CHAPTER IV

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Judicial creativity in the sphere of consumer protection has witnessed a steady decline in recent years. It is difficult to identify one single cause responsible for this phenomenon. However, judicialization of the consumer fora appears to have largely contributed to it. Due to inordinate delay in disposal of consumer cases, an ordinary consumer, unlettered in the niceties of procedure, has progressively lost interest in adjudication in consumer fora. To obtain redress he has to engage a counsel by spending heavy amounts. In many cases he is unable to obtain relief due to limitations express or self-imposed, of the authority of these quasi-judicial bodies.

The Supreme Court in its decision *Lucknow in Development Authority*¹, gave the notion of “service” the widest possible amplitude, two recent decisions of this court have, however, curtailed its scope. In *S.P. Goel v. Collector of Stamps*² the

² I (1996) CPJ (SC)
court held that the Controller of Stamps was not performing "service" while exercising authority under the Stamp Act, 1899 even though the gross negligence of the officials had resulted in loss or damage to the consumer. Once again the ghost of the distinction between sovereign and non-sovereign functions appears to have influenced the outcome. In another judgment, the court ruled that the government was not performing service while remitting the premia of an employee to the LIC as it was service free of charge\(^3\). Though the decision is unassailable on technical grounds the fact remains that a consumer of service will no longer use the convenient medium of employer to remit premia, treating this deduction from the salary as if it was the first charge. And in a democratic state if the government department is callous and fails to remit the money in due time, dismissing the complaint of the aggrieved consumer on the suspicious ground that the service is free of charge is unjustified.

In consonance with its position that consumer fora have limited jurisdiction, the National Commission has held that it is not within the jurisdiction of a consumer forum to go into fairness of the terms of contract. The decision of the Supreme Court in *Bharti Knitting Co. v. DHC Worldwide Express Courier Division of Airfreight*

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\(^3\) State of Orissa v. Div. Manager LIC 1112996] CR I 31 (SC)
Ltd.\textsuperscript{4} favours the literal interpretation of the terms of contract even though the term of contract is patently unreasonable. It was mindful of the injustice which might be caused to a claimant, but suggested that, in appropriate situations, the tribunal may either get into the questions of determining the validity of the terms of the contract or refer the parties to the civil court. Since the court has not provided the guidelines as to when consumer fora may determine legality of the terms of contract, the easy way to be adopted by the fora would be to refer the parties to the civil court.

In the case of \textit{Poonam Verma v. Ashwani Patel \& others}\textsuperscript{5} the Supreme Court tried to analyse the vexed question of respective rights and liabilities of various kinds of practitioners of medicine. It observed that “a person who does not have knowledge of a particular system of medicine but practices in that system is a quack and a mere pretender to medical knowledge or skill or to put it differently a charlaton”. In a complex society afflicted by poverty and backwardness, this view which greatly affects the practitioners of indigenous system of medicine is unfortunate.

In \textit{Fair Engineers Pvt. Ltd. \& Ant. v. N.K. Modi}\textsuperscript{6}, the Supreme Court decided the vexed question of status of consumer fora in our

\textsuperscript{4} II(1996) CPJ 25 (SC)
\textsuperscript{5} II (1996 CPJ 1 at (SC)
\textsuperscript{6} Civil Apeal No. 11459/96 decided on 20.8.96
system of adjudication. It may be recalled that the National Commission had *held* that consumer fora were no judicial authorities and proceedings before them were no legal proceedings.\(^7\) Dismissing this view of the apex Commission, the court stated that "the District Forum, State Commission and National Commission have all trappings of a Civil Court and judicial authority. The proceedings before them are legal proceedings." Invoking the provisions of section 3 of the Consumer Protection Act, 1986 the Court suggested that consumer fora are at liberty to proceed in the matter rather relegating the parties to arbitration proceedings. This important clarification should enable the consumer fora to assume jurisdiction in matters in which other remedies are available.

In an equally enlightening opinion, the Supreme Court has *held* that like any other court, a consumer forum has the right to exercise incidental and ancillary powers in aid of the substantive power to decide controversies.\(^8\) It is for the consumer courts to work out the ramifications of this important observation of the highest court.

For the most part, the orders of the National Commission lean

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\(^7\) N.K. Modi v. Fair Air Engineers Pvt. Ltd, 1993 CPJ (NC)

on conservatism. Illustrative of this approach is the order of the Commission in the case of *Mysore Sales International Ltd. v. M.N. Misra.* The complainant had deposited Rs. 11 lacs with the opposite party as security for dealership but the amount was returned by it after 83 days without payment of interest. The National Commission refused to intervene on the ground that there was no hiring of service. According to the Commission it was merely a contractual relationship. It *held* that the District Forum and State Commission suffered from serious irregularity in the exercise of jurisdiction as the complainant was no consumer.

It appears that this case and the orders of the Commission in cases of non-delivery by Maruti Udyog do not lay down good law. In *Punjab Water Supply & Sewage Board v. Udaipur Cement Works* the Supreme Court did not approve of this "blanket observation" without the National Commission ascertaining whether any deficiency of service was involved.

It has been *held* that the buyer of seeds for agricultural purposes and beneficiary under a contract of guarantee with a

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9 II (1996) CPJ 64 (NC).
10 Navin Bahri v. Maruti Udyog, 1 (1996) CPJ 91 (NC)
11 1995 (6) SCALE 327.
12 II (1996) CPJ 86 (NC).
bank are consumers.\textsuperscript{13}

Whether damages can be recovered by a \textit{husband} for injuries suffered by his wife due to bursting of the pressure cooker was answered by the National Commission in the affirmative. It observed that relationship of husband and wife give rise of commonality of interest entitling either to step into the shoes of another. The husband had incurred an expenditure of Rs. 38,000/- on his wife for treatment of injuries caused to a defective pressure cooker. He was under the law a consumer of goods.

\textbf{CONSUMER FORUM}

An important question arose as to whether the order passed by two members of the forum without the junction of the president was valid. In view of the specific provision of section 14(2A) of the Act, in the case of \textit{Prem Kishore Agrawal v. Estate Officer, HUDA}\textsuperscript{14} the National Commission concluded that "it was totally wrong on the part of the State Commission to record the disposal of the case by the District Forum as one effected only by two members without the junction of the President. In fact the president has also been part of the proceedings but he had given a separate dissenting

\textsuperscript{13} II (1996) CPJ 128 (NC)
\textsuperscript{14} III (1996) CPJ 181 (NC).
view." The case was remanded to the State Commission. In short, the National Commission reiterated its opinion that no order of the forum would be valid if the president had not participated in the decision-making process. In *United Insurance Company Ltd. v. Sanjeev Kumar*, the Commission took suo motu notice of the orders of the State Commission which had passed the orders without the junction of the president. The post of President was vacant at that time. It set aside the orders of the Commission as illegal and without jurisdiction.

What would, however, happen when the President, for one reason or another, was not available. On this point the Supreme Court set aside the orders of the Commission by observing that it committed an error in holding that the order passed by two members of the Commission without the junction of the President as illegal and void. It stated:

"The only harmonious construction that could be given to Sub-sections (2) and (2A) of Sec. 14 of C.P. Act, 1986 read with sub-rules (9) and (10) of Maharashtra Consumer Protection Rules, 1987 is that as and when the President

\[\text{15 Supra} \]
\[\text{16} \text{ I (1996) CPJ 90 (NC)} \]
\[\text{17} \text{ Gulzaril Lal Agrawal v. Accounts Officer, III (1996) CPJ 12 at 16 (SC)} \]
of the State Commission is functional, he along with at least one member sitting together shall conduct the proceeding, but where the President being non-functional, sub-rules (9) and (10) of Rule 6 of Maharashtra Consumer Protection Rules, 1987 will govern the proceedings.”

It has been held that a consumer forum has a duty to consider a complaint on merits if a written statement has been filed even though his lawyer did not attend.\textsuperscript{18}

\section*{JURISDICTION}

There is sufficient amount of case law available on jurisdiction of consumer fora. As a result of a conservative stand of the National Commission, the fora have been denied jurisdiction on flimsiest of grounds. In \textit{Sheila Construction Pvt. Ltd. v. National Lake Development Authority}\textsuperscript{19} the land of the authority was purchased by two parties at an auction for Rs. 51 lakhs and Rs. 45 lakhs. The authority had made the promise in the advertisement to construct a connecting road. On its failure to do so, the National Commission asked the authority to complete the road by 15.2.1995 while the two complainants were directed to pay instalments of Rs.

\textsuperscript{19} III (1996) CPJ 11 (NC).
3 lakhs by 31st December.

Surprisingly, the Commission after assuming the jurisdiction and deciding on merits dismissed the complaint on the ground that no hiring of service was involved in a case where there had been an outright sale of immovable property.

In *Quality Foils India Ltd. v Bank of Madura*[^20] the National Commission observed that for determining the pecuniary jurisdiction of the fora, the basis was the value of goods and compensation claimed in the aggregate and not separately.

The Apex Commission has consistently adhered to its home-spun doctrine of exclusion of jurisdiction in determining question of complex nature. In a banking matter in which the complainant challenged excess interest charged by the bank it refused to take account. It observed[^21] "*The Forum constituted under the Consumer Protection Act is not proper forum for taking accounts and deciding the amount due to any of the parties; that is to be done only by regular civil courts.*" There appears to be no logic for this observation.

In an insurance matter, the National Commission refused to decide a case on the ground that the insurer had made allegation of

[^20]: Il (1996) CPJ 103 (NC)
[^21]: Il (1996) CPJ 59 (NC)
fraud against the insured which could not be looked into by a consumer forum. In this case some miscreants had loosened the nuts of oil tanks of the insured resulting in loss of oil. The surveyor had recommended the payment of Rs. 54,09,356/- which was accepted by the party. Then the insurer appointed an investigator on the basis of whose report it repudiated the claim after 5 years.\textsuperscript{22}

However, in another complaint in which the owner of a T.V. set received an electric shock resulting in his death, the National Commission set aside the orders of the State Commission refusing to proceed with the complaint on the ground that it was a complex matter. The investigator in this case had concluded that the accident had taken place due to the defect in the TV set.\textsuperscript{23}

It is apparent that the line between a complex and non-complex question is thin and very much of a subjective nature. Since consumer fora do not abide by the time limitation for disposal of complaints, the underlying justification for this invidious distinction no longer exists. It is high time that consumer fora are trusted to determine complex questions.

It has been pointed out that according to the National

\textsuperscript{22} Ghai Agro Mills Ltd. v. New India Insurance Co. III (1996) CPJ 47 (NC)
\textsuperscript{23} Perumal v. Velwyn Television Ltd. I (1996) CPJ 164 (NC)
Commission, the consumer fora have no jurisdiction to determine the validity of a term of contract, however, unreasonable it may be. While rejecting the claim for refund of fee, the National Commission expressed its inability to intervene as the prospectus contained the provision that fees once paid were non-refundable, it observed.24

"Suffice it to say that Fora established under the Consumer Protection Act have no jurisdiction to declare any rule in the prospectus of the institution as unconscionable or illegal."

This is in spite of the judgment of the Supreme Court in Bharti Knitting Co. case25 that "in an appropriate case the tribunal without entrenching upon the disputed questions of fact may decide the validity of the terms of contract." In the aforementioned case, the National Commission should have identified "appropriate situation" when this power could be exercised by consumer fora.

PROCEDURE

If not anything else, the consumer fora in the course of last few years have continued to borrow technicalities of the Civil Procedure Code, 1908. It is now necessary to use technical legal terms such as “deficiency in service”, “negligence” and the rest; a

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24 Homeopathic Medical College Hospital v. Gunita Virk, I (1996) CPJ 37 at 38 (NC)
25 Ibid
layman unlettered in legal procedure is bound to be thrown out of
the court if the procedure is not meticulously followed.

It is worthy to mention that technicalities of procedure do
often promote the course of justice. Thus, it has been held that
the first appeal is a continuation of the main complaint and all
reliefs available on the date of determination of the appeal could be
granted to the appellant irrespective of the state of law at the time
of filing of the complaint.26

Where the State Commission did not grant permission to the
appellant to cross-examine the complainant and his two witnesses,
the National Commission held that there has been failure of justice
and the matter was remanded to the State Commission.27

DEFECT IN GOODS

The Supreme Court has further clarified the meaning of
consumer of goods in Rajeev Metal Works v. Metal Corporation of
India.28 The complainant had ordered for the purchase of GP
sheets through the Metal Corporation, from a foreign source. The
opposite party having failed to get the required quantity from the
supplier was sued by the complainant for deficiency in service. It

26 Harbans Singh v Rajasthan Housing Board, II (1996) CPJ 122 (NC)
was dismissed by the National Commission on the ground that the sale was for a commercial purpose and not agreement for rendering any service. On appeal, the Supreme Court held that the respondent was a statutory authority to procure required goods on behalf of buyers from a foreign source. It had not taken any responsibility for the supply or non-supply of goods. Moreover, the goods supplied were for a commercial purpose i.e., for manufacture and resale as finished goods. It observed: "Under the circumstances the appellants intended to purchase these resale... Thus considered, we are of the opinion that the Appellants are not consumers by virtue of exclusionary clause under Sec. 2(1)(d)(ii)."\^29

In *Kody Electronic Ltd. v. C.P. Gupta*,\^30 the National Commission considered the question whether an ultrasound scanner machine which was defective purchased by the respondent for the nursing home was being used for commercial purpose or not. The State Commission had ordered for removal of the defect or refund of the price. It relied on *Laxmi Engineering* case\^31 and held that the test is whether goods purchased are for use by the person himself for earning a livelihood. In view of the affidavit given to

\^29 Supra
\^30 1((1996) CPJ 7 (NC)
\^31 Laxmi Engineering Works v. PSG Industries, C.A. No. 4193/95 decided on 4.4.1995
that effect by the purchaser, the National Commission ruled that it is not the profits of the enterprise which are relevant but the use to which these are to be put. It concluded that the scanner was not for commercial purposes within the meaning of Section 2(1)(d)(i) of the Act.

Where the complainant had ordered a brick-making machine, the National Commission affirmed the findings of the District Forum and State Commission that it was not for commercial purpose. It held "A person who purchases machine to operate himself for earning a livelihood would be a consumer even if such a buyer takes assistance of one or two persons to assist or help him."32

DEFICIENCY IN SERVICE

Numerous cases have been decided on the legal notion of "deficiency in service" by consumer fora. The decision of the Supreme Court in Lucknow Development Authority33 formed the high water mark in this regard. In that epoch-making judgment the court made the following observation:34

"The authority empowered to function under a Statute while

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32 II (1996) CPJ 88 at 9 (NC)
33 Ibid
34 Ibid
exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bona fide, loss may accrue to any person. And he may claim compensation which may in the circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself to act in a manner which is arbitrary."

However, the scope of this progressive judgment which did to a large extent ensure accountability has to a considerable extent been reduced by the judgment in S.P. Goel.\textsuperscript{35} The court conveniently ignored the callous attitude of the collector who had grossly been negligent having failed to determine the nature of the document and the amount payable to the document for five to six years. It should not have arrived at the conclusion that the Stamp Act was a tax collection statute ignoring the well known distinction between "tax" and ‘fee’. Stamp duties are in the nature of fee and in the circumstances of the case the payment should have been

\textsuperscript{35} Supra
treated as consideration for the service rendered. It appears that the adjudicators were influenced by the much criticized sovereign immunity function, which is untenable in our constitutional system of governance.

The National Commission seems to have reconsidered its stand regarding the liability of provident fund authorities. In the earlier case of *Central Bank of India v. Dil Bahadur Singh*, it had made the startling conclusion that the matter being one of employment, the complainant had to move the civil court for claiming the arrears of provident fund. The *Regional Provident Fund Commissioner v. Shiv Kumar Joshi*, however, the Commission made some hair splitting distinctions to establish accountability for payment of provident fund. It made the distinction between situations where the payment was to be made by the Accountant General as in the case of general provident fund or by the Provident Fund Commissioner under the Employees' Provident Fund & Misc. Provisions Act, 1952. It disapproved the holding of the Delhi State Commission in *M.K. Sangal v. Accountant General* where the Accountant General had been held liable by

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36 III (1996) CPJ 379 (NC)
37 I (1996) CPJ 199 (NC)
38 II (1992) CPJ 441
the State Commission for payment of general provident fund. According to the National Commission the Accountant General was performing a statutory function which earned immunity for him. On the other hand, it found the Regional Provident Fund Commissioner liable as it was providing service under section 2(1)(o) of the Act. With regard to the provision of the Accountant General in respect of provident fund savings made the following interesting observation:39

"The responsibility in compiling and maintaining General Provident Fund accounts by the Government of Public Sector Undertakings is a discharge of statutory responsibility and the source of this authority is not the said Act and the 1952 Scheme."

Obviously, therefore, the Accountant General was not rendering service and could not be held accountable under section 2(1)(o) of the Act. It is submitted that this approach is again a relic of the non-accountability of a functionary for sovereign function which our courts have not abandoned in spite of the observations of the Supreme Court in Lucknow Development Authority.40

39 Supra
40 Ibid
AIR SERVICES

The question of liability of the airlines for its operations arose in Common Cause v. Union of India. There was serious disruption of air services for a period of six weeks on account of illegal strike of members of Indian Flight Engineers’ Association and not by the Indian Airlines. On the basis of the CUTS case, the airline could not be asked to pay compensation as there was no negligence on its part. However, for the first time the National Commission found a way out from the web of technicalities and it gave a warning to the association as under:

“In addition we also think it necessary to administer a strong word of caution that in case similar instance of disruption of service by illegal strikes or agitations come to the notice of this Commission, in future, on the part of employees of any organisation rendering service to the public for consideration or any Association or Union of employees we will be dealing with the matter in a very strict manner and will have no hesitation to award proper compensation to the consumers who are thereby affected.”

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41 I (1996) CPJ 33 (NC)
43 Ibid
The National Commission has in another significant judgment unsettled the rules relating to agency. It is a matter of common knowledge that due to complex nature of business transactions and other preoccupations consumers largely rely on agents. They have a definite mind set in this regard that an agent is liable for the acts and omissions of the principal in the course of business. In *Air India v. Yogendra H. Parekh*\(^{44}\) the agent had issued return tickets for five days for a trip to Moscow in violation of the rule of the principal that the trip must be at least 10 days duration to qualify for the concession. The Commission refused to hold the airline liable on the ground that for the mistake of the agent, Air India could not be *held* liable. If this judgment is given wide publicity, many consumers of air service will refuse to deal with agents even through direct dealing with the airline may be inconvenient.

In *Station Manager, Indian Airlines v. Jiteswar Ahir*\(^{45}\) the National Commission had to consider the liability of the airline for its negligence in providing safe facilities for embarking and disembarking. A passenger had boarded the aircraft without identifying the baggage on the ground. On being told by an official

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\(^{44}\) II (1996) CPJ 1116 (NC)

\(^{45}\) I (1996) CPJ 326 (NC)
to do so, the passenger proceeded towards the door of the aircraft. Before he could put the weight of his body on the staircase, the ladder was suddenly removed resulting in injuries to him. The State Commission awarded him compensation of Rs. 5,01,000/- for deficiency in service and negligence. The National Commission approved it as fair and reasonable.

BANKING

There has not been any significant change in the attitude of the National Commission in matters relating to banking. The Commission has meticulously avoided intervening in disputes of consumers with the bank on the plea that accounting work was of a complex nature and the civil courts alone could take cognizance of them. Neither did it question the manner in which discretionary power had been exercised by the management even though it was used arbitrarily.\(^{46}\)

In the matter of dishonouring of a draft issued by a Bank, the State Commission found the bank negligent and deficient in rendering service. The complainant had suffered loss because of the non-entertainment of an application for allotment of shares. It had granted compensation for the loss suffered by the consumer

\(^{46}\) R. Sethu Raman v. The Manager, Indian Overseas Bank, II (1996) CPJ 58 (NC)
due to spurt in prices of shares. In addition it had ordered for payment of interest and other damages. The National Commission while upholding the finding of the State Commission disallowed payment of interest and other damages restricting the quantum of compensation to price difference of the shares.

**ELECTRICITY**

There are several problems faced by consumers of electricity. The efforts made by them and consumer organisations to secure justice have succeeded only marginally. Due to shortage of power a consumer of electricity is made to suffer sudden breakdowns and fluctuations in voltage. While the courts have expressed inability to give appropriate relief in such situations, some aggressive consumers have taken the law into their own hands by adopting violent means or theft of electricity to wreck vengeance on the supplier.

In any case, consumer fora provide some relief to consumers of electricity for whimsical actions of the officials such as arbitrary disconnection and discriminatory treatment in permitting new connections. *In Haryana State Electricity Board v. Tanuj Rashi Poultry Farm,⁴⁷* an NRI consumer complained against electricity

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⁴⁷ [II (1996) CPJ 15 (NC)]
disconnection to his farm which caused death of 3080 birds. It appears that the consumer had resisted demands a bribe for getting his application for extended load sanctioned. The board had taken no steps to replace the meter which got burnt. The State Commission had granted Rs. 75,000/- as compensation. Expressing resentment over the role of the board officials connected with the case, the National Commission observed that it would have been appropriate on the part of the Haryana State Electricity Board to make an inquiry into the conduct of its officials rather than wasting public money in litigation. The National Commission dismissed the appeal preferred the Board and sustained the judgement of the State Commission.

In another case the National Commission up held the finding of the State Commission that the drastic action of disconnecting electricity without notice to a consumer amounted to deficiency in service. The State Commission had directed to board to restore the electric supply and the payment of Rs. 50,000/- as compensation to the aggrieved consumer. The National Commission found the assessment of compensation by the State Commission to be on sound principles and fair.48

HOUSING

The National Commission has been liberal in the grant of relief to consumers of housing construction.

It may be recalled that in *Gujarat Housing Board v. Datania Amritlal*\(^{49}\) the National Commission had come to the conclusion that pricing was outside the purview of consumer fora unless the price had been fixed by law. In that case it had overlooked the inordinate delay caused to the consumers as a result of which some senior citizens had to pay higher price. Since the Supreme Court, in an important judgment, had in unequivocal terms *held* that delay in giving possession on discharge of a contract might amount to deficiency in service or unfair trade practice,\(^{50}\) it has been necessary for the apex Commission to redefine its position in relation to complaints of housing. While formally reiterating its stand that pricing complaints cannot be entertained, it has pointed out that consumers may seek compensation if there was an unreasonable delay in handing over possession. In short, it has now become a matter of pleading. A complainant who challenges a price hike is likely to lose as against one who claims compensation

\(^{49}\) F.A. No. 241 order dated 7.10.1993 (NC)
\(^{50}\) Om Prakash v. Asst. Engineer, Haryana Agro Industries Corporation I (1994) CPR 9 (SC)
for loss caused due to delay in delivery of possession.

In Akhilesh Verma v. Skipper Builders Pvt. Ltd.,\textsuperscript{51} the National Commission took serious note of the escalation of real estate prices day by day. In granting compensation it made the observation that "a consumer cannot be allowed to be swindled by an unscrupulous builder." An interesting point to note is that it has now been reduced to a question of pleadings.

In Gujarat Housing Board v. Akhil Bhartiya Grahak panchayat\textsuperscript{52} the complainant had claimed compensation for loss caused due to bad construction and delay in delivery by way of reduction in the price of the house. The State Commission had disallowed the claim following the judgement of the National Commission that, pricing of housing could not be agitated in the consumer fora. The National Commission dismissed the appeal on the ground that since the consumer had not demanded compensation before the State Commission on these heads, no relief was possible.

Where a consumer had not been given possession when all others had received flats, the National Commission ordered the delivery of possession within two months. The aggrieved consumer

\textsuperscript{51} I (1996) CPJ 51 (NC)
\textsuperscript{52} I (1996) CPJ 41 (NC), see also I (1966) CPJ 103 (NC)
was successful not only in getting 18 per cent interest on a sum of Rs. 8,46,000 from 1.4.1990 but also a compensation of Rs. 50,000/- for mental harassment.\textsuperscript{53}

However, in Kashmiri Migrant's case\textsuperscript{54} the apex Commission was not as liberal. In an advertisement the builder had shown the land to be for building houses and commercial plots when in fact it was agricultural land. He failed to have the use of land converted as per his promise in eight years. The National Commission instead of granting compensation on the basis of price rise, granted interest at the rate of 28 per cent. No other relief was held to be admissible.

The present position has been summarised by the National Commission in Commissioner, Assam State Housing Board v. Manoj Kumar Adhikary\textsuperscript{55} as under:\textsuperscript{56}

"It is now settled that matters relating to pricing may be adjudicated by consumer fora in cases where price is fixed by law or there is deliberate or intentional act on the part of seller of

\textsuperscript{55} II (1996) CPJ 47 at 49 (NC). See also V.S. Shukla v. Lucknow Development Authority, (III) (1996) CPJ 67 (NC)
\textsuperscript{56} Ibid
goods to take advantage of a higher price of the goods or there is a price dispute due to unfair trade practice... or there is an avoidable delay in the delivery of the goods resulting in a higher price of the goods. This flows from our judgment in Haryana Urban Development Authority v. Deep Kishore Singh ... and judgment of the Supreme Court in Om Prakash v. Assistant Engineer, Haryana Agro Ind. Corp. Ltd... and Mohindar Pratap v. Modern Automobiles & Another...."

INSURANCE

The consumer fora have continued to show appreciation of the problems of policy holders in life insurance cases. In Chinnamma v. Div. Officer, Life Insurance Corporation⁵⁷ the National Commission set aside the order of the State Commission on the ground that repudiation of claim by itself could not constitute a bar against the maintainability of a claim of insurance provided the insurer was able to establish before the forum that there has not been due application of mind. In this case the LIC had not repudiated the claim in good faith as it had not established any nexus between peptic ulcer for which he had undergone treatment and heart attack, which was the cause of death.

⁵⁷ III (1996) CPJ 136 (NC)
It is unfortunate that policy guidelines adopted by the corporation decades earlier still from the basis of the response to claims made by or on behalf of the insured. Almost mechanically a condition, patently unreasonable, which cannot withstand judicial scrutiny, is sought to be enforced to defeat the rights of the insured.

In *Ram Naresh Sinha v. Divisional Manager, LIC* \(^{58}\) it was alleged that the original policy was containing a first pregnancy clause while in the copy produced by the claimant no such clause existed. Under this clause the LIC can repudiate a claim at the time of the first pregnancy unless special payment is made to cover that risk also. Giving the benefit of doubt to the claimant, the National Commission allowed the claim. It stated that since no convincing evidence had been given that the policy was subject to this clause, the implication was that the policy was not subject to it.

The LIC repudiated a life insurance policy on the ground that at the time of death the insured was intoxicated. The Karnataka State Commission held the repudiation unjustified as the corporation could not lead evidence to establish that at the time of

\(^{58}\) I(1996) CPJ 130 (NC)
the accident the insured was intoxicated.\textsuperscript{59}

**GENERAL INSURANCE**

Consumer fora at all levels have been flooded with complaints relating to general insurance. Some interesting decisions have been given by the Supreme Court.

In *B. Nagaraju v. Oriental Insurance Co.*\textsuperscript{60} the Supreme Court disapproved the reasoning of the National Commission that extra passengers carried in a goods vehicle in violation of the terms of the policy constituted such a fundamental breach as to afford ground to the insurer to eschew liability altogether. The court *held* that the exclusion term of policy of insurance must be read down to subserve the main purpose of the policy, that is, to indemnify the damage caused to the vehicle. This judgment is a contrast to the order of the National Commission that liability of the insurer to compensate the insured for any loss occurring to the vehicle is conditional or the driver of vehicle possessing an effective licence at the time of occurrence of the loss.\textsuperscript{61}

In a significant ruling the Supreme Court laid down the foundations of the rights and liabilities of the insurer and the

\textsuperscript{59} S.B. Girijamba v. Sr. Manager LIC. I(1996) CPJ 224 (Kar)

\textsuperscript{60} II (1996) CPJ 18 (SC)

\textsuperscript{61} New India Assurance Co. v. Jadav Narendrabhai, I (1996) CPJ 230 (NC)
insured. In United India Insurance Co. Ltd. v. M.K.J. Corporation,\textsuperscript{62} it made the following observation:

"It is a fundamental principle of insurance law that utmost good faith must be observed by the contracting parties. Good faith forbids either party from concealing (non-disclosure) what he privately knows, to draw the other into a bargain, from his ignorance of that fact and his believing to the contrary. Just as insured has duty to disclose, similarly it is the duty of insurers and their agents to disclose all material facts within their knowledge, since obligation of good faith applies to them equally with the insured."

It, therefore, rejected the pleas of insurer that the policy which covered riots, strikes or malicious damage did not cover loss or damage resulting from cessation of work or retardation or interruption or cessation of any process for operation or omission of any kind. In this case the surveyor had come to the conclusion that the insured had suffered damage due to strike organised by the workmen.

However, by a strange argument, the court restricted the

\textsuperscript{62} AIR 1997 SC 408 at 409; case decided on 11.8.1996
grant of interest to 12 per cent on the ground that the insurance company in its turn secures interest on its investments at 11.3 per cent only. By introducing an unpredictable test for determining the rate of interest the court appears to have brought uncertainty. The rate of interest ought to have been allowed on the basis of market rate as is the case in all cases decided by the consumer fora. The court also rejected claims on account of consequential loss on the ground that such claims were heard and disposed of by the Commission, leading the court to infer that these must be deemed to have been rejected. Such a summary treatment of an important issue by the highest court has been a source of grave hardship to consumers of this class. It has been misunderstood by the fora that such claims need not be examined seriously.

An important case regarding rights of the transferee of a vehicle on transfer of registration was decided by the Supreme Court. The Motor Vehicles Act of 1989 repealed the Act of 1939 (old Act). An insurance policy of a vehicle was taken under the old Act. It was sold on 15.6.1989 before the new Act, i.e. The Act of 1989 came into force. At the time of sale the transferee had made an application under Section 103A of the old Act for transfer of insurance policy but this was not done until the vehicle met with
an accident. The application of the transferee was pending at the time the new Act came into force. Under Section 157 of the new Act, the policy was deemed to have been transferred. However, the policy was restricted to third party risk and would not cover loss or damage to the vehicle. On the basis of this interpretation, the National Commission dismissed the complaint holding that a certificate of insurance is deemed to have been transferred under Section 157 of the new Act “but the said provision applied only in relation to third party risk and did not apply to a policy covering risk of damage to the vehicle or person of the insurer”. The Supreme Court approved this reasoning of the National Commission holding that in the realm of contract, there must be an agreement between the insured and the transferee.63

It is, however, hard to understand why the court refused to give relief to the transferee in respect of damage to the vehicle when he had done everything to have the policy of insurance transferred.

An easy expedient widely used by the insurance companies is to repudiate a claim on the ground of alleged fraud. It involves long delay on the part of the insurer as it must give an impression that a thorough investigation had been made, though in fact that

generally is not done. In *Ghai Agro Mills case*, the National Commission should have asked the insurance company to produce more convincing evidence of fraud, namely, incorrect information by fabricated documents in view of the fact that it took almost five years to repudiate the claim. It has been no consolation to the insured for having been granted Rs.20,000/- for the delay made by the insurer for the settlement of a claim of Rs. 55 lakhs.

However, in *Changalrayan Co-operative Sugar Mills v. Oriental Insurance Co.* the Commission concluded that the claim could not be held to be fraudulent simply because the insured had claimed that “exaggerated amount of empty bags” were stored in the godown which were lost in the fire.

A thorough examination of the issues arising out of repudiation was done by the National Commission in *Tanawala Synthetic Textile Ltd. v. Oriental Insurance Co.* The insured failed to settle the claim of loss of the insured on account of fire which took place in 1991 for more than three years until it was repudiated by it, in April 1994. Though the surveyor had given the report in September 1991, the insurer did nothing up to February

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64 Supra
65 III (1996) CPJ 59 (NC)
66 III (1996) CPJ 99 (NC)
1994 when it appointed L.V. Associated to verify purchases. The National Commission took a serious note of this meaningless delay and observed that no valid grounds were given in the letter of repudiation as to why the report of the surveyor had not been accepted. It ordered payment of Rs.7,16,278/- with 18 per cent interest from 14.7.1991 till the date of payment and Rs. 20,000/- for mental agony suffered by the petitioner.

In another case where repudiation was done by the insurer on the ground that spontaneous combustion of the goods is not “fire” within the meaning of the policy, the National Commission gave relief to the insurer. It held that it would be natural to presume that damage of molasses had been caused by fire arising from spontaneous combustion.67

Likewise, the Commission refused to accept repudiation of a policy in respect of an accident to jeep. At the time of accident, the vehicle was carrying passengers who had paid charges. The insurance company had relied upon report of Minimization Bureau which mentioned that fare paying passengers were being carried in the jeep. The National Commission saw no reason to disagree with the findings of the State Commission without the affidavit of the

67 Saraya Sugar Mills Ltd. v. United India Insurance Co. Ltd. II (1996) CPJ 6 (NC)
person who investigated the case on behalf of the insurer.\textsuperscript{68}

**MEDICAL**

Only a few months after it’s judgment in *Indian Medical Association* case,\textsuperscript{69} another landmark judgment was handed down by the Supreme Court defining respective rights and obligations of allopathic and homoeopathic systems of medicine. In *Poonam Verma v. Ashwini Patel & Others*,\textsuperscript{70} a person registered as a medical practitioner for homoeopathic practice only, without finding the necessity of conducting pathological tests, treated Pramod Verma for an ailment “prevalent” at that time in the locality in question, by prescribing allopathic medicines. As a result of this the patient died. The Maharashtra State Commission did not provide relief to the complainant, the wife of the deceased.

The Supreme Court *held* that the respondent, by virtue of his registration, was under a statutory duty not to enter the field of any other system of medicine. By practising in allopathy he had “trespassed into a prohibited field and was liable to be prosecuted under section 15(3) of the Indian Medical Council Act, 1956.” Having practised in allopathy, without being qualified in that

\textsuperscript{68} United India Insurance Co. Ltd. v. Dashrath J. Patel II (1996) CPJ 77 (NC)
\textsuperscript{69} Indian Medical Association v. V. P. Shantha, III (1995) CPJ 1 (SC)/1996(1) SCCR 42
\textsuperscript{70} II (1996) CPJ 1 (SC)/1996 (1) SCCR 760 (SC)
system, observed the court, "the respondent was guilty of negligence per se". The petitioner was granted a compensation of Rs.3 lakhs and cost of Rs. 30,000/-.  

After sustained complaints by Indian Medical Association and prominent members of medical profession a debate has been generated as to whether practitioners of indigenous system of medicine should be allowed to prescribe allopathic medicines for treatment. The judgment of the Supreme Court in Indian Medical Association case\textsuperscript{71} has signalled a resounding victory for the members of allopathic system of medicine. Though the court was forthright to lable a person not having the knowledge of a particular system of medicine as a quack if he practised in that system, the fact remains that different systems of medicines in vogue in India cannot remain in water tight compartments. The knowledge of one system is not sufficient to outlaw the other one and there is taking place a synthesis of these systems, though it is imperceptible at present. Millions of inhabitants of this country have deep faith in indigenous systems of medicine, and if the practitioners of these systems are not allowed to use some tried out allopathic medicines for the benefit of their patients the loss will be of patients only.

\textsuperscript{71} 1996 (1) SCCR 42
That this meddling may not endanger life, if it necessary to suitably make changes in the theory and practice of practitioners in the curriculum.

The National Commission has provided some guidelines for calculating compensation in medical malfeasance cases. In a case of medical negligence, the State Commission had awarded a paltry compensation of Rs.2000/- (in addition to Rs. 15000/- which had been reimbursed by the doctor at the time of reoperation) to a complainant who had been operated in a negligent manner. The surgeon had left forceps inside which caused pain and suffering, and endangered the life of a patient, necessitating another operation. During the second operation some portion of the intestine had to be removed. The National Commission while raising the amount of compensation to Rs. 10,000/- observed:\textsuperscript{72}

\textit{We are of the opinion that no standard criteria can be prescribed for determining the amount of compensation in such like cases. In this case factors like the period of discomfort and agony... are taken into consideration while determining the amount of compensation.}

That consumer fora have been adopting an approach of

\textsuperscript{72} Sau Madhuri v. Dr. Rajendra, III (1996) CPJ 75 at 77 (NC)
extreme caution in determining medical malfeasance is reflected in the orders of the National Commission in Dr. N.T. Subrahmanyam v. Dr. Krishna Rao.\textsuperscript{73} The State Commission had rejected the case of medical negligence against the respondent on the ground that no gross-mismanagement as alleged in the complainant had been established. The National Commission stated the principles for determining negligence as under:\textsuperscript{74}

"The principles regarding medical negligence are well settled. A doctor can be held guilty of medical negligence only when he falls short of the standard of reasonable medical care. A doctor cannot be found negligent merely because in a matter of opinion he made an error of judgment. It is also well settled that when there are genuinely two responsible schools of thought about management of a clinical situation the court would do no greater disservice to the community or advancement of medical science than to place hallmark of legality upon one form of treatment."

\textsuperscript{73} II (1996) CPJ 233 (NC)
\textsuperscript{74} Ibid
POSTAL

In Presidency Post Master case\textsuperscript{75} the National Commission had drastically limited the liability of postal authorities for misdelivery and non-delivery of postal articles on the basis of section 6 of the Indian Post Offices Act, 1898. The effects of this decision have been disastrous. The National Commission has tried to resile from this position in some recent cases.\textsuperscript{76}

In \textit{Superintendent of Post Offices v. Upvokta Surakshya Parishad}\textsuperscript{77} the District Forum awarded to a consumer Rs.2000/- as compensation for the "wilful" act of postal authority to get the letters stamped late with the result a letter carrying information regarding admission of the complainant was delivered late. It was affirmed by the State Commission. On revision the National Commission \textit{held} that failure to do something which should have been done is also an act of will and therefore covered by "wilful acts" mentioned in section 6. It found no merit in the revision petition and dismissed it. The Commission reiterated the need of amendment of the Post Offices Act to bring it in tune with the functioning of a democratic and accountable government.

\textsuperscript{75} Presidency Post Master v. U. Shanker, II (1993) CPR 1141 (NC)
\textsuperscript{76} See D.N. Saraf, "Consumer Protection Law", XXX ASIL 18 (1994)
\textsuperscript{77} III (1976) CPJ 105 (NC)
Whether reduced rate of interest not stamped on the National
Saving Certificate would entail liability of the post office to pay
interest shown in the certificate was answered by the National
Commission in the negative. It came to the conclusion that there
was no deficiency of service. According to it the District Forum and
the State Commission had given undue importance to the
‘ inadvertent mistake committed by the clerical staff’. 78

CARRIERS

It is now almost settled that ordinarily a party to a contract of
carriage of goods may not claim more than the agreed amount of
compensation for the loss of goods. Some important judgments of
the consumer fora relate to the loss or damages of the
consignment.

In Nath Bros Exim International Ltd. v. Best Roadways79 the
complainant lost his goods in the godown of the carrier as a result
of fire. The carrier pleaded that the consignee had booked the
consignment on owner’s risk as he had not opted to insure the
goods at the rate of 80 p. for every hundred rupees. The
complainant relied upon section 9 of the Carriers Act, 1865 which
provides that in a suit for loss, damage or non-delivery of goods

78 Union of India v. Manoj Kumar, II (1996) CPJ 114 (NC)
79 III (1996) CPJ 91 (NC)
sent through carrier it would not be necessary for the plaintiff to prove negligence or criminal act of the carrier, his agents or servants. The National Commission dismissed the petition on the ground that the carrier, not being negligent, could not be made liable under Consumer Protection Act. It further held that liability of the carrier did not arise even under the provisions of the Carriers Act, presumably because the consignee had sent the goods on owner’s risk.

However, the National Commission gave the benefit of Section 9 of the Carriers Act to the consignee in one another case of destruction of goods by fire. In this case the complainant had sent 257 generator sets to the opposite party by the carrier. The consignment did not reach the destination as it was alleged that it had been destroyed in a fire. It was held that loss of goods sent was prima facie evidence of negligence. “Occurrence of alleged fire without any explanation by the opposite parties as to the cause or origin of fire is presumptive proof of negligence.” The petitioner was entitled to damages.80

In another case of carriage of goods through Indian Airlines all the four cases (boxes) were not delivered to the consignee

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80 Birla Yamaha Ltd. v. Patel Roadways Ltd. II (1996) CPJ 40 at 42 (NC)
because of pilferage. The State Commission granted compensation at the rate of Rs. 160/- per kg as per limitation of the carrier. On appeal to the National Commission the consumer sought to invoke Rule 24 of the first schedule of Carriage by Air Act, 1972 on the ground that the loss had been occasioned by a “wilful” act of the carrier. It dismissed the appeal by distinguishing between “negligent” or “reckless” and “wilful” act. Since no evidence had been produced to show that the act was wilful the loss could not be compensated under rule 25.\(^{81}\)

The *Old Village Industries Ltd. v. Air India*\(^ {82}\) the National Commission had to determine the liability of the carrier for non-delivery of consignments at the destination. The complainant had sent the goods through Air India which carried them to Nairobi from where Air India had to make arrangements for carriage of goods to the destination through KLM and Swaziland Airlines. KLM carried the goods to Johannesburg but these could not be lifted from there by Swaziland Airways due to constraints of space. In determining the liability of the airlines, the National Commission came to the unfortunate conclusion that neither Air India nor KLM were negligent because the complainant had failed to give alternate

\(^{81}\) Jindal Photofilms v. Indian Airlines, II (1996) CPJ 168 (NC)

\(^{82}\) III (1996) CPJ 41 (NC)
disposal instruction in the event of no response being received from the consignee. However, this fact alone should not have been sufficient to exonerate the airlines from liability. The Commission did not attach any importance to the fact that the consignments had been lost.

Where the carrier made delivery of consignment from Madras to Zurich to the buyer without negotiating the documents and collecting the amount of the bill from the bank, the State Commission allowed the claim of Rs. 4,57,474/- in respect of the amount of the bill with 19.75 per cent interest. The National Commission upheld the orders of the State Commission but reduced the rate of interest to 18 per cent.\textsuperscript{83}

\textbf{RAILWAYS}

In a significant decision the National Commission came down heavily on the railway administration for its failure to provide security to passengers having confirmed tickets. The complainant and his parents had valid reservation but they were forced by miscreants to vacate their seats. On their refusal they were beaten severely causing injuries including permanent disability. The District Forum and the State Commission had \textit{held} the railway

\textsuperscript{83} Air France v. Patel Exports India, III (1996) CPJ 143 (NC)
liable. On revision the National Commission rejected the argument of the railway authority that the maintenance of law and order within the railways was the responsibility of Ministry of Home Affairs, i.e., the Police Department. It *held* that the complainants have paid consideration for the service and were entitled to be carried safely in the train up to its destination in the reserved compartment. It also pointed out that under Section 147(2) of the Railways Act, 1890, the railway administration could throw out unauthorized persons. Having neglected in checking the entry of unauthorised persons and removing them, the railway administration had failed to perform its duty. The order of the District Forum was confirmed.84

**TELECOMMUNICATIONS**

Because of the long rope given by the National Commission to telecommunication authorities, several cases of arbitrary action by it against consumers remain unagitated. However, all is not lost. Consumers are able to obtain relief in patent cases of abuse of power by telecommunication authorities.

In *District Engineer, Telecommunications v. Roshan Lal Agrawal*85 the two telephones of a consumer, one at the mill and

84 Union of India v. M.H. Pathak, II (1996) CPJ 31 (NC)
85 I (1996) CPJ 335 (NC).
another at residence, were disconnected for default in making timely payment of bills amounting to Rs.1,77,414. It was pleaded on behalf of the department under rule 443 of the Indian Telegraph Rules the department was authorised to disconnect all the telephones in the name of the subscriber. In this case the arrears were in the name of the mill and not in the name of Agrawal. It was held that the disconnection of telephone at the residence was an arbitrary act and, therefore, not legal.

EXECUTION

Consumers have generally relied on Section 27 of the Consumer Protection Act for execution of the orders of the fora. Under this Section a forum has the power to order for imprisonment and/or impose a fine for non-compliance of its orders. That this power is of a plenary nature is evident from the execution proceedings in the case of Sambhavana Builders Aggrieved Members' Association v. Sambhavana Builders (P) Ltd.86 In an original petition before the National Commission an order had been passed requiring the respondent to make a payment of Rs. 5,00,000/- producing before the registry title deeds and furnishing an affidavit to place this property at the disposal of the

86 III (1996) CPJ 167 (NC)
Commission. On the failure of the respondent to comply partly with the order, the Commission directed issue of warrants against the three directors of Sambhavana Builders and their detention in Tihar Jail for a period of three months by way of punishment for non-compliance of the order of the Commission dated 29.9.1995. A direction was also issued to the Commissioner of Police having jurisdiction in Vasant Vihar against the Directors Bhawani Iyer, Vijay Krishnamurthy and Lathika Srinivasan and to lodge them in Tihar Jail.

LIMITATION

With the amendment of Consumer Protection Act in 1993, a period of two years from the date of cause of action has been laid down for filing of claims in a Consumer Forum. The fora have also power to relax in certain situations.

It may be recalled that consumer fora have up held the clause of an insurance policy which restricts the time available to file claim against the insurer to one year only from the date of repudiation of the claim. In Jaya Kumar v. National Insurance Company, the National Commission held that relevant date for calculating 12 months in such cases would be 12 months from the date the regional office and not the branch office repudiates the claim.
CONCISE GIST AND SUMMARY OF CERTAIN IMPORTANT CONSUMER CASES

We are presenting below a gist and summary of certain important consumer cases decided recently on various aspects.

AIRLINES

1. Denial of Boarding Cards

The complainant and his wife had reported at the check-in-counter of Singapore Airlines at Madras Airport on the date of journey only at 23.00 hrs., which was just 50 minutes before the scheduled time of departure. Since by that time the counter had been already closed, there was no negligence or deficiency in service on the part of the Indian Air Lines in refusing to issue boarding passes to them.\(^{87}\)

2. Disruption of large number of flights of Air India due to sudden strike resorted to by members of Indian Flight Engineering Association

The contract of carriage entered into with Air India is a contract with the whole organisation. In the event of deficiency in service and consequent loss being suffered by passengers, action

under the Consumer Protection Act can be instituted not only against the corporate personally of Air India but also against the carrying staff member or group of members or its component department responsible for the deficiency in service.\textsuperscript{88}

3. \textbf{Removal of step ladder suddenly - injuries sustained by passenger}

The Complainant boarded air-craft. Disembarked to identify his luggage. He sustained injuries due to sudden removal of ladder. The National Commission upheld finding of the State Commission that there was negligence of the staff of Airlines resulting into injuries caused to the complainant. compensation awarded just and fair.\textsuperscript{89}

4. \textbf{Defective food supplied on Board}

A sharp metallic wire went into the mouth of a passenger alongwith rice and curry. \textit{Held} to be a deficiency in service, the complainant was awarded Rs. 2000/- as token compensation.\textsuperscript{90}

\textbf{BANKING}

1. \textbf{Freezing of credit facilities without notice}

The action of the Bank in freezing the credit facilities was

\textsuperscript{88} Common Cause v. Union of India, 1996(2) CPR 39 (NC).
\textsuperscript{89} Station Manager Indian Air Lines, New Delhi v. Dr. Jiteshwar Ahtir, 1996(1) CPR 152 : I (1996) CPJ 326 (NC).
\textsuperscript{90} Indian Airlines, New Delhi v. S.N. Sinha, I (1992) CPJ 62 (NC).
malafide. The Bank must be held guilty of negligence and deficient in rendering banking service.\textsuperscript{91}

2. \textbf{Discretion at Bank to grant further advances}

It is legally open to the banking company concerned to take a decision in good faith in the exercise of its bonafide discretion as to whether it is safe to make advances of public funds to any particular party and arrive at a decision after examining the relevant facts and circumstances.\textsuperscript{92}

3. \textbf{Banking - Loan}

Full amount not disbursed - Complaint against - Appellants case that they sustained heavy losses due to non-disbursement of the balance amount of the loan, not borne out by facts of the case - Complaint rightly dismissed.\textsuperscript{93}

\textbf{BUILDER}

1. \textbf{Defects in construction of Flats}

The building activity carried on by the Opposite Party is service within the meaning of Section 2(o) of the Consumer Protection Act. Construction of a flat or house is for the benefit of the person for whom it is constructed and when he hires services of

\textsuperscript{91} Mike's (P) Ltd. v. State Bank of Bikaner, 1995(3) CPR 1 (NC).
\textsuperscript{92} Ambika Cold Storage (P) Ltd. v. State Bank of India; 1992(2) CPR 719 (NC).
\textsuperscript{93} Mrs. Viswalakshmi Sasidharan & Ors. v. The Branch Manager; Syndicate Bank, 1999 NCJ 336.
a builder for construction he is within the ambit and scope of the definition of consumer.94

2. Possession of Flat not delivered within stipulated period

When possession of the flat is not delivered within the stipulated period the delay so caused is denial of service such dispute is not in respect of the sale of immovable property, but deficiency in rendering of service within the scope and ambit of the Consumers Protection Act.95

3. Builder agreed to provide car parking space

The purchase of the car parking space cannot be taken as a separate contract for purchase of some immovable property. Hence for the purchase of car parking space the complainant will be deemed to be a consumer of service qua the Opposite Party.96

4. Booking of Shop

The complainant booked a shop against part payment of Rs. 8,900/-. Builder had not got the building plan sanctioned. The complainant was allowed the refund of the amount alongwith 15% interest.97

94Pushpa Builder Flat Buyers Association v. Pushpa Builders Ltd., 1996(3) CPR 57(NC); II (1996) CPJ 212 (NC).
5. **Flat**

A person who deposits money for flat which is not delivered is entitled to refund and compensation.\(^{98}\)

**CARRIAGE BY AIR ACT, 1972**

1. **Eight out of twelve packages found missing**

The first respondent had not only failed to exercise reasonable care and caution as was expected from it after being aware of the nature of the consignment but had been grossly negligent in its custody. The part of consignment was lost due to the negligence of the first opposite party. There is clear deficiency in service on the part of the first opposite party resulting in loss to the complainant.\(^{99}\)

2. **Goods not delivered at destination**

Mere negligence will not connote wilful misconduct or default. Art. 25 (1) of the Air Act will not help the complainant. He is only entitled to the compensation for the loss in transit in terms of Regulation 5 as the value of the consignment was not declared by him or his agent.\(^{100}\)

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\(^{99}\) Shobha Global v. Air India, 1995(2) CPR 271 (NC).

\(^{100}\) Jindal Photo Films Ltd. v. Indian Airlines, 1996 (2) CPR 27 (NC); II (1996) CPJ 168 (NC).
3. Goods delivered without authority or without receipt of shipment

Two consignments were carried and arrived at the destination on 17.8.1992 and 24.8.1992 respectively and the action for damages against opposite party could be brought only before the expiry of two years computed from 17.8.1992 and 24.8.1992. The right to damages got extinguished as the action was not brought within two years.\(^{101}\)

CARRIERS ACT, 1865

1. Loss suffered to Maruti car

The complainant's Maruti car has suffered damage while in the custody of the carrier. The respondent will make necessary payment about repairs of the car. As the complainant has been deprived of the car for more than ten months it was ordered that respondent should pay Rs.10,000/- as damages.\(^{102}\)

2. Consignment destroyed by fire when stored in godown

The consignment of the petitioner was not destroyed because of any animal act or negligence on the part of the carrier or his agents. Even under the provisions of the Carriers Act, the claim of

\(^{101}\) Rava Exports (P) Ltd. v. Air France Cargo, 1997(2) CPR 60 (NC) : 1997 NCJ 361.

\(^{102}\) P.S.N. Rao v. Venine Cariers 1992 (2) CPR 705 (NC)
the petitioner cannot be sustained.\textsuperscript{103}

3.\textbf{ Failure to carry Consignments}

The appellant failed to carry consignments safely and to deliver it to the consignee. There has been deficiency in rendering of the service by the transporter.\textsuperscript{104}

\textbf{CONSUMER}

1.\textbf{ Diagnostic kit giving wrong results}

The purchase of the Kit made by the complainant was for a commercial purpose. The complainant cannot be regarded as a consumer entitled to maintain complaint under the Act.\textsuperscript{105}

2.\textbf{ Purchase of generating set}

The complainant purchased Kirloskar generating set for commercial purpose. The complainant is not a consumer within the meaning of expression "Consumer" in Section 2(d)(i) of the Act.\textsuperscript{106}

3.\textbf{ Machinery purchased for setting up oxygen plant}

The purchase of machinery for setting up an oxygen plant by appellant was for commercial purpose. The appellant is not a

\textsuperscript{103} Nath Bros. v. Best Roadways Ltd., 1996(3) CPR 207 (NC); III (1996) CPJ 91


\textsuperscript{105} Ranbaxy Laboratories Ltd. v. Mamtata Sarkar, 1997(1) CPR 1 (NC) : 1997 NCJ 124.

\textsuperscript{106} Madhu Chawla v. R.K. Engineering Co. (P) Ltd., 1995(3) CPR 449 (NC).
consumer.\textsuperscript{107}

4. Failure of landlord to maintain building

The arrangement between the complainant and the respondents is only one of Lease of immovable property and the default or omission on the part of the respondents complained of are in relation to their obligation under the said contract relating to lease of immovable property. The complainant not a consumer complaint not maintainable.\textsuperscript{108}

It indicates that the case falling under the purview of the Law of Contract cannot be brought into the Consumer Protection Act.

COMMERCIAL PURPOSE

1. Short supply of rice - deterioration in its quality

The complainant purchased huge quantity of rice not for self consumption but for sale. The complainant cannot be regarded as consumer. The defect in or shortage of goods is not sufficient, but the position of the complainant as Consumer is equally important to establish the claim.\textsuperscript{109}

\textsuperscript{108} Laxmiben Laxmichand Shah v. Sakerben, 1992(1) CPR 74 (NC).
\textsuperscript{109} Lakshmi Narayan Rice Mills Ltd. v. Food Corporation of India, 1995(3) CPR 630 (NC).
2. **Trust purchasing CT scan machinery**

Where every patient who is referred to Diagnostic Centre of Charitable Trust had to pay for it and only ten percent were provided free service, machinery purchased obtained by charitable trust was being used for commercial purposes. Trust not a consumer within the meaning of the Act.

It was further observed in the same case that "in spite of the commercial activity, whether a person would fall within the definition of 'consumer' or not would be a question of fact in every case. The National Commission had already held on the basis of the evidence on record that the appellant was not a "consumer" as the machinery was installed for "commercial purpose". We have been again referred to various documents, including the "Project document", submitted by the appellant itself to the Bank for a loan to enable it to purchase the machinery in question, but we could not persuade ourselves to take a different view. Every patient who is referred to the Diagnostic Centre of the appellant and who takes advantage of the CT scan etc. has to pay for it and the service rendered by the appellant is not free. It is also the case of the appellant that only ten percent of the patients are provided free service. That being so, the "goods" (machinery), which were
obtained by the appellant, were being used for "commercial purpose".110

3. S.2(1)(D) - Commercial Purpose

It is a matter of evidence. The mere earning of livelihood in a commercial purpose does not mean that it is a commercial purpose. Self-employment connotes that the person alone uses the machinery for producing goods for his livelihood.111

4. The complainant who had purchased VCR for running his video parlour was held not to be consumer.112

CONSUMER DISPUTE

1. Machinery not purchased for self employment

Where machinery was not purchased for self-employment but for commercial purposes, a person was not consumer.113

2. Failure to Sanction Plan

Failure to sanction plan is not a consumer dispute.114

3. Contractor charging higher charges for parking of vehicles and cycles

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113 Laxmi Engineering Works v. PSG Industrial Institute, (1995) 3 SCC 583;
The question as to the reasonableness of the price charged for the performance of service cannot be agitated before a Consumer Forum constituted under the Act. Thus there was no consumer dispute between the parties.\textsuperscript{115}

4. Both parents as well child consumer

When a young child is taken to a hospital by his parents and the child is treated by the doctor, the parents would come within the definition of consumer having hired the services and the young child would also become a consumer under the inclusive definition being a beneficiary of such services. The definition clause being wide enough to include not only the person who hires the services but also the beneficiary of such services which beneficiary is other than the person who hires the services, the conclusion is irresistibile that both the parents of the child as well as the child would be consumer within the meaning of Section 2(1)(d)(ii) of the Act and as such can claim compensation under the Act.\textsuperscript{116}

5 Car purchased for Commercial Purpose - Complainant not consumer

When the District Forum had no jurisdiction to entertain the

\textsuperscript{115} General Manager, A.P. State Road Transport Corpn. v. Secretary East Godawari Distt. Consumer Aid Advice and Welfare Society, 1995 (2) CPR 582 (NC).
complaint as the vehicle has been purchased for commercial purpose and the complainant was not a “Consumer” as defined in the Act, the orders of the District Forum as well as the State Commission have to be set aside.\textsuperscript{117}

\textbf{DEFICIENCY IN SERVICE}

1. Transporter failed to deliver goods

There was gross deficiency in service on the part of the transport company and on account of the failure on the part of the transport company to faithfully discharge its obligations under the contract of carriage, the complainant must have been put to very serious prejudice and loss in relation to his business. The interest awarded to the complainant by the State Commission would only go to partly off-set this head of loss sustained by the complainant and it would not cover the loss of business and the inconvenience and mental agony caused to the complaint as a result of the default committed by the transport company. Compensation for mental agony inconvenience suffered awarded.\textsuperscript{118}

2. Fixation of Fare - Jurisdiction

The fare being legitimately charged cannot be said to be illegal and no grievance in respect of the same can be raised under the

\textsuperscript{117} Sanjay Bagna v. Dr. Vijay P. Aher, 1996(3) CPR 126 (NC).  
\textsuperscript{118} Anil Textile v. Ajanta Transport Co. 1993(3) CPR 195 (NC).
Consumer Protection Act. The charging of fare which is approved by the Competent Authority cannot be said to be a deficiency in service and therefore, the Redressal Forums have no jurisdiction to entertain such complaints. In other words the charge of legitimate fare as per approved fare table cannot be said to be illegal and there is no deficiency in service within the meaning of the word ‘deficiency’ as defined in the Consumer Protection Act, 1986. The correctness or otherwise of the fares fixed by the Government of State Transport Authority or Regional Transport Authority in exercise of its statutory powers cannot be questioned under the provisions of the Consumer Protection Act, 1986.\textsuperscript{119}

3. **Death by drawing in swimming pool due to negligence of trainee**

The State Commission *held* that it clearly appears that opposite party No. 2 was negligent when the students were being trained for swimming in the pool. The State Commission further *held* that necessary life saving mechanism was not made available at the pool site and thus the Management of opposite party No. 1 was totally negligent in keeping ready the necessary life saving mechanism to save the lives of trainee students in case of

\textsuperscript{119} Maharashtra State Road Transportation v. B.G. Sarang, 1995(3) CPR 60 (NC).
accidents. Thus, opposite party No. 1 is also clearly liable for the negligence of opposite party No. 2 who was their employee.\textsuperscript{120}

4. Wrist watch given for repair - watch lost

The National Commission was of the opinion that the order of the State Commission, so far it relates to the watch of the claimant’s wife cannot be sustained. It was the claimant who had produced the watch of his wife for repairs and entrusted it for repair to the respondent. Thus it was the claimant petitioner who had hired the services of the respondent for repairing the watch of his wife. By losing the said watch, the respondent was definitely negligent in the rendering of service.\textsuperscript{121}

5. Viva examination not communicated, did not appear for viva

The notice regarding the date of viva examination was duly displayed on the Notice Board of the institution. There was no obligation on the part of the institution to inform each student individually about the examination programme including the date of viva examination. There has been no deficiency on the part of the Appellant-Opposite party.\textsuperscript{122}

\textsuperscript{120} Shashikant Krishanaji Dube v. Shikshana Prasaraka Mandali, 1995(3) CPR 292 (NC)
\textsuperscript{122} Datapro Information Technology v. Rajinder Singh Saluja 1994(3) CPR 657 (NC).
DEFECTIVE GOODS

1. Bajaj Auto Trailer found defective

The National Commission confirmed the findings of the State Commission that the complainant is consumer and the vehicle supplied was defective. The respondent to replace vehicle by a new one and be covered by usual warranty from the date of delivery. Compensation granted for loss of earnings.\textsuperscript{123}

2. System of Air-Conditioning failed to function

The State Commission correctly stated the settled legal position that even where the goods were purchased for commercial purpose, if there is a warranty as in this case for its maintenance, the purchaser becomes a consumer in respect of the services rendered or to be rendered by the manufacturer or supplier during the warranty period, it committed that the complainant is a consumer within the meaning of section 2(1)(d)(i) of the Act as well as Section 2(1)(d)(ii) of the Act.\textsuperscript{124}

3. Paddy Seeds of special variety defective

The purchase of seeds for the purpose of agriculture is not a


\textsuperscript{124} M/s. Jay Kay Engineers v. M/s. Mohan Breweries & Distilleries Ltd. 1996(1) CPR 102 (NC).
purchase of an article for commercial purpose.\textsuperscript{125}

\textbf{ELECTRICITY}

1. \textit{Disconnection of electric supply - discrepancies in date of inspection}

    The reasoning and conclusion of the State Commission was upheld that the Board is guilty of the deficiency in service which it had undertaken to render to the consumer under the Indian Electricity Act and the Electricity Supply Act as also the statutory instructions of its own sales manual by disconnecting the electricity supply without any prior notice.\textsuperscript{126}

2. \textit{Disconnection of electric supply without due process is a Deficiency in Service :}

    The failure on the part of the Electricity Board to reconnect the electric supply clearly constitutes deficiency in service. If the department of highways has any objection to the grant of electric supply to the premises, such objection should be raised before the appropriate authority in accordance with law. The order of the State Commission was therefore, set aside and that passed by the


\textsuperscript{126} HSEB v. Naresh Kumar, 1996(2) CPR 47 (NC) : 1 (1996) CPJ 306 (NC).
District Forum restored.\textsuperscript{127}

3. **Non-release of electricity connection for tube-well not Justified**

The argument that it is the discretion of the Board to give or not a connection under the priority scheme, in view of these instructions, is not a valid ground and cannot be accepted as a justified reason for withdrawing a sanction issued after a period of 5 years from the date of the instructions.\textsuperscript{128}

4. **Illegal disconnection of Electricity**

The National Commission was of opinion that the District Forum was perfectly justified in awarding Rs.500/- by way of compensation to the complainant. The interference made by the State Commission with the award of compensation made by the District Forum, without stating any reason for such interference, was manifestly illegal. The National Commission set aside the Order of the State Commission insofar as it has disallowed the compensation of Rs.500/- to the complainant.\textsuperscript{129}

\textsuperscript{127} P. Jagadeesan v. Tamil Nadu Electricity Board, 1997(2) CPR 235 (NC) : 1997 NCJ 620.


\textsuperscript{129} Dharmata Prasad v. Sub-Divisional Officer, 1992(1) CPR 831 (NC) : I (1992) CPJ 252 (NC).
5. **Disconnection of electric supply to a Mill:**

Complaint - Electricity Board’s case that meter was recording 1/3rd of actual consumption. Whether the Haryana State Electricity Board or its officials could arbitrarily disconnect electric supply of their consumers without any notice? - (No). The Board had failed to establish the very foundation upon which they summarily proceeded to take drastic action of disconnection without any notice. State Commission was justified in awarding Rs.50,000/- as compensation.\(^{130}\)

**EX-PARTE ORDER**

1. **Disposal of case without affording opportunity**

All the provisions of the Code of Civil Procedure are not applicable to the proceedings before the redressal fora constituted under the Consumer Protection Act 1986 and only certain specific provisions enumerated in Sec. 13(4) of the Act are made applicable to such proceedings. Hence, the State Commission should not have imported the Hypotechnical procedure of debarring a party from filing his written statement and adducing his evidence in opposition to the complaint petition on the ground that he was absent on an earlier date of posting and in consequence, the Ex-

\(^{130}\) Haryana State Electricity Board v. Naresh Kumar, 1999 NCJ 45.
parte Order, if passed could be set aside.\textsuperscript{131}

2. **Appeal against Ex-parte order passed by State Commission**

   However, the Ex-parte order could not be got set aside, where the absence or delay on the part of the appellant was not found fit for being condoned. The notice was served on the appellant but no written version was filed within thirty days of the service of notice. Thereafter hearings were fixed on four dates but the appellant did not appear in spite of service of notice. The reasons given for delay in submission of the appeal are entirely unacceptable and there is no justification for condoning delay in filing the appeal.\textsuperscript{132}

3. **Ex-parte order to be set a side on the ground of Justice and Fairness**

   It is the claim of justice and fairness required that an opportunity should be given to the newly impleaded party to file its objections and also to produce relevant records and papers including the rules / manual. Alternatively, taking into account of the fact that the disposal by the District Forum was ex-parte, the State Commission could have remitted the matter to the District Forum for giving an opportunity to the complainant as well as to

\textsuperscript{132} Citi Bank NA v. Ganesh Narain, 1992(2) CPR 672 (NC):
both the respondents to substantiate their respective cases by adducing documentary / oral evidence inclusive of production of rules / manual etc.\footnote{S.P. Singh v. N.D.M.C., 1992(1) CPR 540 (NC).}

EDUCATION WHETHER SERVICE :

1. **Stampede in School During Recess Time**

   It has been *held* that importing education in school is service as defined in Sec.2(i) of the C.P.Act, 1986.

   If a girl died in stampede in school during recess time, as the school authorities failed to control the flow of students going up or down the stairs during recess time, it amounted to deficiency in service, for which the paretns of the girl could file the complaint. *

   *The duty of the school authorities towards the students and their parents does not begin and end only in class rooms.* \footnote{Dilipkumar Harilal Shah v. Lokhandwala Education Trust III (1995) CPJ 451 (Gujrat SCRDC)}

2. **Result not declared**

   The complainant enrolled as a private candidate and appeared in the matriculation examination. Result was published as “Result Later” but despite frantic efforts was not declared. *Held*, education is a ‘Service’ and compensation of Rs. 10,000/- awarded.\footnote{Tilak Raj v. Harayana School Education Board, Bhiwant, I (1992) CPJ 176}
3. Wrongful Denial of Hall Ticket:

The complainant, a student of the Law College, was not issued the hall ticket by the College authorities for appearing in the examination, without any just reason. The District Forum awarded him compensation of Rs.10,000/- which was reduced to Rs.3,000/- on appeal by the Andhra Pradesh State Commission, Hyerabad.\textsuperscript{136}

**GENERAL INSURANCE:**

1. **Sinking of Fishing Boat - Repudiation of Insurance claim**

Where much delay was caused by the Insurance company in considering the final decision and after a considerable period, suddenly repudiated the claim without sufficient and adequate reasons. It was *held* that there was deficiency in service by the Insurance company.\textsuperscript{137}

2. **Insured Bus stolen, compensation offered by Insurance Company not accepted**

The Assessor had assessed the market value of the bus on the basis that it was simple wooden type body. But there is an evidence on the record that the bus had a steel body. In view of

\textsuperscript{136} The Principal, SBRTM Law College v. S.Md.Habebullah, I (1994) CPJ 141

\textsuperscript{137} National Insurance Co. Ltd. v. Premjibhai Ranchhodbhai Hodar, (1998) NCJ (NC) 239 : 197 (2) CPR 251 (NC) .
this, the market value of the bus even according to the valuation of the Assessor would be Rs. 4,35,000/-. The Assessor also remarked that this was "plus-minus 5%". The State Commission awarded a sum of Rs. 4,50,000/-. There is hardly any difference between the amount awarded by the State Commission and as assessed by the Surveyor. There is no force in this appeal.\textsuperscript{138}

3. Insurance claim accepted

Mere execution of discharge voucher would not always deprive consumer from preferring claim with respect to deficiency in service or consequential benefit. If consumer satisfies the authority under the Act that discharge voucher was obtained by fraud, misrepresentation, undue influence or coercive bargaining compelled by circumstances appropriate relief can be granted. Mere execution of discharge voucher and accepted on claim would not estop consumer from making further claim.\textsuperscript{139}

4. Super Delux Bus damaged in Accident

There was not much difference between the two reports regarding assessment on 'Cash Loss Basis', but after looking into the report of the Surveyors in view of the damage caused to the

\textsuperscript{138}Manoj Jindal v. United India Insurance Co. Ltd. III (1999) CPJ 576 (NC).

Vehicle, the fair principle would be to pay on the assessment made by the First Survey on “Total Loss Basis”. The salvage value was only guess work and actually this amount may not be recovered. It was held that the rejection of the First Survey Report by the opposite parties was not fair and proper.\textsuperscript{140}

5. \textbf{Consideration of prevailing circumstances:}

However, keeping in view the unpleasant circumstances prevailed in Kashmir valley at that time. The National Commission thought that it would be reasonable to give a period of six months from November 1991, the time when the flour mill was damaged by the terrorist, for the settlement of a claim of this nature. The Respondent - Insurance Company was directed to pay a sum of Rs. 4,29,771/- by way of full settlement of the insurance claim and interest at the rate of 18 \% p.a. on the sum of Rs. 30,12,549/-.\textsuperscript{141}

6. \textbf{Claim not settled within reasonable period}

While we appreciate that the insurance company has to safeguard public funds by ensuring that no false or exaggerated claim are admitted. It is equally essential that the insured are compensated by way of interest on the amount paid to them late.


Till the amounts found due on the claims are released, the insured have to suffer financial embarrassment due to paucity of funds and to bear interest charges if they have borrowed from banks till their claims are settled. In equity, therefore, the insurance companies must compensate the insured for settling claims beyond a reasonable period. The Commission felt that it would be possible, where there are no disputes, to settle the claim within a period of three months when the Insurance Company becomes seized of the claim.  

7. **Damages in Consequence to Earth-Quake:**

The complainant had insured his cold storage building which was dilapidated in an earthquake. Claims not settled for 2 years. It was *held* by the National Commission that the insured company is required to have inspected the building before insuring an insurance policy and, hence, it was directed to pay the sum towards losses suffered.  

**HOUSING:**

1. **Liability of Housing Authority to pay interest for delay**

The National Commission *upheld* the order of the State Commission as regards 15% interest on the total price of the flat.

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142 S. Vellirayajan & Co. v. New India Assurance Co. Ltd. 1992 (1) CPR 808 (NC)
143 Shree Cold Storage (Pvt.) Ltd. v. New India Assurance Co. Ltd. 1 (1992) CPJ 35 (NC)
for delay beyond the period of three weeks along with Rs. 2,000/- as damage for each complainant allottee.\textsuperscript{144}

2. **Non-allotment of house deposit complainant had deposited seed money**

The Housing Board was directed to allot the previous house to the complainant and if that house is not available allot any one of the Houses on the price of Rs. 17,000/- already deposited.\textsuperscript{145}

3. **Question of pricing not to be determined by Consumer Fora**

Question of pricing cannot be gone into by Consumer Fora since the price of the flats is not fixed by any law and that even if any excess charge has been allotted by way of price that will not constitute a ground for contending that there is a 'deficiency' in service on the part of the opposite party.\textsuperscript{146}

4. **Refund of earnest money with interest as no plot allotted**

The National Commission partly allowed appeal and modified the order of State Commission to the extent that the respondent shall be entitled to interest at the rate of 10 % as held in *Estate Officer HUDA v. Jaspal Singh Dara* (Revision Petition No. 642 of

\textsuperscript{144} Delhi Development Authority v. Krishan Lal Nandrayog, 1997 (2) CPR 148 (NC) : III (1997) CPJ 57 (NC).

\textsuperscript{145} Harbans Singh v. Rajasthan Housing Board, 1996(2) CPR 122 (NC) : II (1996) CPJ 122 (NC).

\textsuperscript{146} Manohar Lal Sharma v. DDA, 1994 (1) CPR 704 (NC) : I (1994) CPJ 22 (NC).
1996), in addition to the earnest money paid by the Complainant.\textsuperscript{147}

LIFE INSURANCE:

1. Repudiation of Insurance Claim - Suppression ailments by insured

It is evident that in personal health statement submitted by the insured just, prior to the revival of policy, he had suppressed the material facts concerning his health. As such, the repudiation of the policy by the life Insurance Corporation was fully warranted and there has been no deficiency in-service because of such a repudiation. In the result, this Revision Petition is allowed, the order of the State Commission is set aside & that of the District Forum is restored.\textsuperscript{148}

2. Cancellation of Policies - Claim for refund of Premium Paid

If during this period of the Complainant had died (an event which did not occur the insurer i.e., L.I.C. would have had to pay the full amount due under the policies even though only some fraction of the premia would have been realised by that time by the insuree. Hence on cancelling the policies the complainant is only entitled to the surrender values of the two policies. It is immaterial

\textsuperscript{147} State of Punjab v. Malkiat Singh. 1997 (2) CPR 214 (NC).
\textsuperscript{148} LIC of India v. S. Vitaya. 1995(1) CPR 332 (NC) : I (1995) CRJ 122 (NC)
what circumstances prompted him to cancel the policies.\textsuperscript{149}

3. **Proposal of assured reached branch of Insurance Company concerned, after the death of deceased**

   It was *held* by the Kerala High Court that contract of insurance had come into existence during the life of the deceased and was binding on the Corporation. In the present case the proposal of the assured had reached the branch concerned only after the death of the deceased and the amount paid on behalf of the assured, had been kept in the suspense account. Before the death of the assured even the premium amount had not been calculated.

   It is *held* that in the present case no binding contract of insurance had come into existence between the assured and the insurer and therefore, the Corporation was justified in repudiating the claim under the policy.\textsuperscript{150}

4. **Death of policy holder due to heart stroke**

   The so-called ailment for which the deceased was treated in the hospital during the said period namely peptic ulcer had no nexus whatever with the cause of his death which is stated in the

\textsuperscript{149} LIC of India v. Anil P. Tadkalkar, 1995(3) CPR 659 (NC).
\textsuperscript{150} Consumer Education & Research Society v. LIC of India, 1993(2) CPR 129 (NC)
death certificate to have been heart stroke. The finding of the District Forum that the repudiation made by the insurer was arbitrary and that it was not based on a proper application of mind to the facts and circumstances of the case, were upheld.\textsuperscript{151}

5. \textit{Salary Saving Scheme - Death of Employee}

It is clear that under the scheme employer is responsible for deducting the premia from the salary of the employee and remitting it to the LIC. In case of any non-deduction of premium or non-remittance of premium resulting in the lapse of the insurance policy, it is the employer who is negligent and is responsible for the lapsed policy. The Pay and Disbursing Officer in this case has been negligent in complying with the terms and conditions of the Salary Saving Scheme and the responsibility undertaken for deduction and remittance of the monthly premiums. The finding of the State Commission upheld that there is deficiency on the part of the Officers of the State Government of Orissa in rendering service to the policy holder as well as the nominee under the policy i.e., the complainant.\textsuperscript{152}

\textsuperscript{151} B. Chinnomma v. LIC of India, 1996 (3) CPR 229 (NC) : III (1996) CPJ 136 (NC) .
\textsuperscript{152} LIC of India v. Hari Bandhu, 1995 (1) CPR 845 (NC)
6. Life Insurance

_Held_ that concealment of material facts and misdeclaration in the proposal form will vitiate the policy of insurance issued by the LIC of India.\(^{153}\)

7. Offer and Acceptance

A life insurance contract is concluded only when offer is accepted and is not effected by mere retention of premium or issue of policy document.\(^{154}\)

**MEDICAL NEGLIGENCE**

1. **Negligence - Medical Practitioner required to practice in Homeopathy**

Since the law, under which Respondent No. 1 was registered as a Medical Practitioner required him to practice in Homeopathy only, he was under a statutory duty not to enter the field of any other system. Allopathy to be precise. He trespassed into a prohibited field and was liable to be prosecuted under Section 15(3) of the India Medical Council Act, 1956. His conduct amounted to an actionable negligence.\(^{155}\)

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\(^{155}\) Poonam Verma v. Ashwin Patel & others, 1997 NCJ 66 (SC)
2. Hiring of Medical Services (Consumer)

There is a clear finding recorded by the State Commission that it was the complainants themselves who took the deceased to the first appellant hospital and made the arrangements for his admission and treatment there. Thus they themselves were the person who had hired the service of the hospital and the deceased was only the person for whose benefit the arrangement was made. Hence in this case there cannot be any doubt that the complainants having themselves hired the service, they squarely fall within the definition of the expression "consumer" contained in Section 2(1)(d) of the Act.\textsuperscript{156}

3. Negligence must result into Injury

It is of the essence of Section 14(1)(d) that the loss or injury for which compensation is to be adjudged and awarded should be found to have been caused by the negligence of the Opposite Party. The complainant has to establish that there was negligence of the opposite party and that in consequence thereof loss or injury was suffered by him. In this case the negligence of the opposite party is not the cause of the death of the child.\textsuperscript{157}


\textsuperscript{157} Rinji Lal v. Savrododaya Medical, 1995(1) CPR 833 (NC).
4. Surgery Performed at Central Government (Health Scheme) Hospital

A Government servant under the Central Government Health Scheme is not a consumer within the meaning of Consumer Protection Act, 1986 as defined in Section 2(1)(d) of the Act and the services rendered to him under the C.G.H.S., does not constitute service as defined under section 2(1)(o) of the Act.¹⁵⁸

5. Parents of child hired services of Hospital -Whether consumer? - (yes)

The parents of the child having hired the services of the hospital are also the consumers within the meaning of Section 2(1)(d)(ii) and that they would also be entitled to award of compensation due to negligence of the opposite parties to the complainant. A similar situation has arisen in the case on hand where complainant had been given financial support the parents for Hospitalization and associate, expenses; although an adult he has to be given physical support for a very long period by parents in view of his physical immobilisation and sensory deficient consequent to the surge. As for the claim for the complainants brother and maternal uncle, the same cannot be sustained as they

¹⁵⁸ The Additional Director (CGHS) v. Dr. R.L. Bhutani, 1996 (1) CPR 136 (NC) : I(1996) CPJ 255 (NC)
are not covered by the definition "Consumer" under the Act.\textsuperscript{159}

6. **Service rendered by medical practitioner where charges required to be paid by persons who are in position to pay**

   Service rendered at a Non-Government Hospital/ Nursing Home where charges are required to be paid by persons who are in a position to pay and persons who cannot afford to pay are rendered service free of charge would fall within the ambit of the expression service as defined in Section 2(1)(o) of the Act irrespective of the fact that the service is rendered free of charge to person who are not in a position to pay for such services. Free service, would also be service and the recipient a consumer under the Act.\textsuperscript{160}

7. **Doctors working in Government or Private Hospitals**

   In *Indian Medical Association v. V.P. Shantha and Others*, III (1995) CPJ 1 (SC), the Supreme Court had to consider inter alia the question whether doctors who are working in (Government or Private Hospitals) and are paid a salary are liable to be proceeded against under the provisions of the Consumer Protection Act in the event of any deficiency in service being made out in the matter of

\textsuperscript{159} Presanth S. Dhanarka v. Nizam's Institute of Medical Science, 1 (1999) CPJ 43 (NC) : 1999 NCJ 128

\textsuperscript{160} Indian Medical Association v. V.P. Santha, 1995(3) CPR 412 (SC).
providing proper treatment to a patient. In its judgment, the Supreme Court has stated that Government Hospitals / Nursing Homes and Private Hospitals / Nursing Homes broadly fall in three categories:

1. Where services are rendered free of charge to everybody availing the said services

2. Where charges are required to be paid by everybody availing the services and

3. Where charges are required to be paid by persons availing services but certain categories of persons who cannot afford to pay are rendered service free of charges.

The hospital falling in category (1) being outside the purview of the Consumer Protection Act, the Court held that the doctors employed in those hospitals will not also come within the scope of the Act:

"Adverting to the individual doctors employed and serving in the hospitals, we are of the view that such doctors working in the hospitals / nursing homes, dispensaries / whether Government or private belonging to categories (2) and (3) above would be covered by the definition of "service" under the Act and as such are amenable to the provisions of the Act along with the management
of the hospital etc. jointly and severely."\textsuperscript{161}

8. **Service - Service rendered at Government Hospital**

Health Centre / Dispensary where services are rendered on payment of charges and also rendered free of charge to other persons availing such service - These would fall within ambit of expression service as defined in Sec. 2(1)(o) of the Act - Free service would also be service and recipient a consumer under the Act - OPI (NIMS, Hyderabad) an institute of Medical Sciences established under Nizam's Institute of Medical Sciences Act - Complainant, a paying patient - He is a consumer qua the NIMS as also doctors of NIMS, who are beneficiaries of payments made to NIMS.\textsuperscript{162}

**POSTAL DEPARTMENT**

1. **Late delivery of Postal Cover containing Admission Letter**

Even under the provision of Section 6, as it is, there is a patent default on the part of the Postal Department based on the admission of the peon that the letters were stamped late and delivered late resulting in a loss of one year in the educational career of the recipient. Not doing something what one ought to do is also an act of Will and, therefore covered by "wilful act"


\textsuperscript{162} Prasanth S. Dhananka v. Nizam's Institute of Medical Sciences & Ors., 1999 NCJ 128.
mentioned in Section 6 as one of the circumstances, where, the liability can be fixed on the Postal Department and its functionaries.\(^{163}\)

2. Delay in delivery of Telegrams

The National Commission has taken consistent view that the government is not liable to make payment of compensation arising or resulting from any failure of service affecting transmission of delay in delivery of telegram unless it is established that there was mala fide intention or collusion. The State Commission has thus exercised jurisdiction with material illegality in reversing the well-considered decision of the District Forum.\(^{164}\)

3. Loss of Parcel, a Deficiency

Registered parcel sent to Mhow from Pune lost in transit - Parcel not delivered to addressee - Compensation claim for deficiency in service - Maintainability.\(^{165}\)

4. Non-Payment of the Money Ordered - A Deficiency

The complainant sent Rs.50/- by telegraphic money order (MO) for Kartik Pooja in Srinivasa Temple at Mishri Koti. Only

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\(^{163}\) Superintendent of Post Offices v. Upbhokta Surakshya Parishad, 1997 (1) CPR 11 (NC).


telegram was delivered. Order for return of Rs.50/- along with compensation of Rs. 25/- plus cost of Rs.20/-.

RAILWAYS

1. **Entry by unauthorised person into reserved compartment**

   It is not in dispute that the complainant had hired services of Railway Administration for consideration and if there is any negligence or deficiency in service on the part of the Railway Administration, then it is a consumer dispute within the scope and ambit of Section 2(1)(o) of the Act. The Complainant was entitled to be carried safely in the train upto its destination in the reserved compartment. However if any person enters into any reserved compartment unauthorisedly, then besides being liable for criminal prosecution he can be removed from the railway compartment by any railway servant or by any of the person whom such railway servant may call to his aid (see Section 147(2) of the Railways Act, 1989). The Railway Administration neglected in checking the entry of unauthorised person in the reserved railway compartment and then failed to remove them forcibly for which they are duly empowered by the Statute.

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2. **Matter of Reservation within the scope of the Forum:**

The dispute raised in the complaint does not at all fall within the exclusive jurisdiction of the Railway Claims Tribunal Act because the grievance put forward by the Complainant is not in respect of any of the matters respecting which such jurisdiction has been conferred by the Railway Claims Tribunal Act, 1987 on the Claims Tribunal in the circumstances, the view taken by the State Commission that the petition was not maintainable before the District Forum was incorrect and unsustainable in law.\(^{168}\)

3. **No Pantry Car provided in Super Fast Train**

This is clear discrimination in the differential treatment meted out to the passengers travelling by this Super Fast Train who are paying the same fair as other passengers travelling in other similar Super Fast long distance trains which are all provided with pantry cars and other facilities. We, therefore, allow a period three weeks time from today to the Railway Board and to the General Manager, Northern Railway to see that a pantry car is attached to the Mangala Express operating between Nizamuddin Railway Station and Mangator Central.\(^{169}\)

\(^{168}\) V.K. Upadhyay v. General Manager, Central Railways 1997(2) CPR 288 (NC) : 1997 NCJ 473.

4. **Death of passenger passing through Vestibule**

The National Commission was of the opinion that the State Commission was right in pointing out that a Railway passenger is a consumer and the death of the deceased was caused by her fall from the passage between the two compartments because the vestibule did not have grills on sides to hold her back in case of a jerk during the movement of the train. Compensation of Rs. 2 lakhs awarded.\(^{170}\)

5. **Time-table**

The complainant was issued confirmed ticket by advance reservation but the train did not ply for that date. *Held*: There was negligence on the part of the Railway and compensation awarded.\(^{171}\)

6. **Reservation**

Some other person holding earlier reservation tickets were occupying seats reserved by the complainant. Railway was *held* vicariously liable and compensation was awarded.\(^{172}\)

**SHARES AND DEBENTURES**

1. **Share - Whether Prospective Investor could fall under the**


\(^{172}\) The General Manager Southern Railways v. J. F. Albert Fernando, II (1991) CPJ 407
the Consumer Protection Act - (No.)

In order to satisfy the requirement of definition of consumer it is clear that there must be a transaction of buying goods for consideration under clause (2)(i) of the Act. The definition contemplates the pre-existence of a completed transaction of a sale and purchase. It regard is had to the definition of complaint under the Act, it was held by the Supreme Court that no prospective investor could fall under the Consumer Protection Act, 1986.¹⁷³

2. Shares - Complicated, Factual and Law Points based on Elaborate Evidence - Whether such type of issues may be adjudicated by Consumer Forum - (No.).

An elaborate enquiry into the market value of the shares at the relevant time and the settlement of accounts between the parties as a result of sale/market value of the shares and the outstandings or as to when the account of the complained should have been closed or whether there was any contract between the parties authorising the Citi Bank to sell excess shares or whether the complainant has suffered any damages on account of the breach of contract can be satisfactorily adjudicated only in regular Civil Court and not before the Fora under the Consumer Protect

3. Purchase of the Share

Non-delivery of shares purchased by the complainant amounts to deficiency in service.\textsuperscript{175}

\textbf{TELEPHONE}

1. Telephone - Excess Billing

The use of the telephone for STD / ISD is, therefore, clearly established. Moreover, mere fact that the Telecom Department, after investigation allowed a rebate of 4530 calls in their bill cannot reasonably lead to a convincing conclusion that the meter was defective. The question of computation of calls in such a situation has to be based on some basis, but certainly not on the average basis.\textsuperscript{176}

2. Telephone Directory

The two complainants, who were wife and husband respectively and were Doctors by profession gave certain particulars to the opposite party for being published in the Yellow Pages of the Telephone Directory for the year 1992, 1993 and 1994.

In the Directory for the year 1994 name of the first

\textsuperscript{174} Citi Bank N. A. v. Universal Trading Corporation II (1995) CPJ 198 at 201 (NC)
\textsuperscript{175} Difcoss Investment Consultant v. R.V.S.Rao, II (1993) CPJ 761
\textsuperscript{176} District Manager Patna Telephones v. Harishankar Sharan Singh. 1995(2) CPR 172 (NC) .
Complainant was not printed.

It was held a deficiency in service. The District Forum awarded compensation of Rs.20,000/- to the Complainant. The amount of compensation was increased to Rs.35,000/- by the State Commission.\footnote{M&N Publications Ltd. v. Dr. Mrs. Atherunnissa Begum & another, 1 (1999) CPJ 135 (Tamil Nadu) (SCDRC).}

3. Dynamic code facility, STD facility locked by use of wrong code, inordinate delay in reopening

Any inordinate delay in unlocking the dynamic facility would be deficiency in service of the opposite parties.\footnote{Vijay Sethi v. District Manager Telephones, 1997(1) CPR 103 (NC).}

4. Negligence on part of appellant in shifting telephone

The National Commission did not find any valid grounds for disturbing the finding arrived at by the State Commission that in effecting the shifting of the telephone from the office of the Complainant to the residence of the Private Secretary to the Chairman. There was negligence on the part of the appellant herein and that it constituted a deficiency in the service rendered by the appellant Department to the consumer.\footnote{Commercial Officer of Telecom v. Bihar State Warehousing Corporation, 1991(1) CPR 142 (NC) : 1991 CPC 44 (NC) : 1 (1991) CPJ 42 (NC).}
5. **Telephone of complainant remained out of order for seventy days in five months**

A practising Medical Doctor's practice would be seriously disrupted if he cannot readily communicate with his patients. In addition a subscriber and his family may also suffer personal inconvenience for frequent and prolonged faults in the functioning of telephone, its disconnection and receiving a bill for a huge amount which will cause dismay to any consumer/subscriber. In fact, we feel that the State Commission has been quite conservative in granting a compensation limited to Rs.2,000/- which is described as a token compensation.\(^{180}\)

6. **Non-Functioning**

State Commission directed the Telecom Board to give on its own accord rental rebate to all subscribers whose phones were not functioning during 7 days of strike.\(^{181}\)

7. **Illegal Disconnection**

The complainant suffered inconvenience and mental agony on account of illegal disconnection despite having paid the bills regularly. *Held*: It was deficiency and compensation awarded.\(^{182}\)

