CHAPTER VI

ROLE AND FUNCTIONING OF ASSAM STATE CONSUMER DISPUTES REDRESSAL COMMISSION AND DISTRICT CONSUMER DISPUTES REDRESSAL FORUMS
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INTRODUCTION:

The proper functioning of Consumer Disputes Redressal Agencies is highly responsible for the development of consumer protection movement in a country. Section 9 (a, b, and c) of the COPRA, 1986, makes the provision for establishment of three-tier quasi-judicial redressal agency for the redressal of various consumer grievances in the country.

In the State of Assam, the State Commission and District Forums have been instituted, according to the provisions provided under COPRA, 1986. These Redressal Agencies were established after a considerable delay from the date of implementation of the COPRA, 1986 itself, and that too after the Supreme Court's Directives\(^1\) to that regard. In this CHAPTER under Part-I, it is intended to make a discussion on the functioning of these Redressal Agencies in the State. Whereas in Part-II, it is intended to make a brief discussion on some important cases, recently decided by the State Commission and also to incorporate the views of the litigants regarding their cases.

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PART-I

6.1. ESTABLISHMENT AND FUNCTIONING OF STATE COMMISSION AND DISTRICT FORUMS:

The 'State Commission' (Assam) was instituted in the year 1989 and it has started functioning from 5th of January 1991. Presently, there are one President, who is a siting Judge of Gauhati High Court and two other Members of distinguished personalities. The office staff of the Commission consisting of persons from the Department of Food and Civil Supplies, Government of Assam, on deputation and some of the persons from Gauhati High Court on honorarium basis. Their services are not permanent in nature.

The Commission has not possess its own premises and functions in a rented building. The Commission regularly sits only on Saturday in every week, provided the President is available.

Out of the 23 districts in the State, the District Forums of only 8 districts, namely Cachar, Dibrugarh, Jorhat, Kamrup, Kokrajhar, Nagaon, Nalbari, and Sonitpur are presently functioning independently with independent and whole-time president of the Forums. The remaining 15 districts, namely Barpeta, Bongaigaon, Darrang, Dhemaji, Dhubri, Goalpara, Golaghat, Hailakandi, Karbi-Anglong, Karimganj, Lakhimpur, Morigaon, N.C. Hills, Sibsagar and Tinsukia are presently not functioning independently with whole-time presidents. These Forums are presided by the District and Session Judges of the concerned districts. The above
mentioned independent Consumer Forums of 8 districts sit regularly. Whereas, the remaining District Forums without having a whole time president do not sit on a regular basis but once or twice in a week.

The number of cases instituted before the Redressal Agencies of the State, since their inception till the date, are not a huge one. Although there is the provision under the Rules\(^2\) to dispose of the complaint cases within 90 days from the date of receipt of the complaints in case the complaints do not involve any laboratory testing, and if they involve any analysis or testing, the complaints have to be disposed of within 150 days, but in practice, the Redressal Agencies of the State in a considerable number of cases have failed to comply with this provision. For several reasons, such as paucity of fund, lack of Governmental initiatives, lack of efficient persons, lack of minimum supporting staff, lack of basic infrastructural facilities, etc., it has not been possible for these Redressal Agencies to adhere strictly to the time schedule. As a matter of fact, these factors have hampered the smooth and effective functioning of the Redressal Agencies in the State.

The informations collected in respect of institution, disposal, and pendency of cases before the State Consumer Disputes Redressal Commission, Assam, since its inception upto 30th September, 2000 (30-09-2000) have been shown in the following tabular statement (TABLE : 6.1)

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2. Assam State Consumer Protection Rules, 1989, Sections 4(9) and 7(9).
TABLE : 6.1

STATEMENT OF INSTITUTION, DISPOSAL AND PENDENCY OF CASES BEFORE THE STATE CONSUMER DISPUTES REDRESSAL COMMISSION, GUWAHATI, ASSAM. (SINCE ITS INCEPTION UPTO 30TH SEPTEMBER 2000)

<table>
<thead>
<tr>
<th>ITEMS</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. No. of cases Filed</td>
<td></td>
</tr>
<tr>
<td>(a) Complaint cases</td>
<td>471</td>
</tr>
<tr>
<td>(b) Appeal cases</td>
<td>861</td>
</tr>
<tr>
<td>(c) Total (a+b)</td>
<td>1332</td>
</tr>
<tr>
<td>2. No. of cases Disposed</td>
<td></td>
</tr>
<tr>
<td>(a) Complaint cases</td>
<td>329</td>
</tr>
<tr>
<td>(b) Appeal cases</td>
<td>327</td>
</tr>
<tr>
<td>(c) Total (a+b)</td>
<td>656</td>
</tr>
<tr>
<td>3. No. of cases Pending</td>
<td></td>
</tr>
<tr>
<td>(a) Complaint cases</td>
<td>142</td>
</tr>
<tr>
<td>(b) Appeal cases</td>
<td>534</td>
</tr>
<tr>
<td>(c) Total (a+b)</td>
<td>676</td>
</tr>
<tr>
<td>4. No. of cases Decided with in 90 days</td>
<td></td>
</tr>
<tr>
<td>(a) Complaint cases</td>
<td>40</td>
</tr>
<tr>
<td>(b) Appeal cases</td>
<td>53</td>
</tr>
<tr>
<td>(c) Total (a+b)</td>
<td>93</td>
</tr>
<tr>
<td>5. No. of cases Decided above 90 days and within 150 days</td>
<td></td>
</tr>
<tr>
<td>(a) Complaint cases</td>
<td>27</td>
</tr>
<tr>
<td>(b) Appeal cases</td>
<td>41</td>
</tr>
<tr>
<td>(c) Total (a+b)</td>
<td>68</td>
</tr>
<tr>
<td>6. No. of cases Decided in more than 150 days:</td>
<td></td>
</tr>
<tr>
<td>(a) Complaint cases</td>
<td>262</td>
</tr>
<tr>
<td>(b) Appeal cases</td>
<td>233</td>
</tr>
<tr>
<td>(c) Total (a+b)</td>
<td>495</td>
</tr>
</tbody>
</table>

SOURCE: STATE CONSUMER DISPUTES REDRESSAL COMMISSION, GUWAHATI, ASSAM
From the figures represented in the above Table, it is clear that only 1332 cases consisting of 471 Complaint Cases and 861 Appeal Cases respectively have been instituted before the State Commission, since the date of its inception upto 30th September, 2000. Out of these cases, 329 Complaint and 327 Appeal Cases, amounting to a total of 656 cases have been disposed of by the Commission till the said date. The remaining 142 Complaint and 534 Appeal Cases, amounting to a total of 676 cases are still pending before the Commission. Out of the disposed of cases, only 40 Complaint and 53 Appeal Cases i.e., total of 93 cases have been decided by the Commission within the period of 90 days. A total number of 68 cases, consisting of 27 Complaint and 41 Appeal Cases have been decided by the Commision between 90 days to 150 days. Whereas, a considerable number of 495 cases out of the total disposed of cases, comprising of 262 Complaint and 233 Appeal Cases have been decided by the Commission in more than 150 days.

The figures of the above Table indicate that within a period of approximately a decade from the date of its establishment, only 1332 cases have been instituted before the State Commission, and more than half (676 cases) of them are still pending before the Commission. The time taken for disposal of majority cases (495 number of cases) indicates that the Commission has miserably failed to adhere strictly to the time schedule, as provided under section 7(9) of Assam Consumer Protection Rules, 1989. This also speaks about the delay in providing justice by the Commission and its unsatisfactory functioning as well.
As per the informations available, most of the cases instituted before the State Commission are related with Telephone Service, Electricity Service, and Insurance Service, where cases relating to Telephone Service top the list.

Regarding the districts, as mentioned earlier, only 8 districts have independent Consumer Forums with whole time Presidents and Members, at present. The remaining 15 districts of the State are yet to function independently. The District Forums of the State also have to confront with various problems, which have hampered their smooth functioning.

The informations collected in respect of the institution, disposal and pendency of cases before the different District Forums of the State have been presented in the following tabular Statement (TABLE : 6.2):
TABLE : 6.2

STATEMENT OF INSTITUTION, DISPOSAL AND PENDENCY OF CASES BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUMS, ASSAM. (SINCE THEIR INCEPTION UPTO 30TH SEPTEMBER 2000)

<table>
<thead>
<tr>
<th>DISTRICTS</th>
<th>(1) No. of complaints filed since inception</th>
<th>(2) No. of complaints disposed of since inception</th>
<th>(3) No. of complaints pending</th>
<th>(4) Cases decided within 90 days</th>
<th>(5) Cases decided above 90 days &amp; within 150 days</th>
<th>(6) Cases decided in more than 150 days</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. BARPETA</td>
<td>162</td>
<td>109</td>
<td>53</td>
<td>14</td>
<td>20</td>
<td>75</td>
</tr>
<tr>
<td>2. BONGAIGON</td>
<td>110</td>
<td>82</td>
<td>28</td>
<td>35</td>
<td>25</td>
<td>22</td>
</tr>
<tr>
<td>3. CACHAR</td>
<td>384</td>
<td>297</td>
<td>87</td>
<td>83</td>
<td>95</td>
<td>119</td>
</tr>
<tr>
<td>4. DARRANG</td>
<td>72</td>
<td>52</td>
<td>20</td>
<td>1</td>
<td>4</td>
<td>47</td>
</tr>
<tr>
<td>5. DHEMAJI</td>
<td>91</td>
<td>65</td>
<td>26</td>
<td>37</td>
<td>15</td>
<td>13</td>
</tr>
<tr>
<td>6. DHUBRI</td>
<td>248</td>
<td>220</td>
<td>28</td>
<td>105</td>
<td>60</td>
<td>55</td>
</tr>
<tr>
<td>7. DIBRUGARH</td>
<td>421</td>
<td>271</td>
<td>150</td>
<td>80</td>
<td>25</td>
<td>166</td>
</tr>
<tr>
<td>8. GOALPARA</td>
<td>120</td>
<td>95</td>
<td>25</td>
<td>34</td>
<td>38</td>
<td>23</td>
</tr>
<tr>
<td>9. GOLAGHAT</td>
<td>245</td>
<td>216</td>
<td>29</td>
<td>48</td>
<td>79</td>
<td>89</td>
</tr>
<tr>
<td>10. HAILAKANDI</td>
<td>97</td>
<td>73</td>
<td>24</td>
<td>28</td>
<td>24</td>
<td>21</td>
</tr>
<tr>
<td>11. JORHAT</td>
<td>684</td>
<td>658</td>
<td>26</td>
<td>40</td>
<td>128</td>
<td>490</td>
</tr>
<tr>
<td>12. KAMRUP</td>
<td>2892</td>
<td>2692</td>
<td>200</td>
<td>227</td>
<td>430</td>
<td>2035</td>
</tr>
<tr>
<td>13. KARBI-ANLONG</td>
<td>66</td>
<td>53</td>
<td>13</td>
<td>14</td>
<td>25</td>
<td>14</td>
</tr>
<tr>
<td>14. KARIMGANJ</td>
<td>185</td>
<td>162</td>
<td>23</td>
<td>75</td>
<td>44</td>
<td>43</td>
</tr>
<tr>
<td>15. KOKRAJHAR</td>
<td>34</td>
<td>31</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>24</td>
</tr>
<tr>
<td>16. LAKHIMPUR</td>
<td>111</td>
<td>90</td>
<td>21</td>
<td>35</td>
<td>30</td>
<td>25</td>
</tr>
<tr>
<td>17. MORIGAON</td>
<td>61</td>
<td>52</td>
<td>9</td>
<td>30</td>
<td>15</td>
<td>7</td>
</tr>
<tr>
<td>18. NAGAON</td>
<td>416</td>
<td>284</td>
<td>132</td>
<td>91</td>
<td>55</td>
<td>138</td>
</tr>
<tr>
<td>19. NALBARI</td>
<td>80</td>
<td>68</td>
<td>12</td>
<td>28</td>
<td>25</td>
<td>15</td>
</tr>
<tr>
<td>20. N.C.HILLS</td>
<td>57</td>
<td>45</td>
<td>12</td>
<td>15</td>
<td>19</td>
<td>11</td>
</tr>
<tr>
<td>21. SIBSAGAR</td>
<td>145</td>
<td>125</td>
<td>20</td>
<td>55</td>
<td>38</td>
<td>32</td>
</tr>
<tr>
<td>22. SONITPUR</td>
<td>298</td>
<td>227</td>
<td>71</td>
<td>58</td>
<td>90</td>
<td>79</td>
</tr>
<tr>
<td>23. TINSUKIA</td>
<td>316</td>
<td>293</td>
<td>23</td>
<td>93</td>
<td>110</td>
<td>90</td>
</tr>
<tr>
<td>TOTAL</td>
<td>7295</td>
<td>6260</td>
<td>1035</td>
<td>1229</td>
<td>1398</td>
<td>3633</td>
</tr>
</tbody>
</table>

SOURCE : STATE CONSUMER DISPUTES REDRESSAL COMMISSION, GUWAHATI, ASSAM.
From the figures of the above Table, it has been observed that only a total number of 7295 complaints have been instituted before all the District Forums of the State, taken together, since their inception upto 30th September 2000. Out of these, 6260 number of complaints have been disposed of by the Forums and 1035 number of complaints are still pending before the Forums till the mentioned date. Whereas, in deciding more than half of the disposed of cases, numbering 3633 complaints, the Forums have failed to satisfy the time schedule as provided by the Assam Consumer Protection Rules 1989, vide Section 4(9).

As per the figures shown in the above Table, the highest number of cases amounting to 2892, have been instituted before the District Forum of Kamrup, since its inception till 30th September 2000. In this respect, District Forum of Jorhat ranks the second place with 684 complaints and District Forum of Dibrugarh occupies the third place with 421 complaints. On the other hand, the District Forum of Kokrajhar ranks the lowest in respect of institution of cases, with only 34 complaints since its inception.

6.2 FACTORS RESPONSIBLE FOR UNSATISFACTORY FUNCTIONING OF THE REDRESSAL AGENCIES:

Several factors hindered the smooth and effective functioning of the Redressal Agencies in the State. These factors which can be considered as 'problems' confronted by the Redressal Agencies, are summarised as follows:

i) **Paucity of Fund**: Lack of sufficient fund and the failure on the part of the State Government to respond to the demand made by the
Consumer Disputes Redressal Agencies, stand as a prime obstacle against the effective functioning of these Agencies. Due to the lack of sufficient fund, the Redressal Agencies are not well-equipped with adequate stationeries, books, furnitures etc. As evident from an official letter, written by the Registrar of State Consumer Disputes Redressal Commission to the Secretary and Commissioner, Food and Civil Supplies Department, Government of Assam, Guwahati, that in the State Commission, due to the lack of fund, even the 'blue note sheets' are not available, which are generally used to type out the judgement and orders. This simple example will highlight the functioning of the State Commission situated in the capital of the State. The State Commission is housed in a rented building and because of the paucity of fund the Commission is unable to make the payment for house rent for more than three years. Similar is the position in respect of telephone bills also. Due to the same reason, the Commission and the Forums are unable to purchase law books and journals which are essential for these Institutions. In the State Commission, 'book bills' are also pending for payment. The non-release of adequate fund on the part of the State Government is the main reason for insufficiency of funds with the Redressal Agencies in the State.

**ii) Lack of Government Initiative :**

The concerned Government in a State is responsible for the establishment and proper functioning of the Redressal Agencies in the State. The concerned Government in the State can issue notices and directives from time to time to that effect. But in our State, the State Government seems to be less 'bothered' about the issue of 'consumer protection'. Lack of proper initiative on the part of the State Government
is one of the prime reason for unsatisfactory functioning of the Consumer Disputes Redressal Agencies.

Out of the 23 districts in the State, only 8 districts have independent Consumer Forums, and in respect of the remaining 15 districts, the State Government is yet to take the necessary steps for the establishment of independent Forums. Although the subject of 'consumer protection' is under the purview of the Department of Food and Civil Supplies, Government of Assam, but the said Department has not properly monitored the functioning of the Consumer Disputes Redressal Agencies in the State.

The State Government has miserably failed in providing timely, the adequate finance for the Redressal Agencies, which ultimately hampers the smooth and effective functioning of these Agencies to a considerable extent. In some occasions, the State Government also fails to fill-up the vacant posts of Presidents or Members of the Redressal Agencies in time, which also adversely affects the functioning of the Redressal Agencies.

iii) Lack of Efficient and Experienced Persons :

The lack of efficient and experienced persons as Members of the Redressal Agencies is also another important factor that hinders the proper functioning of the Agencies. The Members of the Redressal Agencies should have to be well-acquainted with the various provisions of legal enactments. They should be well experienced and trained in the legal areas. Therefore, the appointment of persons, devoid of legal knowledge, as Members of the Redressal Agencies, where they have to discharge judicial powers, is not appropriate.
But in the State of Assam, majority of the Consumer Disputes Redressal Agencies are functioning with untrained, non-legal experts and inexperienced Members for which their functioning are not upto the mark. Practically the expectation of a sound judgement from such legally untrained and inexperienced Members is quite difficult in absence of their appraisal of the basic ethics of law, objectivity and fundamental tenets of rule of interpretation.

iv) Inadequacy of Honararium and Allowances:

The insufficiency of the amount of honarariums and sitting allowances to the Presidents and the Members of the Redressal Agencies practically affects the functioning of the Agencies adversely. The moral and physical boost of either the Presidents or the Members of the Agencies cannot be expected, without providing them with sufficient and suitable honararium or sitting allowance whatever it may be.

v) Lack of Basic Infrastructural Facilities:

The lack of basic infrastructural facilities is also a factor for poor and unsatisfactory functioning of the Redressal Agencies in the State. Many of the District Forums of the State are running in rented buildings. Even the State Commission is housed in a rented building. They do not have own premises. Moreover, these Redressal Agencies have the basic problems of insufficiency of rooms and furnitures as well. Similarly, these Agencies are also in the need of maintaining proper and well furnished bar-rooms and bar-libraries with sufficient law-books and journals. Lack of various stationeries, communication facilities, and the unavailability of electricity also retards the smooth functioning of the Redressal Agencies in the State.
vi) Lack of Adequate Staff:

The Consumer Dispute Redressal Agencies in the State, practically are in the need of adequate supporting staff with having adequate experience. Many of the Redressal Agencies in the State are functioning without the minimum supporting staff, which in fact, hampers the smooth and proper functioning of these Institutions to a great extent. As a matter of fact, these Redressal Agencies need some persons with adequate knowledge and experience on Civil Laws, to be appointed to the post of Bench Assistant, Typist etc. But due to the absence and insufficiency of experienced persons the Redressal Agencies have been confronted with some specific problems which ultimately results in unsatisfactory functioning.

All the factors discussed in the foregoing pages are more or less responsible for the inefficient and unsatisfactory functioning of the Consumer Disputes Redressal Agencies in the State.

PART : II

6.3 CASE STUDIES:

This section includes a brief study on some important 'cases' decided recently by the State Consumer Disputes Redressal Commission, Assam. Effort has also been made to incorporate the views of the 'parties' to the litigations. In order to elicit their views and opinions, the litigants have been personally contacted. A few selected cases are discussed in the following few pages:
This appeal is directed against the judgement and order passed by the District Forum, Nagaon in C.P. Case No. 21 of 1995.

a) FACTS OF THE CASE:

The appellant is a dealer in clothes at Dhing, Nagaon. He had a shop which was insured with the National Insurance Company Ltd. for Rs.1 lakh. According to the appellant, a fire broke out on 26.5.93 for which, articles stocked in the shop and the godown of the appellant were completely gutted. The shop was insured for the period from 1.3.93 to 28.2.94. Fire broke out on 26.5.93, when the insurance policy was in force. As per terms of the policy, the claimant (appellant herein) claimed Rs.1 lakh, though the value of the articles, according to him was much more. Immediately after the fire, the claimant informed the Insurance Company and a Surveyor was sent by the Insurance Company to assess the loss. The Surveyor in due course, submitted the report on 10.01.94. The Surveyor assessed the loss at Rs. 90,000/- of the stock in trade. However, the Insurance Company allowed a sum of 69,000/- which was refused by the claimant. Thereafter, a complaint case was filed before the District Forum, and the same is rejected by the Forum on the ground that there was a dispute regarding the amount which the appellant was entitled. Hence the present appeal before the State Commission.

* Gauhati Law Times, 1996, Volume-II, P-8, [1996(11) GLT(CP) 8].
b) JUDGEMENT OF THE STATE COMMISSION:

After hearing both the parties, and persusal of records, the State Commission have found no reason for rejection of the claim, and accordingly set aside the impugned judgment passed by the District Forum, Nagaon and allowed the claim to the extent of Rs.90,000/-. The Commission directed the Insurance Company to pay the awarded amount within a period of three months. Further, the claimant (appellant herein) is entitled to interest at the rate of 18% per annum of the amount of compensation of Rs.90,000/- if the Insurance Company fails to pay the same, after expiry of the three months period from the date of occurrence till realisation. The Commission also awarded a compensation of Rs.10,000/- to the claimant towards mental agony.

c) VIEWS OF THE LITIGANTS:

The appellant is highly satisfied with the decision of the Commission. In his opinion, his case is a genuine one and he is legally entitled to his claim but the Insurance Company unnecessarily harassed him. He has a little dissatisfaction regarding the time taken for settlement of his case. He has also suggested for inclusion of strict provisions in the COPRA, 1986, for disposal of the cases within the prescribed time limit. According to him, if the Redressal Agencies fail to settle the cases promptly, it would defeat the objectives of the COPRA itself.

The concerned officials of respondent Insurance Company, when contacted, refused to make any further comment on the present case by stating that the decision of the State Commission is binding upon them and they have nothing to say in this regard.
This appeal is directed against the judgement passed by the District Forum, Kamrup in C.P. Case No. 172 of 1992.

a) FACTS OF THE CASE:

The subject matter of this appeal relates to award of compensation by the District Forum for disconnection of the telephone belonging to the respondent (herein). In connection with a bill dated 1.7.91 a notice was issued by the appellants (herein) which was disputed and a complaint was lodged by the respondent on 6.3.92. Thereafter, in connection with bill dated 1.3.92 another notice was issued by the appellants. This also was disputed by the respondent by lodging a complaint dated 1.3.92. But without entertaining the complaints and without inquiring into the matter the appellants disconnected the said telephone of the respondent on 19.3.92 i.e., after the second complaint was lodged. In this situation, the respondent filed a complaint before the District Forum, Kamrup and the District Forum, by the impugned judgement held that the telephone was disconnected without taking steps to investigate the complaints lodged by the complainant and without issuing split bills in respect of the dispute. The District Forum also expressed the view that disconnection, in all probability, was not justified. Therefore, the Forum, directed the present appellants to investigate the
complaints lodged by the complainant in respect of his disputed bills within a period of two months from the date of receipt of the said order and awarded compensation of Rs.2000/- for sufferance due to disconnection of the telephone and cost of Rs 200/- towards the complainant. Hence the present appeal before the Commission.

b) JUDGEMENT OF THE STATE COMMISSION:

In the opinion of the State Commission, the said disconnection of telephone of the respondent by the appellants was not proper. The Commission is also agree with the views of the District Forum, that the disconnection was not justified, the said disconnection was made on 19.03.92 and the telephone remained disconnected till 22.09.93, when the telephone was restored by the appellants on orders passed by the District Forum, and the complainant had to suffer for such a long period. In view of the facts and circumstances of the case, the State Commission is of the opinion that the amount of compensation awarded by the District Forum, is not exclusive and accordingly dismissed the present appeal for lack of merit.

c) VIEWS OF THE LITIGANTS:

The concerned officials of appellant Telephone Department, while commenting on the instant case, stated that they have nothing to say in this case as it has already been decided by the State Commission. In their opinion they have done their duties with proper diligence. According to them, some of the telephone consumers wilfully avoid to pay the telephone bills timely, even after availing the service without any interruption.
The respondent, the consumer of the disconnected telephone is satisfied with the decision of the State Commission. According to him, the disconnection of his telephone by the telephone authority is quite arbitrary, and they are also negligent in performing their duties.

*3. M/S PATKAI MINING & ENGINEERING CORPORATION
   PRIVATE LIMITED
   AND OTHERS ....................... PETITIONERS
   -VS-
   NATIONAL INSURANCE COMPANY LIMITED
   AND OTHERS ....................... OPPOSITE PARTIES

(Consumer Protection Case No 45 of 1993 Decided on 9.7.1996)

This complaint has been filed under Section 17 of the COPRA, 1986, claiming compensation of Rs.10,000,00/- (ten lakhs) for non-payment of the claim to the complainants/petitioners.

a) FACTS OF THE CASE :

The Claimant No.1 is a Private Limited Company and its registered office at Margherita in the District of Tinsukia, Assam. The Claimant No.2 is the Tinsukia Branch of State Bank of India from where the Claimant No. 1 availed the cash credit facilities. The Opposite Party is an Insurance Company with its Divisional Office at Tinsukia Town and Regional Office at Guwahati, Assam. The Opposite Party is engaged

* Gauhati Law Times, 1996, Volume-II, P-12, [1996(H) GLT(CP) 12].
in the business of insurance and covers various risks, including the risk for fire and allied, against payment of premium.

As per the terms and conditions of availing cash credit facilities from the State Bank of India, it was necessary for the claimant to insure and to keep the stores of the godown duly insured covering various risks arising out of fire, riots etc. In the instant case also, the Insurance Policy was issued by the Opposite Party, in the joint names of the Claimant No.1 M/S Patkai Mining & Engineering Co.(P) Ltd and the Claimant No.2, the State Bank of India, Tinsukia Branch. The said policy was to the extent of Rs.8 (eight) lakhs and the requisite premium of Rs. 2303/- had been paid by the Claimant No.1. The period of insurance was from 11.05.90 to 10.05.91.

On the night of 13.05.90 at about 11:30 p.m. there was a devastating fire and the godown belonging to the Claimant No.1, insured by the Opposite Party, was completely gutted by fire due to the electrical short circuit and the entire store kept in the godown was burnt out and nothing could be salvaged. On 14.05.90, the Claimant No.1 informed the fact to the Divisional Manager, National Insurance Company Limited, Tinsukia, and he also informed the matter to the In-Charge, State Fire Service Station, Margherita and Officer-in-Charge, of the concerned Police Station.

Thereafter, the Opposite Party deputed one Surveyor to visit the site and to make assessment regarding loss. After visiting the site, the Surveyor returned back to Guwahati and wrote a letter to Claimant No.1, asking him to furnish some papers and documents as stated in the letter. Immediately on receipt of the said letter, the Claimant sent all papers and documents as required by the Surveyor. Thereafter, the Claimants came
to know that the Surveyor gave a report stating that the case was genuine and it was payable under the terms of the policy. In his report, the Surveyor assessed the loss to the tune of Rs. 8,38,604/-. However, the said report was not furnished to the Claimants by the Surveyor.

Thereafter, both the Claimants wrote letters to the Opposite Party for early settlement of the claim. However, the claim was not settled and more queries were made by the Opposite Party time and again. The Claimants gave detailed answer to those. Further 15 months rolled by, but the claim amount had not been settled. Thereafter, on realising that the Opposite Party was not interested in settling the claim and they were avoiding settlement on one or the other pretext, the Claimant No.1, sent a lawyer's notice on 6.11.92, giving 10 days time for compliance of the notice. In spite of that also, the claim was not settled. Hence the present claim before the State Commission. The Claimants have claimed Rs 8 (eight) lakhs being the insured amount together with interest of Rs 2(two) lakhs upto the date of filing the instant petition. The Opposite Party entered appearance and also submitted written version. In the written version, the Insurance Company has not denied the fact that the godown was insured by them. The Opposite Party however states that due to non-submission of relevant documents by the Claimants, the Surveyor could not submit his report. It was also stated in the written version submitted by the Opposite Party, that the claim put forward by the Claimants required further investigation and accordingly they took necessary steps.

b) JUDGEMENT OF THE STATE COMMISSION:

After hearing both the parties and persual of records, the State Commission is of the opinion that the Insurance Company ought to have
settled the claim in terms of the policy within a reasonable time. However, it was not settled in spite of repeated reminders. The investigation of the Insurance Company should be prompt. But in this instant case, the Insurance Company prolonged the investigation. They had made inordinate delay. The Insurance Company also did not put forward any argument repudiating the claim. Only they took time for further investigation. It is true that the Insurance Company is liable to make payment only in case of genuine claim. It is the duty of the Insurance Company also to see that they are not saddled with its liability to make the payment on fraudulent claim. Therefore, it is also expected that he Insurance Company should investigate the matter and come to a conclusion. But that does not mean that the investigation should be prolonged for an indefinite period. It is also expected that the Insurance Company should make the investigation and should come to a conclusion within a reasonable time. But in the instant case, the Insurance Company has not yet been able to come to a conclusion. Therefore, the commission is of the opinion that the Insurance Company was negligent in conducting the investigation. Hence, the Insurance Company is liable to pay a sum of Rs.8 (eight) lakhs being sum insured together with interest @ 15% p.a. with effect from First of November 1990, by which the claim ought to have been settled till the date of realisation. The Commission also awarded Rs.10,000/- towards the cost of litigation. The Opposite Party is directed to make the payment within three months from the date of the order.

c) VIEWS OF THE LITIGANTS:

The Claimants are highly satisfied with the decision of the State Commission. In their opinion, the Opposite Party tried to avoid the settlement of their genuine claim, and without the decision of the
Commission, it would not have been possible for them to settle the matter. In their view, the decision of the Commission relieved their mental sufferings to a great extent. According to them their victory in the instant case is an instance of justice towards the 'consumers' in our country.

The Opposite Party, the concerned officials of the Insurance Company expressed their inability to comment anything on the decision of the State Commission in the present case.

*4. LIFE INSURANCE
CORPORATION OF INDIA
AND OTHER ........................................

APPELLANTS

- VS -

MRS. JAHERA BEGUM ............... RESPONDENT

(Consumer Appeal Case No. 50 of 1994 Decided on 13.07.1996)

This appeal is directed against the judgement and order passed by the District Forum, Kamrup in C.P. Case No. 882 of 1993.

a) FACTS OF THE CASE :

The facts of the case are that the husband of the complainant (respondent herein) late Krimula Sheikh took a Life Insurance Policy for Rs. 3,00,000/- on 31.12.88. Krimula Sheikh submitted a proposal form to the Life Insurance Corporation of India (L.I.C.I) on 29.12.88 along with first premium of Rs. 16,755/-. The proposal form and the first premium had been received by the LICI and issued acceptance letter-cum-first

premium receipt on 31.12.88. Insurance Policy commenced from the said date of insurance. The sum assured was Rs.3 lacs. Krimula Sheikh, thereafter, fell ill and was admitted in the Down-Town Hospital, Guwahati for his chest pain and breathing problem. He died thereafter. On 2.2.90 the complainant informed the appellant Corporation about the death of her husband. The death certificate was issued by the concerned Hospital.

On receipt of the information about the death, the Corporation gave a form to the complainant which was required to be submitted after duly filled-in by the complainant along with all other particulars. The complainant duly filled-in the said form and, thereafter, submitted it to the Corporation. The complainant claimed Rs.3 lacs being the amount insured. The Corporation did not make any payment in terms of the policy. As nothing was heard from the Corporation, the complainant approached the District Forum for redressal. After usual notice, written version was filed by the appellant, whereby the Corporation informed that the claim of the complainant was repudiated and it was intimated to the claimant by letter dated 2.4.92. By the said letter, it was also informed to the complainant that the complainant’s claim had been repudiated on the ground of withholding material information by the insured, regarding his health at the time of making the insurance, which was a requirement of the policy. The Corporation also informed that there was indisputable proof regarding the misstatement. The appellant Corporation, did not examine any witness before the District Forum. It had also not filed any Affidavit to that effect. The District Forum, after going through the papers and the relevant documents and considering the materials on record and on hearing both the parties, held that the complainant is entitled to receive the insured amount and accordingly directed the Corporation to make payment of Rs.3 lacs with interest at the rate of 12% per annum, from 2.2.90 till realisation. Besides, the appellant Corporation was directed to
pay a sum of Rs 25,000/- as compensation for mental agony etc. and Rs 1,500/- as costs of the proceedings.

On being dissatisfied with the decision of the District Forum, the LIC had filed this appeal before the State Commission.

b) JUDGEMENT OF THE STATE COMMISSION:

After hearing both the parties and the perusal of records the State Commission is of the opinion that there is no reliable evidence that the insured has suppressed material facts regarding his health at the time of taking the Insurance Policy. Therefore, the Commission comes to the conclusion that the Life Insurance Corporation of India, illegally and unreasonably withheld the payment of the insured amount to the claimant. There is deficiency of service. The Commission upheld the decision of the District Forum and dismissed the present appeal with cost of Rs. 2000/-.

c) VIEWS OF THE LITIGANTS:

The LIC is not satisfied with the decision of the State Commission. According to them the insured was suffering from chronic disease long before the insurance, which information he has suppressed at the time of making the policy. The Insurance Corporation is not happy for the reason that the State Commission did not pay due importance to the Certificate issued by the Down-Town Hospital, stating the facts regarding chronic disease of the insured.

The claimant (respondent here in) is quite satisfied with the decision of the State Commission. The respondent has full faith and confidence on the Redressal Agencies, and she is quite hopeful that these Redressal Agencies will certainly be able to facilitate consumer protection in the
country. In her opinion, these Agencies are the only means to get the rid from the problems, like the instant one.
other hand, insisted on full payment of the entire kist money, for all the 80 Sal trees allocated to him. Accordingly the complainant deposited the balance amount of Rs.1750/- on different dates and instalments as stated in the petition.

In the meantime, the Bogs of the 32 Sal trees which were in the possession of the complainant were seized by the Forest Department and kept in their custody, which was later disposed of by the opposite parties. When the complainant protested he was given extension twice during the time when the standing crops were there in the surrounding fields. As the complainant could not cut down the trees for fear of damaging the crops in the nearby fields he prayed for third extension. Although third extension was given by the Department but the complainant could not avail it due to his sickness.

The complainant, thereafter, lodged complaint to the opposite parties against the concerned Range Officer, and prayed the opposite parties to settle his claim. As the Forest Department didnot settle his claim the complainant submitted a representation to the Honourable Chief Minister, Assam. This representation was sent to the Secretary of the concerned Department by the Chief Minister, with endorsement on it to finalise the matter immediately. On 24.02.94 the complainant received the letter dated 19.02.94 from the Deputy Secretary, Forest Department, regretting Government's inability to consider his prayer of replacement of 'coupe timber' on the ground that the 'coupe holder' violated the coupe agreement signed by him and failed to implement Government Extension Order thrice. Again on 1.3.94 the complainant received another letter dated 28.2.94 from Deputy Secretary, Forest Department, requesting him to appear before the Secretary of the Forest Department for hearing on
replacement of 'coupe tree's. The complainant claims to have appeared before the Secretary and hearing was held on 16.3.94 but no final order has been passed by the Government in this respect. Being aggrieved by this, the complainant has filed the present complaint before the Commission on 8.7.94.

In his complaint petition, the complainant prays for direction to the opposite parties to pay him Rs. 12 Lakhs only as cost of 80 Nos. of Sal trees or replace the coupe of 80 Sal trees, interest accrued on the value of the Sal trees and a compensation of Rs. 5 Lakhs for mental and physical agony, emotional stress, harassment etc.

b) JUDGEMENT OF THE STATE COMMISSION:

After careful consideration of facts and circumstances revealed by the records, the State Commission is of the opinion that - this is a classic example of 'red-tapism', gross negligence and deficiency of service on the part of the officials of the Forest Department of Government of Assam, from top to bottom. The Commission also regrets to place on record its displeasure at the casual and irresponsible manner of dealing with the instant case by very senior officers like Secretary to the Government of Assam, Forest Department and the Principal Chief Conservator of Forest.

In the opinion of the State Commission, the facts of the instant case is almost similar to that of Kanti Kumar - Vs- Divisional Manager, Fair Price, Jammu and Kashmir Forest Corporation. According to the Commission the observation in the aforesaid case is applicable in the instant case also.

In view of the facts stated above, the Commission has directed the State Government in Forest Department opposite party No.1, to refund the amount of Rs.3,500/- only to the complainant along with interest @ 18% per annum from the date of deposit of different instalments till the date of payment. Besides, compensation of Rs 10,000 only for mental agony, harassment etc. and cost of Rs.10,000 only are awarded to the complainant. The opposite party is also directed to pay the aforesaid amounts within two months from the date of the present order, and failure to which, they shall pay interest @ 20 % per annum on the entire amount payable from the date of expiry of two months till its realisation.

The Commission further directed the State Government in Forest Department to pay the amounts of interest, compensation and cost from the Government Fund subject to Departmental inquiry against the concerned officers/officials of the Forest Department responsible for negligence of duty and deficiency of service in the instant case if the Government so desire and then recover the same from their pay or pensionary dues. The present appeal is allowed and disposed of with the aforesaid direction.

(c) VIEWS OF THE LITIGANTS :

According to the complainant Shri Ananda Prasad Medhi, the instant case has harassed him, both financially and mentally to a great extent, and the decision of the State Commission in his favour, practically gives a relief to him. But he is not satisfied with the long time taken for disposal of the case. He puts a query regarding the time taken by the Commission, in spite of the provisions under COPRA, 1986 for disposal of cases within a specified period. Moreover, the complainant is extremely unhappy with the amount of compensation as awarded by the State
Commission. According to him this compensation cannot be taken as a just one in comparison to his sufferings. But still he is satisfied, because of the reason that the irresponsible Government officials have got a lesson from the instant case. The complainant has made a suggestion regarding the amendment of COPRA, 1986 in order to make a strict provision for disposal of the consumer cases within the specified period. Similarly, a broad provision for compensation should also be incorporated under COPRA, 1986.

The concerned officials of the State Government, the opposite parties in the instant case, when contacted, has tried to avoid from making any comment in respect of the decision of the State Commission in the case. According to them, they have nothing to say regarding the said decision.

*6. ORIENTAL INSURANCE COMPANY LIMITED..................................APPELLANT
-VS-
SAFIA RAHMAN........................................... RESPONDENT
(Consumer Appeal Case No. 106 of 1997 Decided on 23.05.1998)

This appeal is preferred against the judgement of the District Forum, Kamrup in C.P. Case No, 131 of 1996

(a) FACTS OF THE CASE :

Complainant (respondent herein) Mrs. Safia Rahman took a Mediclaim Policy, popularly known as 'Domiciliary Hospitalisation and Benefit Policy' jointly with her husband from Oriental Insurance Company

195 Ltd. (appellant herein) on 5.12.94. She paid premium of Rs. 1470/- only including 5% tax that day itself. While submitting proposal for the said Mediclaim Policy, the complainant also furnished a 'medical certificate' from a registered medical practitioner to the effect that she was not suffering from any disease. Being satisfied with the said medical certificate, the Insurance Company had accepted the proposal and accordingly issued the aforesaid policy along with a copy of prospectus.

That after about 10 months of opening the said policy, when the complainant went to Madras with her husband and other family members, availing her husband's LTC, suddenly she had acute and severe pain in her stomach, there in Madras. On 5.10.95, she was immediately admitted to Appollo Hospital, Madras by her husband. On examination by the doctor in the hospital it was found that she was suffering from pain due to Gall Stone Disease - Empyema of Gall Bladder, and was advised immediate operation to save her life. Accordingly, the complainant had undergone Gall Bladder operation in Appollo Hospital, Madras on 6.10.95. Thereafter, on her return to Guwahati, the complainant preferred a formal claim before the Insurance Company for the total medical expenditure of Rs 21,539.55 incurred by her against her aforesaid Mediclaim Policy. She furnished all the medical documents, medical bills etc. along with her claim.

But, instead of settling her claim, the Insurance Company informed her husband that the Insurance Company had no other alternative but to repudiate her claim as 'No Claim' on the basis of report of their 'Panel Doctor', declaring the disease as pre-existing. Thereafter, the complainant Mrs Rahman, submitted representations to the Insurance Company on 28.2.96 and 9.4.96. As there was no response, the complainant issued Advocate Notice to the Insurance Company on 17.09.96 with a request
to settle her claim by making the payment within ten days. But this time also, the Insurance Company turned a deaf ear. As a result, the complainant filed a complaint in the District Forum alleging deficiency in service on the part of the Insurance Company and claiming from them a total amount of Rs.41,819.55 of which Rs 21,539.55 towards medical expenses, Rs. 15,000.00 as compensation and Rs.5,280.00 as interest @ 18% per annum.

The Insurance Company filed written statement in the District Forum, justifying their repudiation of the complainant's 'mediclaim' on the grounds of non disclosure or misrepresentation of fact or information by the insured and the disease of the insured complainant being pre-existing.

After going through the complaint, written version and other relevant papers on record and hearing both the parties, the learned District Forum delivered Judgement on 30.05.97, holding the Insurance Company liable for deficiency of service for repudiating the claim without any valid ground and directing the Insurance Company to pay Rs. 17,799.55 only along with interest @ 18% per annum with effect from 4.1.95, the date of repudiation till the date of payment to the complainant. Besides, a compensation of Rs 5,000/- and cost of Rs 1,000/- were awarded.

On being aggrieved by the decision of District Forum, the appellant (Insurance Company) has preferred this appeal before the State Commission.

(b) JUDGEMENT OF THE STATE COMMISSION :

After observing the required formalities under the law, the State Commission is of the opinion that there is no reasonable ground to believe
that the complainant knew about her disease at the time of taking the
policy and waited for ten months to get herself operated at Madras. It is
not unlikely that the complainant herself did not know till she suffered
from pain on 5.10.95 in Madras, that she had Gall Bladder Stone and it
should be removed by surgical operation. At the time of accepting the
proposal the Insurance Company was satisfied with the medical certificate
of a doctor, furnished by the complainant. The concerned officer of the
Insurance Company did not raise any objection nor did he find it necessary
to get the insured person examined by their 'panel doctor' at that time.
The doctor's certificate furnished by the complainant is in the possession
of the appellant. The Insurance Company cannot challenge this certificate
at this stage that the concerned doctor did not examine the insured properly.
They can not take this plea now, after accepting the certificate once and
issuing policy on the basis of it. Nobody prevented the Insurance
Company from getting the insured examined by their panel doctor before
issuing the policy. On the fact and circumstances, the appellant's contention
of the complainant/respondent not disclosing the fact or misrepresenting
any fact and having a pre-existing disease is unfounded and without any
force and liable to reject.

It appears from the record that the appellant (Insurance Company)
not only repudiate the claim of the present respondent, but also did not
respond to two representations, which can be taken as a deficiency in
service on part of the Insurance Company.

In view of the facts and circumstances stated above, the State
Commission upheld the judgement of the District Forum, Kamrup dated
30.05.97 with the modification in respect of the interest payable [on the
The appellant, Oriental Insurance Company Limited is directed to pay the complainant (respondent herein) Rs 17,799.55 only along with interest @ 12% per annum with effect from the date of repudiation till date of payment. Besides, the appellant is directed to pay the complainant/respondent Rs 5000/- only as compensation and Rs.1,000/- as cost as awarded by the District Forum. The entire amount shall be paid by the appellant Insurance Company within two months from the receipt of this order, failure to which it would be liable to pay interest at the rate of 18% per annum from the expiry of two months till the date of payment.

The appeal is dismissed. There is no order as to separate cost of the appeal.

(c) VIEWS OF THE LITIGANTS:

The complainant (respondent in the Appeal Case), Mrs. S. Rahman is satisfied with the decision of the 'State Commission'. But she is not feeling comfortable with the compensation amount as awarded by the 'Commission'. According to her opinion the compensation awarded is inadequate.

The opposite party (appellant in the Appeal Case), Oriental Insurance Company Limited is not satisfied with the judgement of the 'State Commission'. According to them, the State Commission totally ignored the report of their 'panel doctor', and there was no deficiency in service on their part.
This appeal is directed against the judgement delivered by the District Forum, Kamrup in C.P. Case No.82 of 1995.

(a) FACTS OF THE CASE:

In this case, complainant Shri Biplab Choudhury (respondent herein) purchased a new SPL Scooter from opposite party 3, M/S Bimal Auto Agency (appellant no. 3 herein) on 24.02.93. The opposite party 1, M/S LML Limited is the manufacturer of the SPL Scooter. The said Scooter started giving trouble during the 'warranty period' itself and those defects were rectified by above mentioned opposite party no. 3. Suddenly on 8th of July, 1994 after expiry of one year and four months of its purchase and when it had ran for 8727 kms only, the complainant faced some problems while driving the Scooter. He immediately got the defect examined by a private mechanic, who informed him that there was a 'crack' in the 'chasis' of the Scooter. As he found that the Scooter had manufacturing defect, and it was of poor quality, he immediately wrote a letter to District Transport Officer (DTO) Kamrup with a request to examine the Scooter. He also wrote a letter to opposite party 3, the distributor, requesting for the replacement of the defective Scooter with a new one, as the Scooter had manufacturing defect. In the mean time, DTO, Kamrup has also informed the complainant that as per report of the Motor Vehicle Inspector (MVI), the 'chasis' of the Scooter was found partially cracked.

Thereafter, as advised by the opposite parties, the complainant produced the Scooter on 29.08.94 in the workshop of opposite party No.3 for inspection. After examining the Scooter by the Company's Service Engineer agreed to repair the scooter by changing the chasis only. But the complainant did not agree to it, and insisted on replacement of the defective Scooter by a new one. After several correspondence between the parties, ultimately, the opposite party no 3, M/S Bimal Auto Agency vide their letter dated 30.05.95, requested the complainant to inform them within seven days whether they should repair the Scooter which was lying in their workshop by replacing the chasis only, otherwise they would treat the matter as closed. The complainant thereafter filed the complaint in the District Forum with a prayer to direct the opposite parties to replace the defective Scooter with a new one of the same model or to refund him the price of the Scooter with interest @ 21% per annum from the date of purchase. Besides, he claimed a compensation of Rs. 2 lakhs for mental agony, financial loss etc. alongwith costs.

In their written version, filed in the District Forum, the opposite parties denied that the Scooter was a defective one and made with substandard materials. Their contention is that the defects occurred in the Scooter beyond the warranty period and even then they agreed to repair and replace the chasis. According to them, the complainant is not legally entitled to get his Scooter replaced by new one and hence his complaint is liable to be dismissed.

After hearing both the parties and considering the evidence on record, learned District Forum allowed the complaint and directed the opposite parties to replace the defective Scooter with a new one of the same model within three weeks of the receipt of the order. It was further directed
that in case, a new scooter of the same model was not available with the opposite parties, they should refund the purchase price of the Scooter to the complainant with 12% per annum interest thereon from the date of the chasis cracked, that is 8.7.94, till realisation. Besides, compensation of Rs.10,000/- and cost of Rs. 500/- were awarded to the complainant.

On being unsatisfied with the order of the District forum, the appellants (M/S LML Limited & ors.) preferred this appeal before the State Commission.

(b) JUDGEMENT OF THE STATE COMMISSION :

In the opinion of the State Commission, the District Forum, Kamrup has rightly decided the case in favour of the complainant after carefully considering the facts and circumstances revealed by the evidence on record. The crack in the chasis is a manufacturing defect of the Scooter and the circumstances of the instant case lead to believe that this inherent defect was there from the time of manufacture itself. It may be that there was no proper quality control and the Scooter was not tested before releasing from the factory. Apparently the manufacturing company is liable for such inherent manufacturing defect.

In view of the facts and circumstances stated above, the State Commission upheld the decision of the District Forum and awarded an additional cost of Rs.1000/- towards litigation expenses in the appeal over and above the cost of Rs. 500/- already awarded by District Forum. The appellants are directed to replace the defective Scooter with a new one of the same model within one month from the receipt of this order. If new Scooter of same model cannot be supplied by the appellants they shall refund the purchase price of the Scooter to the respondent with
interest of 12% per annum with effect from 8.7.94, the date of detection of
the crack on the chasis till realisation of the amount. Compensation of
Rs. 10,000/- and cost of Rs. 500/- awarded by the District Forum
alongwith additional cost of Rs. 1000/- awarded by the Commission
shall be paid by the appellants to the respondent/complainant within one
month of receipt of this order. If the appellants fail to pay the above
amounts within one month of receipt of this order, they shall be liable to
pay interest @ 18% per annum on the entire amount till the date of
realisation.

In the result, the appeal is dismissed with cost.

(C) VIEWS OF THE LITIGANTS :

In the opinion of the respondent/complainant, Sri Biplab Choudhury,
the judgement of the District Forum and State Commission, in his
case, is a victory against the unscrupulous manufacturers and traders in
the country. But he is not at all satisfied with the amount of compensation
awarded by the Commission, and according to him the amount of
compensation awarded is quite negligible in proportion to his sufferings.
He is also dissatisfied for delayed disposal of his case.

In the opinion of the appellant/opposite party no. 3, M/S Bimal
Auto Agency, the complainant has got more than his due, from the
decision of the State Commission. According to the said appellant, as
the 'warranty period' of the Scooter has already expired, the complainant
is not entitled to the replacement of the old Scooter by a new one.
This is an appeal preferred by appellant United India Insurance Company Ltd. Against the judgement of the District Forum, Jorhat in C.P. Case No, 64 of 1993. The fact of the case may be stated briefly as follows:

(a) FACTS OF THE CASE:

The complainant (respondent herein) insured his vehicle (a Mini Bus) with the opposite party (appellant herein). The vehicle met with an accident within Jorhat District on 16.06.92 and it was completely damaged. As claimed by the complainant, as per instruction of the opposite party, (Insurance Company) the vehicle was sent to a garage and it was repaired there. The Surveyor of the Insurance Company after due inspection of the damaged vehicle assessed the cost of repairs etc. at Rs.48,548/- only after deducting the salvage value and some other items. The complainant furnished all the relevant document to the Insurance Company. The survey report was confirmed by a second Surveyor engaged by the Insurance Company. On 23.10.92 the Insurance Company offered Rs.40,000/- only as compensation and the complainant had to accept the amount to meet the expenses of repairs. The complainant claims that he never waived the right to claim the balance amount. As the Insurance Company turned down the complainant's prayer for payment of the balance amount, he filed a complaint in the District Forum.

The opposite party, Insurance Company filed written statement in the District Forum contesting the claim of the complainant. Their contention is that they ascertained the damage of Rs.40,000/- only and paid the amount, which was received by the complainant in full and final satisfaction. According to the Insurance Company, they are not liable for any balance amount.

After hearing both the parties and on perusal of the evidence on record, the District Forum directed the opposite party, United India Insurance Company Ltd. (appellant herein) to pay Rs 6,510/- only to the complainant. The District Forum deducted Rs 2,038/- from the claimed amount of Rs.8,548/- it being the assessed value of two salvage parts.

Being aggrieved at this order of the District Forum, the appellant Insurance Company has preferred this appeal before the State Commission.

(b) JUDGEMENT OF THE STATE COMMISSION :

In the opinion of the State Commission, it is an admitted fact that the complainant (respondent herein) accepted the amount of Rs 40,000/- in full and final discharge of claims upon the appellant Insurance Company. It is a settled law that after acceptance of an amount in full and final discharge of the claims upon any party, be it Insurance Company or anybody else, the claimant cannot come forward again with any claim for balance amount or whatsoever. By accepting the claims in full and final satisfaction the complainant (respondent herein) himself waived the right to claim any balance amount.

In view of the facts stated above, the State Commission is of the opinion that the appellant Insurance Company is not liable to pay any
balance amount to the complainant/ respondent. In the result, the State Commission allow the appeal and set aside the impugned judgement dated 26.04.94 of the District Forum, Jorhat, in respect of CP Case No. 64 of 1993.

(c) VIEWS OF THE LITIGANTS:

The complainant (respondent herein) Shri Dhrabajyoti Sidhanta is quite unhappy with the decision of the State Commission. According to him, he has not waived the right of claiming the balance amount, as it was calculated not by himself but by the surveyors appointed by the opposite party. He also shows his dissatisfaction arising out of his both physical and mental tensions. He expressed his bitterness for the long period taken by the Redressal Agencies to settle his case.

The opposite party (appellant herein) is satisfied with the decision of the Commission. According to Insurance Company, the decision of the State Commission is just and equitable.

*9. PRANJAL BHAGAWATI........................Appellant

- VS -

UNITED INDIA INSURANCE COMPANY LTD. & ORS..................Respondents

(Consumer Appeal Case No. 76 of 1998 Decided on 10.4.1999)

This appeal is directed against the judgement delivered by District Consumer Disputes Redressal Forum, Kamrup in C.P. Case No.37 of 1998.

* Gauhati Law Times, 1999, Volume-I, P-1, [1999(1) GLT(CP) 1].
(a) FACTS OF THE CASE :

The complainant (appellant herein), a Civil Engineering graduate floated a concern under the name and style of AFCON in June 1995 with himself as the sole proprietor. He claims to have purchased three sets of computer with accessories on 14.10.96 from M/S Unique Computers at a cost of Rs 2,31,000/- for diversifying his sources of income to earn his livelihood. The complainant insured the aforesaid computers with accessories on 14.3.97 with opposite party (respondent herein), the Insurance Company on payment of a premium of Rs. 728/- only. Accordingly the respondent Insurance Company issued the Insurance Policy in favour of said AFCON covering the risk period from 14.3.97 to 13.3.98. On the night of 5.4.97 some miscreants entered into the office premises of the appellant by breaking open the locked door and stole away the computers with accessories. Next morning itself he lodged the FIR with the concerned Police Station and a case was registered under Sections 457 and 380 IPC. On Completion of investigation, the police submitted Final Report by holding that the case was true U/S 457 and 380 IPC, but there was no clue. The Final Report was duly accepted by the Chief Judicial Magistrate, Kamrup.

Immediately after the occurance of aforesaid burglary, the appeallant lodged a burglary claim on 9.4.97 with respondent Insurance Company against the aforesaid insurance policy, claiming a sum of Rs.2,31,400/- only towards the costs of replacement of the stolen computers with accessories. It is alleged that the Respondent Insurance Company kept the claim lodged by the appellant pending for more than eight months without any valid reasons. The appellant, vide his letter dated 11.11.97 to the respondent requested the Insurance Company to settle the claim
without further delay on the basis of the Survey Report, dated 9.8.97. But the Insurance Company instead of settling the claim on the basis of the survey report, engaged a private investigator in December 1997 to inquire into the matter. Thereafter, the respondent, vide his letter dated 31.12.97, intimated the appellant that the claim lodged by him was repudiated by the Insurance Company on the ground of it not being genuine. Appellant/Claimant made several correspondences on the subject with the Insurance Company, and he received another letter, dated 16.1.98 from the respondent, intimating that the claim lodged by him deserved repudiation. On being highly aggrieved by the repudiation of the claim the appellant/complainant filed a complaint before the District Forum, Kamrup against the opposite parties, United India Insurance Company and three others, alleging deficiency of service in wrongly and arbitrarily repudiating the claim.

After hearing both the parties and on perusal of the complaint, written version and other relevant papers on record, District Forum dismissed the complaint on the ground that it is not a case where the Insurance Company has repudiated the claim arbitrarily and without applying mind and without any effort to findout genuineness of the claim. However, the Forum awarded a compensation of Rs.2000/- only for delayed disposal of the claim and a cost of Rs.1000/- only to the complainant.

Being aggrieved by this order of the District Forum, the appellant preferred the present appeal before the State Commission.

(b) JUDGEMENT OF THE STATE COMMISSION:

In the opinion of the State Commission, the Insurance Company has not repudiated the claim of the appellant illegally and arbitrarily. In the instant case, the Insurance Company, got the matter
inquired into by an investigator and the report of the investigator revealed certain facts which raised doubt in the genuineness of the claim. The State Commission as well as District Forum are satisfied that in the instant case the Insurance Company did whatever is possible by getting the matter inquired into by a private investigator and there was application of mind by them.

The State Commission is also inclined to agree with the District Forum that the appellant/complainant may seek redress in the competent Civil Court if he challenges the grounds of repudiation of the claim communicated by the respondent Insurance Company. The amount of compensation for delay in disposal of the claim and the cost as awarded by the District Forum are not interfered by the Commission.

On the facts and circumstances cited above the State Commission upheld the decision of the District Forum, Kamrup in the instant case and dismissed the appeal.

(c) VIEWS OF THE LITIGANTS:

According to the appellant his case is a genuine one and the respondent Insurance Company has intentionally delayed the settlement of his claim. After the judgment of the State Commission, the appellant of the instant case, instituted a civil suit before the Civil Court, challenging the grounds of repudiation of the claim communicated by the respondent Insurance Company, which is still pending before the court.

According to the respondents, the claim of the appellant is doubtful and not a genuine one. In their opinion there is no deficiency of service on their part and the present decision of the District Forum as well as State Commission is quite fair and just. The delay in communication, as
explained by them was not due to their negligence but only for heavy pressure of work and the time taken for the required procedure.

10. BRANCH MANAGER,
    LIFE INSURANCE CORPORATION,
    OF INDIA (LICI) &
    ANOTHERS ..............................Appellants
    -VS-
    SUNITY @
    SMTI CHAYA ROY
    & ANOTHERS .............................Respondents

(Consumer Appeal Case No. 102 of 1997 Decided on 8.5.1999)

This appeal has been filed by the Life Insurance Corporation of India (L.I.C.I) against the judgement and order by the learned District Forum, Hailakandi, in C.P. Case. No. 16 of 1996 The brief facts of the case are as follows:

(a) FACTS OF THE CASE:

One K. K. Roy was a policy holder of LICI, for a sum of Rs 25,000/- and the policy commenced on 28.3.90 for a period of 15 years. The policy was issued by the Hailakandi Branch of LICI. The policy was under the 'Salary Savings Scheme' of LICI and the policy holder being an employee of Chandipur Tea Estate, he fully authorised his employer i.e., Manager Chandipur Tea Estate to deduct monthly premium from his salary and to remit it to the Hailakandi Branch of the LICI. The

* Gauhati Law Times, 1999, Volume-1, P-3, [1999(1) GLT(CP) 3].
policy holder expired on 26.3.92 and the information of the death was furnished to the LICI on 14.5.92 and the claim was lodged on 14.5.92

The case of the LICI was that the policy holder resigned from service on 10.11.91 and as such, he was not in service for a period of two years from the date of commencement, the policy holder shall not entitled to the claim. The LICI further contended that the premium from January to March, 1992 was received by the LICI on 19.5.92 after getting information of death and the policy lapsed earlier to it, and as such revival of the policy does not arise. Accordingly on 19-12-92 the LICI repudiated the claim. Thereafter, the complaint case was filed before the District Forum, by the complainant. The opposite parties (LICI & ANR.) filed the written statement before the Forum wherein the above stated questions alongwith the plea of limitation were taken up. In the District Forum three issues were framed in the matter and they are (i) limitation (ii) deficiency of service and (iii) reliefs. The District Forum found that—

(i) there was no acceptance of the resignation of the employee and it was never communicated by the employer to the employee (ii) the letter of resignation was created collusively. The premium was duly paid by the employer even after so called alleged resignation and it was accepted by the LICI and as such the wife of the deceased policy holder is entitled to the amount. Accordingly an order was passed to pay an amount of Rs. 25,000/- alongwith bonus of a sum of Rs. 5000/- was awarded against the employer with interest @ 12% per annum. Regarding issue of limitation, it was found by the Forum that the claim is not time bared and the plea of limitation was also not raised before the District Forum.

On being dissatisfied with the judgement and order of the District Forum the appellants preferred this appeal before the State Commission.
(b) JUDGEMENT OF THE STATE COMMISSION:

The State Commission has upheld the decision of the District Forum and dismissed the present appeal. In the opinion of the State Commission, the activities of the appellants in the instant case are not bonafide.

(c) VIEWS OF THE LITIGANTS:

When the complainant (respondent in the Appeal Case) Smti Chaya Roy was asked to react on the decision of the District Forum and State Commission in respect of the instant case, it has been found that she is highly satisfied with the said decisions. But she was anguished for delay in settling her case.

One of the Opposite Parties (appellant in the Appeal Case), the Branch Manager, LICI, when contacted has tried to avoid from making any statement and comment in respect of the decisions of the District Forum and State Commission in the instant case.

*11. POST MASTER GENERAL
ASSAM CIRCLE, GHY-1 .......................... Appellant
— vs.—
CHITTA PRIYA NANDI .............................. Respondent
(Consumer Appeal Case No. 21 of 1994, Decided on 11-3-2000)

This appeal is preferred by appellant Postmaster General, Assam Circle, against the award given by the District Forum, Cachar in C.P. Case No. 1 of 1990.

* Gauhati Law Times, 2000, Volume-II, P-6, [2000(11) GLT(CP) 6].
(a) FACTS OF THE CASE:

On 14-9-89, the complainant (respondent herein) sent a letter with valuable documents by Speed Post from Silchar Head Post Office to his son Shri Joy Nandi, a resident student at Telang Memorial Hostel, Church Gate, Bombay. On 28-9-89, the complainant came to know from his son that the said letter with valuable documents was not received by him although it was sent through Speed Post by paying Rs. 20/- only for delivery within 24 hours. This caused much hardship and inconvenience to his son, as a Bank Draft was said to have been enclosed with the letter. The complainant made inquiries in the post office at Silchar. In the meantime, the letter was returned to the complainant. Thereafter, the complainant requested the opposite parties to enquire into the cause of non-delivery of the said letter to the addressee. There was no response from the opposite parties, nor any inquiry was made. Being aggrieved, the complainant filed a complaint before the District Forum, claiming a compensation of Rs. 15000/- with costs and other reliefs as admissible.

The opposite parties (appellant herein) contested the case and took the plea that the letter could not be delivered due to operational fault. Accordingly the Postal Department sanctioned refund of Rs 20/- only to the complainant. The main contention of the opposite parties is that their liability does not extend beyond what is stated in Section 6 of the Indian Post Office Act. In their written objection filed before the District Forum, it was stated that the provisions of the Consumer Protection Act lays down that the provisions of the Act are in addition to and not in derogation of the provisions of any other law. In view thereof, it was pleaded that—

(i) The Consumer Protection Act does not supersede other
enactment, (ii) The user of the Postal Service is not a hirer of a service as no consideration is paid.

After hearing both the parties and considering their pleading, the District Forum gave the impugned award of Rs 1000/- as compensation with cost of Rs 4000/- only and refund of Rs 25.60 only to the complainant.

On being dissatisfied with the decision of the District Forum, the appellant preferred this appeal before the State Commission.

(b) JUDGEMENT OF THE STATE COMMISSION:

In deciding this case, the State Commission has taken into consideration the decisions of the National Commission on some similar issues and relied on them. In the opinion of the State Commission, the decision of National Commission in Presidency Post Master and Another—vs—Dr. U. Shankar Rao⁴ and Senior Post Master, GPO, Pune—vs—Akhil Bharatiya Grahak Panchayat and Another⁵ shall be regarded as settled law on the subject, unless the same are revised by the Apex Court. District Forum and the State Commission are bounded by the said decisions. Vide the decision of the aforesaid cases it was observed that— the services rendered by the post office are merely statutory and there is no contractual liability. The provisions of Section 3 of COPRA are in addition to, but not in derogation of the provisions of any other law for the time being inforce. Although this Act provides additional means of obtaining remedy by a consumer, but if the remedy is barred under any other Act (such as the Post Office Act), then the various

⁴ Presidency Post Master & Another v. Dr. U. Shankar Rao (1993) 2 CPJ 370 (NCDRC)
⁵ Senior Post Master, GPO, Pune v. Akhil Bharatiya Grahak Panchayat & Another. (1995) 2 CPJ 230 (NCDRC)
Forums constituted under the act cannot grant remedy. As there was no allegation that the loss, misdelivery, or delay occurred on account of fraudulent or wilful act of any particular postal employee, there is no remedy under Section 6 of Indian Post Office Act.

The State Commission also relied on the decision of National Commission in Chairman Board of Examinations, Madras –vs– Mohideen Abdul Kedar6, and accordingly set aside the impugned award of the District Forum in the instant case. In the opinion of the State Commission, the impugned award of the District Forum suffers from infirmity and illegality and it is liable to be set aside.

(c) VIEWS OF THE LITIGANTS:

According to the appellant, the decision of the State Commission is quite just and fair. The appellant was very much confident and hopeful regarding the outcome of his appeal before the State Commission, as there were previous decisions of the National Commission in similar cases.

Whereas, the son of the respondent (as the respondent has already expired) of this appeal case, is not at all satisfied with the judgement of the Commission. According to him, there is gross deficiency and negligence of service on part of the postal authority, for which he had to suffer a lot. In his opinion, Consumer Protection Act fails to provide adequate justice towards the consumers. According to his suggestion – the COPRA should be widely amended inorder to enlarge the scope of the Act and also to include some strict provisions favouring the consumers in the country.

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This is a case of alleged medical negligence. Complainant Smti Anita Devi, who is the aggrieved person, filed this complaint before the Commission, against opposite parties namely, City Maternity Centre, Jorhat and Dr. Jibo Kanta Bora. The case got delayed for the fault of the complainant's advocate and some other reasons. Ultimately, Shri Atulananda Goswami, a well-versed consumer activist, the authorised representative of the complainant conducted her case.

(a) FACTS OF THE CASE:

The complainant's case is that in December, 1991 when she was in advanced stage of pregnancy she went to consult attending Gynaecologist Dr. Jobo Kanta Bora, the opposite party no 2 (O.P. No.2) who is the owner and doctor in charge of opposite party No 1 (O.P.No1), the City Maternity Centre at Milan Nagar, Jorhat. On the advice of Dr. Bora, she got herself admitted into the said Maternity Centre on 18-12-1991 for her child birth. On the same day Dr. Bora performed surgical operation on her by cutting open the lower abdomen and a male child was born to the complainant. During the said operation, Dr. Bora reportedly repaired the Harnia of the complainant and she was released on 27-12-91 from the Maternity Centre by issuing the Discharge Certificate, signed by Dr. Bora (O.P. No.2) himself. The bill submitted by the Maternity Centre was duly paid by the complainant at the time of release.

* Gauhati Law Times, 2000, Volume-II, P-1, [2000(11) GLT(CP) 1].
After sometime, the complainant developed acute pain in her lower abdomen with swelling. On 28-2-92, the complainant went to consult O.P. No. 2, Dr. Bora who after an examination prescribed some medicines to her for two months. But even after taking the said medicines for two months, she did not get relief from the acute pain and the swelling. Thereafter, when the condition of the complainant deteriorated further, she had no alternative but to consult with a number of Surgeons, Physicians and Gynaecologists and got done several pathological tests and sonography and took the medicines as prescribed by the doctors but to no effect.

In such a situation, the complainant had to be removed to the Apollo Hospital in Madras on 13-2-93. She was admitted to Apollo Hospital in Madras on 19-2-93 after waiting for about six days. A series of different tests, scanning and X-rays were done on the complainant in the said Hospital and after examining the same, it was confirmed by the doctors there that some foreign body existed inside the lower abdomen of the complainant. The Hospital authorities, therefore decided to operate upon the complainant to remove the foreign body from the abdomen as it was the root cause of her physical agony resulting from the operation performed by O.P. No.2, Dr. Bora at Jorhat. On 22-2-93, another operation was performed on the complainant at Apollo Hospital by cutting open her lower abdomen again. To the utter surprise and dismay of the operating surgeon and everyone else, two pieces of cotton pads were found inside the lower abdomen of the complainant in a decomposed stage causing extensive damage to the entire reproductive system inside the body and also causing damages to other areas of her abdomen. The surgeon removed the cotton pads found inside complainant's abdomen,
which were alleged to have been left behind due to utter negligence of O.P. No.2 who performed the previous operation at O.P. NO 1. It is also alleged by the complainant that the cotton pads known as 'lap pads' found in her abdomen have caused extensive damage to her abdomen so much so that her 'uterus' had to be removed to save her life thereby rendering her permanently handicapped. She was released from Apollo Hospital on 4-3-93 with advice to take complete rest. She was advised also to have periodic check-up and take medicines for a long time.

The complainant in her complaint, alleges that on account of dereliction of duty and negligence on the part of Opposite Parties 1 and 2, she has suffered loss and injury and also suffered from deprivation, harassment, physical and mental agony etc. entitling her to claim Rs. 5,00,000/- only spent on her prolonged treatment. Besides, she claims compensation of Rs. 5,00,000/- for extensive damage to her body and irreparable loss making her permanently handicapped.

The complainant has filed as many as fifteen documents connected with her treatment, including discharge summary, scanning report, surgical pathological reports, dated 25-2-93, one referred by Dr. N. Rammurthy and another by Dr. Kausalya Devi, along with the complaint. Besides, the Affidavit sworn by Dr. N. Rammurthy and Dr. B. Sarat, the consultant General Surgeons of Apollo Hospital has been filed.

The opposite party No. 2 Dr. Jibo Kanta Bora, has filed written version denying the allegations brought by the complainant in her complaint. The plea of the opposite parties is that they are not at all responsible for the alleged loss, injury, expenses, and mental agony of the complainant and as such the complaint in the present form and state is not maintainable and liable to be dismissed.
(b) JUDGEMENT OF THE STATE COMMISSION:

The State Commission, after hearing both the parties and perusal of the complaint and other relevant documents is of the opinion that there was a gross negligence on the part of the opposite parties, particularly the Doctor (O.P. No. 2) who operated upon and left behind the two cotton pads in the abdomen of the complainant. Although there is no allegation of lack of skill, wrong treatment or error in judgement, it is abundantly clear that in the present case the Doctor (O.P. No.2), miserably failed in discharging his duty of care in administration of the treatment as a whole by leaving behind two pieces of 'lap pads' in the abdomen with serious consequences of post operation complications. It is a case of serious dereliction of duty and gross negligence, on the part of the Doctor himself as well as other attending staff thereby making the Maternity Centre itself (O.P.No.1) also liable for the lapse.

In deciding the case, the State Commission relied on the decision of the Apex Court in Dr. Laxman Balkrishna vs. Dr. Zimbak Bapu Godbob\(^7\) and the decision of State Commission, Delhi in D.P. Bhandari & Others vs. Sir Gangaram Hospital & Others.\(^8\)

On the facts and circumstances of the instant case, the State Commission came to the definite conclusion that the opposite parties are liable for deficiency in service and gross negligence. As a result, the complaint is allowed and the opposite parties No. 1, the City Maternity Centre and No.2, Dr. Jibo Kanta Bora are directed to pay compensation of Rs. 3,00,000/- only for the physical injury, mental agony and harrassment etc. caused to her by the negligent act of the Opposite Parties.

\(^7\) Dr. Laxman Balkrishna Vs. Dr. Zimbak Bapu Godbob, AIR 1969, SC 128
\(^8\) D.P. Bhandari & Others Vs. Sir Gangaram Hospital & Others, 1991 (2) CPJ 409
Besides, the Opposite parties are directed further to pay another amount of Rs. 1,00,000/- only to the complainant towards expenses incurred by her on medical treatment, subsequent to the operation performed by OP No. 2 at OP No. 1, till the 'lap pads' were found in the Apollo Hospital in Madras. The Commission also awarded the cost of Rs. 50,000/- to the complainant to be paid by the Opposite Parties as litigation cost. As the O.P. No. 2 Dr. Jibo Kanta Bora is the owner of O.P. No. 1, the City Maternity Centre Jorhat, the State Commission directed the O.P. 2 to pay the entire amount of Rs 4,50,000/- only as aforesaid, within a period of three months from the present order. If he fails to pay the amount within this period he shall be liable to pay interest at the rate of 18% per annum from the expiry of the period of three months till realisation.

(c) VIEWS OF THE LITIGANTS:

The complainant, Smti Anita Devi, when asked whether she is satisfied with the Judgement of the State Commission or not, she has replied in a positive way. She is highly satisfied with the decision of the Commission, as the negligent and irresponsible doctor in her case, has got a lesson from this. But to her opinion, no monetary compensation, whatever may be the amount, can compensate the loss and injuries already suffered by her. She has also a bitter experience with some legal professionals in connection with her case, for which her case took a very long time to settle. She is very much greatful to her authorised representative Shri Atulananda Goswami, who according to her opinion, has represented the case in a very systematic and convincing manner.

The Opposite Party No. 2 Dr. Jibo Kanta Bora, when contacted, refused to comment anything in respect of the decision of the State Commission in the instant case. The other hospital staffs of the Maternity
Centre (O.P. No. 1) are also expressed their inability to make any comment regarding the present issue.

6.4 CONCLUSION:

From the analyses of the views and opinions of the litigants in the above discussed cases, it has been observed that most of the litigants/consumers were dissatisfied in respect of the long time taken for settlement of the cases by the Redressal Agencies. According to them, the Consumer Protection Act 1986, should be amended so as to include strict provisions to dispose the cases by the Redressal Agencies within the prescribed time in the Act. In their opinion, if the Redressal Agencies fail to settle the cases promptly, it would defeat the objectives of the COPRA itself. Similarly, suggestions also have been put forward for amendment of the Consumer Protection Act in order to enlarge its scope and also to incorporate some broad provisions for 'compensation' towards the consumers.