as TOT for the mere reason that it was loaded with concrete. In the absence of any tangible proof that overturning of the vehicle had taken place when the tool was in actual operation, the analogy deduced by the Insurance Company that the tool carrying the concrete load itself means that it was in operation is only a fallacy based on an invalid comparison. That being so, the repudiation on the part of the Insurance Company is wholly unwarranted and it clearly exhibits their service deficiency, for which, they shall be held liable.

10. Coming to the relief, we find that the complainant has claimed a sum of Rs.11,48,256/- for the repairs/replacement of spare parts of the vehicle, along with interest, but, on a perusal of the Surveyor Report, we find



that the Surveyor has assessed the net amount payable as Rs.7,58,700/- after deducting the salvage value. Hence, issuing a direction to the OPs/Insurance Company to pay a sum of Rs.7,58,700/- with interest @ 9% p.a. from the date of the complaint till the date of payment, another sum of Rs.25,000/- as compensation for the mental agony besides a sum of Rs.10,000/- towards litigation expenses, would meet the ends of justice.

11. In the result, the complaint is allowed in part by directing the Ops 1 & 2 jointly and severally liable to pay a sum of Rs.7,58,700/- (Rupees Seven lakhs fifty eight thousand seven hundred only) along with interest @ 9% p.a. from the date of complaint till the date of payment and pay a sum of Rs.25,000/- (Rupees Twenty five thousand only) towards compensation for the mental agony caused due to their service deficiency, besides a sum of Rs.10,000/- (Rupees Ten thousand only) towards litigation expenses.