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# CONSUMER PROTECTION LAW

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## I INTRODUCTION

ALL OF us are consumers, either of goods or services or both. Consumer protection law covers practically all aspects and activities of human life which explains its vastness. Besides this, during the year under review the higher judiciary and the National Consumer Disputes Redressal Commission have been prolific in disposal of cases relating to consumer protection law. These factors have made the choice of cases difficult. Therefore, keeping in view the constraint of space this survey has been confined mainly to two more important aspects of consumer protection law, namely, housing and insurance, which are fairly representative of the emerging trends in the development of this branch of law. As in the previous years during the year under review also much of the space in consumer fora, at all levels, has been occupied by the insurance cases. Hence, their pre-dominance in the consumer protection law journals. In the various cases analysed in this survey, attempt has been made to highlight all aspects of the working of the consumer fora, including the subtle attempt of the higher fora to expand their jurisdiction, some jurisdictional set backs experienced by them and the innovative and creative approach of the apex court while dealing with the consumer protection law cases.

## II INSURANCE LAW

An authority which expounds marine insurance law with clarity is *New India Assurance Co. Ltd.* v. *Hira Lal Ramesh Chand and others*[1]. Shorn of unnecessary details the case of the complainant before the National Commission was as under:

Complainants are manufacturers of rugs and durries at Mirzapur, UP. In pursuance of orders placed by Atlanta Rugs Inc., Atlanta (the 'buyer'), M/s. Hira Lal Ramesh Chand (complainant) dispatched 38 consignments of the value of US$ 4,06,096/- between 15.6.95 to 29.6.95. The consignments were

* District & Sessions Judge, Chandigarh (Retd.); Former Member, Governing Council, lLI New Delhi; Member, Committee - GFIL (Appointed by the Hon'ble Supreme Court of India).

1 (2008) 10 SCC 626.

entrusted to M/s.Overseas Container Line Inc., a non-vessel owning cargo container (NVOCC) represented by its agent Naranjan Shipping Agency (P) Ltd., for transhipment from Mumbai to Atlanta (USA). The bill of lading was issued by Overseas Container in regard to each of the consignments showing the consignee as "Unto Order" and the party to be notified as "Atlanta Rugs Inc.". All the consignments were insured by the consignors, with the New India Assurance Co. Ltd. (the insurer). Original documents relating to the consignments were forwarded by Naranjan Shipping to the bankers of complainant – Punjab National Bank. The complainants obtained credit facilities from Punjab National Bank by discounting the bills and endorsed the bill of lading in favour of the said bank. The said bank in turn forwarded the original documents of title to its agent Sun Trust Bank, Atlanta for collection by endorsing the documents in their favour. The buyer did not make payment and obtain release of the documents of title. The complainant, thereafter, made efforts to contact the buyer and the shipping agent – Overseas Container. They were not able to locate them nor were they able to find out the consignments. Therefore, they telephonically lodged a claim with the insurer on 2.2.1996 seeking payment for consignments. The insurer directed them to get in touch with their surveyor-cum-claim settlement agent at Atlanta – M/s.Toplis and Harding Inc. They accordingly requested the said surveyor to enquire and investigate the matter and issue necessary certificate. The surveyor submitted their report to the insurer but failed to furnish copies thereof to the complainant. Their claims were not settled by the insurer for more than one year. Such failure amounted to deficiency in service and consequently the insurer became liable to pay the value of the consignments and other amounts claimed, as compensation. The insurer resisted the complaint stating that it was not maintainable as none of the consignments were lost or damaged in transit. According to them the investigation report of surveyor disclosed that one Kumar Chaudhary was common President of M/s. Overseas Container Lines Inc. (the shipping agent) and M/s. Atlanta Rugs Inc. (the buyer) and said Kumar Chaudhary had admitted to the surveyors that the consignments had all been received by the buyer. The defence of the insurer was that if the buyer having taken delivery of the consignments, failed to pay value of the consignments such non-payment of price by the buyer or non-realisation of the price by the seller, will not be a maritime peril giving rise to a cause of action to the complainant (insured) to a claim against the insurer under a marine insurance policy. When insured consignments had been delivered to the buyer it cannot be said that there is a loss of the consignment. The claims were repudiated on 4.3.1997. The reason for repudiation was furnished to the complainant by the insurer as well by the surveyor. There was thus no deficiency in service. It was also pointed out that when the goods are entrusted to a sea going vessel, a master bill of lading is issued by the vessel/shipping line showing the particulars of consignments and the names of the consignees and the said master bill of lading is not part of the documents of title (in the present case). The failure on part of the complainant to take any action against the buyer and the

manner in which the transactions were conducted gave room for suspicion of collusion between the complainants and the buyer to foist false claims against the insurer. Consumer complaint was allowed by the National Commission. Hence appeal by the insurer. While disposing of the appeal the apex court framed the following three questions for its consideration:

i) What is the scope of the policies of insurance issued by the insurer to the insured?
ii) Whether the complainants had proved that there has been loss of consignments falling within the risks covered by the marine insurance policies?
iii) Whether the commission was justified in holding the insurer liable?

For examining the scope of the insurance policies issued by the insurer, after an exhaustive survey of insurance law, the court, concluded in para 17 of the judgment that the insurance cover extended 'warehouse to warehouse' and so the consignments were covered by the insurance not only for the sea journey but beyond as stated in the policy. Therefore, the contention of the insurer that the insurance cover was available only with regard to the maritime perils was repelled. Having regard to section (4) of the Marine Insurance Act, 1963 and the terms of the policy undertaken, the insurance cover was against wider risks. The policy of insurance would cover the loss not only while goods are navigating the sea but also any loss or damage during transit from the time it leaves the consignor's warehouse till it reaches the consignee's warehouse. The cover against risks will, however, cease on the expiry of 60 days after discharge of the consignment from the vessel at the final port of discharge, if the goods do not reach the consignee's warehouse or place of storage for any reason within the said 60 days.

A more important question was whether the complainant had been able to plead and prove loss of consignment or the breach of terms and conditions of the marine policy by the insurer. The court, *inter-alia,* observed that the basic and fundamental averment and proof required in a case of this nature was that whether the consignment had been lost or damaged in transit or that when the holder of the document applied for the delivery, the goods were not delivered and he was denied or refused delivery on account of non-availability of the consignments either due to pilferage, loss or misdelivery. However, the court found that there was no such averment or evidence that the consignments were lost or damaged. Also there was no averment that the holder of the documents of title applied for the delivery of the consignment and was denied or refused delivery on account of non-availability of the consignment either due to pilferage, loss or misdelivery. So, the court ruled that it was inconceivable how the complainants could maintain a claim against the insurer.

It also emerged on basis of record that M/s. Niranjan Shipping Agents of the complainant/consignor and also the agent of the non-vessel owning

containers (NVOCC) had shipped the consignment on Neptune Line and that the master bill of lading, which was prepared by it mentioned the name of consignee as Overseas Containers Incorporated. This master bill of lading was not made part of the documents of title which were endorsed to the Sun Trust Bank, Atlanta. There was also report of the surveyor that Atlanta Rugs Incorporated was able to take delivery of the consignments because Kumar Chaudhary happened to be the president of both the Overseas Containers and the Atlanta Overseas. The court observed that a claimant insured in a marine insurance claim has to plead and prove the following: (a) his position – whether he is the assured or an assignee; (b) his insurable interest; (c) the type or kind of the insurance policy and its relevant terms; (d) the duration of the cover; (e) the nature of risk/loss; and (f) the risk/loss is covered by the policy.

In the absence of necessary averments and evidence to establish a marine insurance claim, a claim against the insurer is liable to be rejected. Having regard to the facts and circumstances of the case before it, the court, observed that the complainant had failed to plead and make out a case of loss in respect of each and every consignment either during transit or within 60 days of consignment being discharged from the ship at Atlanta Port. The complainant appeared to merely proceed on the assumption that the insurance company was liable when the documents were not retrieved by the buyer, which, the court held was untenable.

The court also concluded that there was no evidence or proof that the consignor or the foreign corresponding bank holding the documents of title or persons authorised by the said bank applied for delivery within 60 days of goods being discharged and there being no averment of proof that the consignments were lost or wrongly delivered within the said period of 60 days, the liability and responsibility of the insurer under the policy came to an end with reference to each of these consignments. Therefore, the claim of the complainant was liable to be rejected.

The court also noticed that the commission had inferred deficiency in service (i) because there was delay of 9 months on the part of the insurer in repudiating the claim after receiving surveyor report; and (2) there was a failure on the part of the insurer to furnish a copy of the surveyor report to the complainants. This finding of the National Commission was also not approved by the court. The court observed that the National Commission had overlooked that the complainant had not lodged any claim in writing (so there was no question of delay in repudiating the claim). The court also noted that the contents of the report had also been notified to the complainant by the surveyor in the telexes dated 4.3.1996 and 1.4.1996. Therefore, the court concluded that the finding of deficiency in service was not warranted. In conclusion, it allowed the appeals and the impugned order of the National Commission was set-aside and the consumer complaints were dismissed. This judgment sharpens the definition of maritime peril, thus putting the insured and insurers on alert relating to their respective claims and liabilities.

**Breach of condition**

What is the effect of breach of condition on a claim made by the insured relating to insured vehicle, which has been stolen? In *National Insurance Co. Ltd.* v. *Nitin Khandelwal*,[2] the complainant had got his car insured with the National Insurance Co. Ltd. The car was allegedly snatched or stolen by some miscreants. His claim was repudiated by the insurance company on the ground that he had violated the terms of the insurance policy. While insuring the car for personal use he was using the same for commercial purpose as taxi. The district forum held that the complainant had violated the terms and conditions of the insurance policy and so the insurer was justified in rejecting his claim. The complaint was dismissed. However, the state commission observed in appeal that theft of the vehicle was not denied by the insurance company and that the claim of the claimant was repudiated solely on the ground that the vehicle though registered and insured as a private vehicle was being used for commercial purposes. It relied on *United India Insurance Co. Ltd.* v. *Gian Singh*[3] wherein it was held by the National Commission that in a case of violation of condition of policy as to use of vehicle the claim ought to be settled on non-standard basis. So it directed the insurer to pay 75% of Rs.4,83,000/- with interest at 6% per annum from the date of complaint till payment. Revision was dismissed by the National Commission. Aggrieved by this, the insurer filed an appeal to the Supreme Court. Counsel for the appellant placed reliance on *National Insurance Co. Ltd.* v. *Kusum Rai and others*.[4] The court, however, observed that this case had no application so far as the instant case was concerned. It only related to an accident where the main or contributory was negligent driving at the relevant time of the accident. On the other hand, the instant case related to theft of car. It was not a case of third party risks. In the instant case the vehicle had not been recovered. It was also not disputed that the vehicle was comprehensively insured. Since the vehicle had been stolen the breach of condition was not germane. For holding this view the court also drew support from *Jitendra Kumar* v. *Oriental Insurance Co. and another*[5] where it was, *inter alia,* ruled that "Section 149 of the Motor Vehicles Act, 1988 on which reliance was placed by the state commission, in our opinion, does not come to the aid of the Insurance Company in repudiating a claim where the driver of the vehicle had not contributed in any manner to the accident. Section 149(2)(1)(ii) of the Motor Vehicles Act empowers the Insurance Company to repudiate a claim wherein the vehicle in question is damaged due to an accident to which driver of the vehicle who does not hold a valid driving licence is responsible in any manner. It does not empower the Insurance Company to repudiate a claim for damages which has occurred due to acts to which the driver has not, in any manner, contributed i.e. damages incurred

2 (2008) 11 SCC 259.
3 2006 CTJ 221 (NCDRC).
4 (2006) 4 SCC 250.
5 2003 CTJ 649 (SC).

due to reasons other than the act of the driver."[5a] The court also quoted with approval the following observations made in *National Insurance Co. Ltd.* v. *Swaran Singh and another*:[6] "If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence."[6a] On consideration of the above cases and the facts of the case in hand, the Supreme Court concluded as under:[6b]

> In the instant case, the State Commission allowed the claim only on non-standard basis, which has been upheld by the National Commission. On consideration of the totality of the facts and circumstances of the case, the law seems to be well settled that in case of theft of vehicle, nature of use of the vehicle cannot be looked into and the Insurance Company cannot repudiate the claim on that basis.

Therefore, holding that no interference is called for the court disposed of the appeal accordingly. The approach of the Supreme Court in this case has been quite consumer friendly and commensurate with the demands of justice.

**Section 28 of Contract Act vis a vis insurance policies**

In *H.P. State Forest Company Limited* v. *United India Insurance Co. Ltd.,*[7] the Supreme Court had the occasion to examine an important question of limitation and the relative scope of legality of section 28 of the Contract Act, 1872 and clause 6(ii) of the insurance policy. In this case, United India Insurance Company Ltd. agreed on 30.7.1987 to insure the timber of the complainant/appellant lying in south zone for an amount of Rs.3.42 crores and issued a cover note dated 7.11.1987 followed by a policy dated 16.11.1987 to be valid from 6.11.1987 to 5.11.1988. The appellant deposited a sum of Rs.2,43,504/- as the tentative premium subject to approval of the tariff advisory commission. In or about the month of September, 1988, on account of heavy rains and flood in the south zone, the insured timber was washed away. This fact was conveyed to the respondent *vide* letters dated 3.10.1988 and 30.9.1989. The case of the appellant was that instead of meeting its contractual obligations the respondent refuted on 13.10.1988 its liability to pay on the pretext that the policy in fact had been issued for a period of eight months starting from 6.11.1987 and ending on

5*a* *Id*. at 422-23.
6 (2004) 3 SCC 297.
6*a* *Id*. at 336-37.
6*b* *Supra* note 2 at 262.
7 2009 CTJ 117 (SC) [Decided on 18.12.2008].

5.10.1988 and the period of one year mentioned in the policy was on account of typographical error. After a prolonged negotiation some additional premium was paid with respect to the said policy (for a period of eight months). The grievance of the appellant was that despite having accepted premium even after the policy had been repudiated on 13.10.1988 the respondent still refused to make good the loss. The respondent did not pay despite legal notices. Therefore, the appellant filed a consumer complaint before the National Commission on 18.4.1994. The defence of the respondent was that the claim had been repudiated by letter dated 13.10.1988 and that the insurance cover was only for a period of eight months whereas by typographical error a period of 12 months had been mentioned in the insurance policy. The National Commission by its order dated 16.8.2000 dismissed the complaint relying on *National Insurance Co.Ltd.* v. *Sujir Ganesh Nayak and Company and another*[8] in which it was held that the complaint could not be entertained as it was time barred having been brought before the commission after the expiry of the period fixed by clause 6(ii) of the insurance policy. Against this order, the complainant appealed to the Supreme Court. The main contention of the appellant was that in view of the observations in *Food Corporation of India* v. *New India Assurance Co. Ltd*.[9], *Sujir Ganesh Nayak* should be reconsidered. The Supreme Court perused clause 6(ii) of the agreement which reads as under:[9a]

> 6(ii) In no case whatsoever shall the company be liable for any loss or damage after the expiration of 12 months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration; it being expressly agreed and declared that if the company shall declaim liability for any claim hereunder and such claim shall not within 12 calendar months from the date of the disclaimer have been made the subject matter of a suit in a court of law then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

It was urged that this clause had curtailed the period of limitation, therefore, it was void in view of the provisions of section 28 of the Contract Act, 1872, which holds that agreements in restraint of legal proceedings are void. The Supreme Court after reading clause 6(ii) and provisions of section 28 of the Contract Act observed that an identical situation had arisen in *Sujir Nayak*, where a contract contained a provision prescribing a period of limitation shorter than the period of limitation. It was held therein that a contractual provision was not hit by section 28 as the right itself had been extinguished. The court quoted the following observations:[9b]

8 (1997) 4 SCC 366.
9 (1994) 3 SCC 324.
9*a* *Supra* note 7, *ibid*.
9*b* *Supra* note 8 at 375.

> From the case-law referred to above the legal position that emerges is that an agreement which in effect seeks to curtail the period of limitation and prescribes a shorter period than that prescribed by law would be void as offending Section 28 of the Contract Act. That is because such an agreement would seek to restrict the party from enforcing his right in Court after the period prescribed under the agreement expires even though the period prescribed by law for the enforcement of his right has yet not expired. But there could be agreements which do not seek to curtail the time for enforcement of the right but which provide for the forfeiture or waiver of the right itself if no action is commenced within the period stipulated by the agreement. Such a clause in the agreement would not fall within the mischief of Section 28 of the Contract Act.

The court also observed that *Food Corporation of India* was considered in *Sujir Nayak* and so the contention of the appellant could not be accepted. In conclusion the court dismissed the appeal, thus adding further weight to the authority of *Sujir Nayak*.

**Driving licence**

Driving licence and its renewal is staple food of insurance law. It makes its appearance before the consumer fora and courts with almost regular frequency. The latest is *Oriental Insurance Co.* v. *Prithvi Raj*.[10] Following and reiterating the ratio of *National Insurance Co. Ltd* v. *Laxmi Naraian Dhut*,[11] it was ruled in this case that once the licence was held to be fake, its renewal did not make it valid. As a result it was held that the appellant insurance company had no liability to compensate the claimant. Same was the ratio of *United India Insurance Co. Ltd.* v. *Davinder Singh*,[12] which was analysed in last year's survey.

In *New India Insurance Co. Ltd*. v. *Prabhu Lal*,[13] it was held that a person holding a driving licence for light motor vehicle without having an endorsement entitling him to ply a transport vehicle was not authorized to drive a goods carrier i.e. transport vehicle.

**Mediclaim policy**

Question of renewal of mediclaim policies and the role of public sector insurance companies *vis-a-vis* private sector insurance companies came under consideration of the apex court in *United India Insurance Co. Ltd.* v. *Manubhai Dharmasinhbhai Gajera and others*,[14] A number of connected appeals were before the court. Therefore, it noticed the facts involved in one

10 (2008) 2 SCC 338.
11 (2007) 3 SCC 700.
12 (2007) 8 SCC 698.
13 (2008) 1 SCC 696.
14 (2008) 10 SCC 404.

of the matters namely, civil appeal @ SLP © 1534/2006. In this case, the respondent obtained mediclaim policy from the insurance company in April, 1995 and renewed it annually on payment of premium. In July 1998 he suffered a coronary disease and was admitted in Escorts Heart Institute where he underwent angioplasty. A claim was made by him and was paid by the appellant insurance company. In January, 2001 he was once again admitted to the said institute and once again underwent angioplasty. The amount claimed was duly reimbursed to him. In May, 2002 he was hospitalized in Holy Family Hospital for a minor operation and the medical expenses claimed by him were again reimbursed. In April, 2002 he underwent a bypass surgery. He submitted his mediclaim which, however, was not paid. On 3.4.2003, he approached the appellant for renewal of policy and issued a cheque for the premium amount for renewal of the policy. But renewal was refused on the purported ground of "high claim ratio". Therefore, the respondent filed a writ petition which was allowed by a single judge of the Delhi High court directing the appellant to renew his mediclaim insurance policy. Hence this appeal by special leave by the insurance company. It is an exhaustive judgment in which the directions issued by the Insurance Regulatory Authority, question of human rights, insurance law and case law were discussed in detail by the apex court. Following propositions/principles have emerged from the discussion:

1. That the public sector insurance companies are 'State' within the meaning of article 12 of the Constitution.
2. Being a 'State' they have different role to play. Fairness or reasonableness on their part must appear in their dealings.
3. Functions of the insurance companies are also governed by their statute namely, Insurance Act.
4. Public sector insurance companies are also bound by the directions issued by the General Insurance Corporation as also the central government. Therefore, a contract of insurance must subserve the statutory provisions.
5. Such contract of insurance must also necessarily be construed having regard to the larger public policy and public interests.
6. Private players may not be bound to comply with the constitutional requirements of an equality clause but the public sector insurance companies are required to comply.
7. Higher judiciary shall interfere where the term of contract is against the public policy or wherein enforcing the same the state acts arbitrarily or unreasonably or it makes discrimination against persons similarly situated.
8. As a proposition of law where a renewal of policy is based on mutual consent there may be no automatic renewal. However, state cannot refuse to renew it at its whims and caprice.
9. When a policy is cancelled the conditions precedent therefore must be fulfilled. Some reasons therefore must be assigned.

10. When an exclusion clause is resorted to, the terms thereof must be given effect to.
11. What was necessary is a pre-existing disease when the cover was incepted for the first time. Only because the insurer had started suffering from a disease the same would not mean that the said disease would be excluded (at the time of renewal).
12. If the insured had made some claims in each year the insurance company should not refuse to renew insurance policy only for that reason.

12A. While renewing a policy the word 'incepts for the first time' as contained in clause 4.1 (of the policy) and also the words "continues and without break" if the renewal premium is paid in time must be kept in mind as also the reasons for cancellation as contained in clause 7(1)(n) thereof.

13. Renewal of mediclaim policy, subject to just exceptions, should ordinarily be made. But the same does not mean that the renewal is automatic. Keeping in view the terms and conditions of the prospectus and the insurance policy, the parties are not required to go into all these formalities.
14. The very fact that the policy contemplates terms for renewal subject of course to payment of requisite premium, the same cannot be placed at par with a case of first contract.

In conclusion having regard to the fact situation obtaining in the appeals before it and applying the above tests, the court declined to exercise its discretionary jurisdiction under article 136 of the Constitution and the appeals were dismissed with costs. Parting words of the Supreme Court in this case may also be re-capitulated with advantage:[14*a*]

> Before parting with this case, however, we would like to observe that keeping in view the role played by the insurance companies, it is essential that the Regulatory Authority must lay down clear guidelines by way of regulations or otherwise. No doubt, the regulations would be applicable to all the players in the field. The duties and functions of the Regulatory Authority, however, are to see that the service provider must render their services keeping in view the nature thereof. It will be appropriate if the Central Government or the General Insurance Companies also issue requisite circulars.
> Appellants before us being subsidiaries to General Insurance Corporation cannot ignore the statutory provisions. They are bound by the directions issued by the Central Government.
> We would request the IRDA to consider the matter in depth and undertake a scrutiny of such claims so that in the event it is found

14*a* *Ibid*.

that the insurance companies are taking recourse to arbitrary methodologies in the matter of entering into contracts of insurance or renewal thereof, appropriate steps in that behalf may be taken.

The court has done a yeoman service to the consumers particularly the holders of the mediclaim policies and has authoritatively settled the law relating to this contentious segment of consumer law.

**Revival of life insurance policy**

Question relating to the revival of a (lapsed) life insurance policy came up for consideration before the Supreme Court in *Life Insurance Corpn. of India* v. *Jaya Chander*.[15] In this case one Karan Singh Chandel (the deceased) had taken a life insurance policy for a sum of Rs.1,50,000/-. Annual premium payable was Rs.12,821/-. The policy was taken on 28.3.1994. Next annual premium was to be paid on or before 28.3.1995 which was not paid. In terms of the policy it became inoperative one month after 28.3.1995. The insured died on 1.7.1995. A cheque dated 27.6.1995 for Rs.12,821/- purportedly on account of annual premium plus late fee of Rs.189/- was issued by one Prakash Chand Thakur. It was received by the corporation on 12.7.1995. According to the claimant, i.e. widow of the deceased the cheque was issued before the death of the insured, therefore, her claim could not have been repudiated. Alleging deficiency in service against the corporation, she filed a consumer complaint which was allowed by the district forum on the ground that though the corporation claimed to have received it on 12.7.1995 yet it is presumed to have been received earlier than that date. While disposing of the appeal of the corporation the state commission held that the amount had been received within the grace period and so the claim could not be repudiated and so the appeal was dismissed. The National Commission dismissed the revision petition holding that section 64-VB of the Insurance Act, 1938 was applicable which stipulates that where premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be. Therefore, it was held that there was revival of the policy. It did not accept the stand of the appellant that revival was not a matter of right. The corporation filed an appeal by special leave to the Supreme Court. Premium payable in this case was annual. Thereon, the court ruled that in view of condition 2 of the policy the grace period for payment of annual premium was 30 days. Since annual premium in this case had not been paid within 30 days on 28.3.1995, so in terms of the policy, it became inoperative after the said 30 days. So the finding of the National Commission that the premium had been paid within grace period was reversed by the court.

15 (2008) 3 SCC 382.

Coming to the question whether provisions of section 64-VB of the Insurance Act, 1938 applied to the Life Insurance Corporation Act, 1956, the court referred to section 43 of the LIC Act and held that though by virtue of the said section some sections of the Insurance Act, 1938 had been made applicable to the LIC Act section 64-VB of the Insurance Act had not been made applicable to the LIC Act. Having regard to the terms and conditions of the policy, the court further held that revival of policy takes effect only after it is specifically approved by the corporation and communicated to the insured, which was not the case here. Therefore, the court ruled that the orders passed by the lower fora including National Commission could not be maintained and so these were set-aside and the appeal was allowed. This judgment crystallises the procedure for revival of the discontinued/lapsed policies, which principle would be of practical assistance to the policy holders.

## III HOUSING CONSTRUCTION

**Joint venture**

An important judgment relating to housing construction is *Faqir Chand Gulati* v. *Uppal Agencies Pvt. Ltd. and another*.[16] This case relates to the question whether a land owner who enters into an agreement with a builder for construction of an apartment building and for sharing of the constructed area is a consumer entitled to maintain a complaint against the builder as a service provider under the Consumer Protection Act, 1986. In this case, the complainant (land owner) was owner of the premises No.L-3, Kailash Colony, New Delhi. He entered into a 'collaboration agreement' with the builder for construction of a new building in the premises of the owner, the terms of which are, in brief, as follows:

(i) The owner shall place at the disposal of the builder, vacant possession of the premises and authorize the builder to secure necessary sanctions, permissions and approvals for demolition of the existing building and construction and completion of a new building.
(ii) The builder shall demolish the existing structure and construct a residential building consisting of ground, first and second floors, at its cost and expense.
(iii) The builder will have the right to appoint architects, contractors, sub-contractors etc.
(iv) The new building to be constructed by the builder shall be of good quality as per the detailed specifications contained in Annexure-A to the agreement.

16 (2008) 10 SCC 345.

(v) On completion of construction, the landowner will be entitled to the entire ground floor (consisting of three bedrooms with attached bathrooms, one drawing-cum-dining, one store room, one kitchen) with one servant room under the overhead water tank on rear terrace and one parking space, as his share in consideration of his having made available the land. The builder shall also pay a sum of Rs.8 lakhs as non-refundable consideration to the owner.

(vi) The remaining part of the building (the entire first and second floors and two servant rooms and two car parking spaces) shall belong to the builder as its share of the building in consideration of having spent the cost of construction of the entire building and all other services rendered by him under the agreement.

(vii) The owner and the builder shall be entitled to undivided and indivisible share in the land, proportionate to their right in the building, that is an undivided one-third share in the land shall belong to the owner and two-third share shall belong to the developer.

(viii) The builder shall be entitled to either retain or sell its share of the building. The owner shall execute necessary documents for transferring the share corresponding to the builder's portion of the building. The owner shall give an irrevocable power of attorney enabling the builder to execute the deed of conveyance in regard to the builder's share in the land. The builder will however, have the option to require the owner to personally execute the sale deed in regard to the builder's share in the land instead of using such power of attorney.

(ix) On completion of the building, the builder shall apply for completion certificate to the concerned authority and shall be liable to pay any penalty that may be imposed or levied in regard to the deviations, if any, made in the construction of the building.

(x) The owner shall not interfere or obstruct the construction and completion of the work in any manner, but will have access to the construction to point out any defect in construction or workmanship or use of inferior material, so as to require the builder to rectify such defects.

(xi) Title deeds handed over by the owner to the builder for completing the formalities relating to the agreement shall thereafter be returned to the owner, who shall however make available the same for reference by the owners of the other floors.

(xii) The agreement and the power of attorney executed by the owner in favour of the builder are irrevocable. In the event of neglect, failure, default on the part of the owner or the builder, the affected party shall have the right to specific performance of the sale agreement at the cost and risk of the defaulting party who shall also be liable to pay damages.

(xiii) The agreement is not a partnership and shall not be deemed to be a partnership between the owner and the builder.

The land owner alleged that the builder secured sanction of the plan for construction from the municipal corporation but made several unauthorised deviations from the sanctioned plan during the construction resulting in several deviation notices. So the Municipal Corporation, Delhi sealed the premises, but subsequently it was de-sealed to enable the builder to rectify deviation. The builder sold the first and second floors to four different persons under different sale deeds. The delivery of possession of ground floor was made on 2.4.1992 by the builder to the landlord's son during his absence from India. On his return the landlord sent a letter dated 29.10.1992 to the builder pointing out several shortcomings in the construction and violation of the sanctioned plan and called upon him to rectify the deviations and defects. The builder did not comply. Therefore, the land owner filed consumer complaint before the District Forum, New Delhi seeking the following relief against the builder:

a) Return of the title deeds relating to the premises;
b) supply of completion certificate and C&D Forms from MCD; and
c) delivery of security deposit receipt for electricity meter and payment of Rs.4262.64 being the charges for change of electricity meter.

The district forum dismissed the complaint as not maintainable under the Consumer Protection Act holding that the land owner was not a consumer as defined under section 2 (1)(d)(ii) of the Act. The appeal filed by him was dismissed by the State Commission, Delhi holding that the agreement between the parties, termed as 'collaboration agreement', was in the nature of 'joint venture' or 'agreement to collaborate' and that the agreement did not have any element of hiring services, and as such the land owner was not a consumer. Revision petition filed by him was dismissed by the National Commission observing that the agreement was in the nature of joint venture and the transaction did not have any element of hiring services of the builder. Ultimately, the matter reached the Supreme Court in appeal by special leave. The land owner contended before the court that though the agreement was captioned as 'collaboration agreement' it was not a joint venture as assumed by the National Commission, but an agreement under which the builder agreed to make a housing construction for the land owner and, therefore, the activity of the builder squarely fell within the definition of service. On the other hand, the builder contended that the agreement was for collaboration in the nature of joint venture which required the owner to contribute the land and builder to contribute the funds for construction of building and thereafter share the construction.

From the contentions raised two questions arose for consideration: (i) whether on the facts and circumstances, a complaint under the Consumer

Protection Act was maintainable, in regard to the agreement dated 17.5.1991 between the parties; and (ii) whether a complaint was maintainable under the Act for a prayer seeking delivery of completion certificate and C&D Forms in regard to a building and whether the prayer for completion certificate/ C&D Forms involves a prayer for rectification of the deficiencies in the building so as to secure the completion certificate and C&D Forms. Taking up the first question, the court proceeded to examine the law laid down in *Lucknow Development Authority* v. *M.K. Gupta*,[17] and *Friends Colony Development Committee* v. *State of Orissa*[18] which are leading authorities on the topic of housing construction and concluded that there was no dispute that a complaint under the Act would be maintainable in the following circumstances:

(a) Where the owner/holder of a land who has entrusted the construction of a house to a contractor, has a complaint of deficiency of service with reference to the construction.
(b) Where the purchaser or intending purchaser of an apartment/flat/ house has a complaint against the builder/developer with reference to construction or delivery or amenities.

Further, the court proceeded to examine the third hybrid category which is popularly called as 'joint venture agreement' or 'development agreement' or 'collaboration agreement' between the land owner and builder. In such transaction the land owner provided the land and the builder puts up building. Thereafter, they shared the constructed area. The court then examined the definition of "joint venture" and noted that necessary elements for a joint venture are: (1) an express or implied agreement; (2) a common purpose that the group intends to carry out; (3) shared profits and losses; and (4) each member's equal voice in controlling the project. The court also referred to the nature of joint venture as elaborated in *New Horizons Ltd* v. *Union of India*[19] where a similar view was taken.

Turning to the terms and conditions of the agreement executed between the parties the court concluded as under:[19*a*]

> We may now notice the various terms in the agreement between the appellant and first respondent which militate against the same being a 'joint venture'. Firstly, there is a categorical statement in clause 24, that the agreement shall not be deemed to constitute a partnership between the owner and the builder. The land-owner is specifically excluded from management and is barred from

17 (1994) 1 SCC 243.
18 2004 (8) SCC 733.
19 1995 (1) SCC 478.
19*a* *Supra* note 16 at 361-62.

interfering with the construction in any manner (vide clause 15) and the builder has the exclusive right to appoint the architects, contractors and sub-contractors for the construction (vide clause 16). The builder is entitled to sell its share of the building as it deemed fit, without reference to the land owner. (vide Clauses 7 and 13). The builder undertakes to the land owner that it will construct the building within 12 months from the date of sanction of building plan and deliver the owner's share to the land owner (vide clause 9 & 14). The builder alone is responsible to pay penalties in respect of deviations (vide clause 12) and for payment of compensation under the Workmen's Compensation Act in case of accident (vide clause 10). Secondly, there is no community of interest or common/ joint control in the management, nor sharing of profits and losses. The land owner has no control or participation in the management of the venture. The requirement of each joint venturer being the principal as well as agent of the other party is also significantly absent. We are, therefore, of the view that such an agreement is not a joint venture as understood in law."

Emphasizing the matter further the court ruled:[19*b*]

The basic underlying purpose of the agreement is the construction of a house or an apartment (ground floor) in accordance with the specifications, by the builder for the owner, the consideration for such construction being the transfer of undivided share in land to the builder and grant of permission to the builder to construct two floors. Such agreement whether called as a 'collaboration agreement' or a 'joint venture', is not however a 'joint-venture'. ……But the important aspect is the availment of services of the builder by the land-owner for a house construction (construction of owner's share of the building) for a consideration. To that extent, the land-owner is a consumer, the builder is a service-provider and if there is deficiency in service in regard to construction, the dispute raised by the land owner will be a consumer dispute.

Taking a consumer friendly approach the court held as under:[19*c*]

We may notice here that if there is a breach by the landowner of his obligations, the builder will have to approach a civil court as the landowner is not providing any service to the builder but merely undertakes certain obligations towards the builder, breach of which would furnish a cause of action for the specific performance and/or

19*b* *Id.* at 362.
19*c* *Id.* at 364.

> damages. On the other hand, where the builder commits breach of his obligations, the owner has two options. He has the right to enforce specific performance and/or claim damages by approaching the civil court. Or he can approach the Forum under Consumer Protection Act, for relief as consumer, against the builder as a service-provider.

Coming to the second question, the court noted that under the agreement the builder is required to construct a ground floor in accordance with the sanctioned plan and specifications and the terms in the agreement and deliver the same to the owner. If the same construction is part of a building which in law requires a completion certificate or C&D forms (relating to assessment), the builder is bound to provide the same. He is also bound to provide amenities and facilities like water, electricity and drainage in terms of the agreement. If the completion certificate and C&D forms are not being issued by the corporation because the builder has made deviations/violations in construction, it is his duty to rectify those deviations or bring the deviations within permissible limits and secure a completion certificate and C&D forms from MCD. The builder cannot say that he has constructed a ground floor and delivered it and therefore fulfilled his obligations. Nor can the builder contend that he is not bound to produce the completion certificate, but only bound to apply for completion certificate. He cannot say that he is not concerned whether the building is in accordance with the sanctioned plan or not, whether it fulfils the requirements of the municipal by-laws or not, or whether there are violations or deviations. The builder cannot be permitted to avoid or escape the consequences of these illegal acts. The obligations on the part of the builder to secure a sanctioned plan and construct a building, carries with it an implied obligation to comply with the requirements of municipal and building laws and secure the mandatory permissions/ certificates.

Dealing with the matter more exhaustively the court ruled as under:[19*d*]

> A prayer for completion certificate and C&D forms cannot be brushed aside by stating that the builder has already applied for the completion certificate or C&D Forms. If it is not issued, the builder owes a duty to make necessary application and obtain it. If it is wrongly withheld, he may have to approach the appropriate court or other forum to secure it. If it is justifiably withheld or refused, necessarily the builder will have to do whatever that is required to be done to bring the building in consonance with the sanctioned plan so that the municipal authorities can inspect and issue the completion certificate and also assess the property to tax. If the builder fails to do so, he will be liable to compensate the

19*d* *Id.* at 365-66.

> complainant for all loss/damage. Therefore, the assumption of the State Commission and National Commission that the obligation of the builder was discharged when he merely applied for a completion certificate is incorrect.

In conclusion, the orders of the National Commission, state commission and the district forum were set aside and the land owner's complaint was held to be maintainable. Since the state commission had purported to consider the factual questions in a half-hearted and casual manner the matter was remitted to the district forum and it was directed to consider the matter on merits and dispose it of in accordance with law.

This is perhaps the first judgment of the Supreme Court defining joint venture *vis-à-vis* consumer protection law. Approach of court in this case has been creative and consumer friendly. Perspicacity with which the court has identified the elements of "service" and "consideration" in the complicated and complex matrix of facts in this case is commendable. This holding is likely to act as a check on the machinations of builders, which often harass the consumers.

**Tentative cost v. final cost of flats**

In *Tamil Nadu Housing Board and others* v. *Sea Shore Apartments Owners Welfare Assn.*,[20] the question involved was whether the allottees, who had obtained possession of the flats after executing an agreement with the Tamil Nadu Housing Board (the board ) to the effect that it was agreed between the parties that the ultimate cost of the total construction of the flats was subject to the outcome of the award of compensation in land acquisition proceedings pending adjudication and the final amount will be fixed on that basis, which will be paid by the members (allottees), could resist payment of additional amount claimed by the board. A connected question was whether pricing was within the jurisdiction of the consumer fora. Essential facts of this case are that on 21.03.1991 T.N. Housing Board had invited applications for HIG flats to be constructed by it. This advertisement contained the details relating to plinth area, tentative price, initial deposits, monthly instalments, repayment period, amount of deposit for the registration etc. There was a huge response. So, the board issued letters on 13.8.1993 asking them whether they were willing to purchase flats. Necessary details as aforesaid were also supplied. Draw was conducted on 15.10.1993 and provisional allotment letters were issued on 19.10.1993. Tentative cost was specified in these letters. Final allotment order was made on 9.8.1994, in which final cost of the flat was mentioned. An agreement was entered into between the housing board and allottees on 22.8.1994. In the agreement, it was mentioned that it was agreed between the

20 (2008) 3 SCC 21.

parties that the ultimate cost of the total construction of the flat was subject to the outcome in the award of compensation in land acquisition proceedings pending adjudication and the final amount will be fixed on that basis which will be paid by the members. Thereafter, possession of flats was given to all allottees. The members were then asked to pay additional amount. The period of payment was also reduced from 15 years to 13 years.

The respondent – Sea Shore Apartment Welfare Association ('association') gave notice to the board not to demand the additional amount nor to reduce the period of payment. But there was no response. Therefore, the association filed a consumer complaint praying that the board be directed to return escalation amount paid by the members of the association with interest thereon; to restrain the board and its officers from insisting on payment of excess amount as demanded; to direct the board to collect instalments in 15 years as per the order of allotment issued earlier; to pay compensation of Rupees one lakh for the loss sustained and mental agony suffered by the members of the association and to pay costs of the complaint. The board contested the case of the complainants. It was stated that under the demand assessment scheme the price mentioned in the advertisement was only tentative. When the scheme was changed from construction of seven types of flats to 15 types of flats, the cost of construction was increased because of increase in ground area, plinth area and also because of payment of excess compensation to the landowners whose lands had been acquired. It was averred that the complainants accepted the increase in the price and took over possession and so they were liable to pay the final price demanded by the board. It was also pleaded that the consumer fora had no jurisdiction in the matter relating to fixation of price of flats and so the complaint was not maintainable. Relating to the decrease in the number of years for payment of price by monthly instalments from 15 years to 13 years it was stated that it was justified because in the original advertisement the period specified was 13 years but while issuing the letters of allotment inadvertently an error crept in and this period was mentioned as 15 years which error the board was competent to correct. The state commission practically accepted all the grounds pleaded by the complainants and allowed the complaint and the demand made by the board was quashed. Refund was also ordered. Aggrieved by this order, the board went up in appeal to the National Commission. The National Commission by a short order dismissed all the appeals holding that the action of the board in increasing price was based on non-existing ground and hence demand was not legal. Against this order, the board applied to the Supreme Court for grant of special leave to appeal which was granted. Operation of the impugned order of the National Commission was stayed subject to the appellant-board depositing the disputed amount.

Dealing with the question whether the matter of price fixation was within the jurisdiction of the consumer fora and whether the 'service of housing construction' comes within the definition of 'service' as defined under the 1986 Act, the court relying upon *Lucknow Development Authority*

v. *M.K. Gupta*,[21] *inter-alia,* observed that this authority makes it clear that when private undertakings are taken over by state or its instrumentalities any attempt to exclude the service offered by such statutory bodies to the common man from the application of the Act must be discouraged. It would be against the spirit behind the benevolent legislation. The court further observed that the price fixation depends upon several factors and normally therefore it would not be appropriate to enter into adequacy of price. In the same context, the court citing with approval from the judgment in *Premji Bhai Parmar & Ors.* v. *Delhi Development Authority and Anr.*[22] observed that "in price fixation, the executive has a wide discretion and is only answerable provided there is any statutory control over its policy of price fixation and it is not the function of the court to sit in judgment over such matters of economic policy as must be necessarily left to the government of the day to decide. The experts alone can work out the mechanics of price determination; courts can certainly not be expected to decide without the assistance of the expert."[22*a*]

It is interesting to note that court, *inter alia*, held as under:[22*b*]

> Having heard the ... counsel for the parties, in our opinion, all the appeals should be allowed. From the record, it is clear that in 1982, a huge land admeasuring about 28 acres at Thiruvanmiyur Extension, Chennai was acquired by the State under the Land Acquisition Act for public purpose, namely, for the purpose of development of area known as South Madras Neighbourhood Scheme. Amount of compensation was paid to the land-owners as per the award but it was enhanced in reference proceedings. The Board came up to this Court, but the enhanced compensation was confirmed. It is also clear from the Scheme initially prepared, i.e. seven types scheme and fifteen type scheme which was subsequently finalized, there as difference in plinth area as also ground area. So far as price is concerned in 1991, when the names of applicants were registered, it was clarified that the price indicated was 'tentative price' and it was subject to 'final price' being fixed by the Board. In any case when the scheme was altered from seven types to fifteen types flats, it was stated that the amount shown was merely "tentative selling price". The intending purchasers, therefore, were aware of the fact that the final price was to be fixed by the Board. In fact an agreement to that effect was executed by all prospective allottees wherein they agreed that they would pay the amount which would be finally fixed by the Board.

21 (1994) 1 SCC 243.
22 (1980) 2 SCC 129.
22*a* *Id.* at 138.
22*b* *Supra* note 20 at 27.

The court also took notice of clause 18 of the agreement executed between the parties and concluded that "In the circumstances, it cannot be said that the allottees were not aware of the above condition and they were compelled to make payment and thus were treated unfairly or unreasonably by the Board."

Having regard to these conclusions the court appears to have subsequently reopened or let at large all the points already settled by it. The Supreme Court, *inter alia*, held that (1) it was obligatory on part of the state/ National Commission to consider whether controversy raised in the proceedings with regard to fixation of price would be justifiable on the facts and circumstances of the case particularly in the light of the contention raised by the board that there was increase in plinth area, ground area and payment of enhanced compensation to the landowners; (2) they (state commission/National Commission) were also required to consider that the board does not have land of its own and the land was acquired under the Land Acquisition Act by paying compensation to be determined in accordance with the provisions of law; (3) the commissions also could not ignore the fact that when the advertisement was issued for the purpose of registration of the intending purchasers of flats, they clearly indicated that the price shown was merely tentative price. Again when the scheme was altered the intending purchasers were informed that the price was tentative and they would have to pay the price determined by the board. They consented and entered into an agreement by giving an undertaking that they would pay the price determined by the board. When the question of giving possession of the flats came up the board informed them to pay the remaining amount so that the possession could be delivered to them. They made such payments and obtained possession. It was, therefore, contended by the board that allottees were estopped from raising contention that the additional amounts could not have been recovered from them. It was open to the allottees not to pay additional amount demanded by the board and not to take possession. By agreeing to pay the amount and by paying such amount and taking possession now they want to go behind the concluded contract between the parties. After noting the above points the court in the concluding part, *inter alia*, observed, "In our considered opinion, all these questions were required to be gone into by the State Commission as also by the National Commission. The orders passed by both the Fora are, therefore, liable to be set-aside". Having posed all these questions after recording its own findings on these points, the court ultimately disposed of these appeals in the manner as below:[22c]

> For the foregoing reasons, all the appeals are allowed. The order passed by the State commission and confirmed by the National Commission is set aside. All the complaints are remitted to the State

22c *Id*. at 34.

> Commission to decide them in accordance with law after hearing the parties.

Caveat to its own decision as entered by the Supreme Court while concluding may also be reproduced:[22d]

> At this stage, we may clarify that we should not be understood to have expressed any opinion one way or the other on the controversy raised by the parties. All the observations made by us hereinabove are limited for the purpose of holding that the State Commission as also National Commission ought to have dealt with and decided the contentions raised by the Housing Board. Therefore, as and when the complaints will be placed for hearing before the Commissions, they will be decided strictly on their own merits without being inhibited by those observations.

It is respectfully submitted that the Supreme Court had itself concluded that normally it would not be appropriate to enter into the adequacy of price because its fixation depends on several factors, at the same time it also observed that it is clear from the scheme initially prepared, i.e. 7 types and 15 types scheme which was subsequently finalized, that there was difference in plinth area and ground area. This was one of the grounds taken by the board in justification of the increase in price and it was found by the Supreme Court to exist. Another ground of increase in the price as pleaded by the board was payment of enhanced compensation for land acquisition. Here too, the Supreme Court noted that "amount of compensation was paid to the landowners as per the award, but it was enhanced in Reference proceedings. The board had (earlier) come to this court but the compensation was enhanced". Thus, this plea of the board was also accepted by the Supreme Court. It may be stated that a perusal of the judgment as a whole does not indicate that there was any statutory formula for determination of the price. The controversy relating to the enhancement of the price centred only around three points, namely, (a) increase in plinth area; (b) increase in ground area; and (c) payment of enhanced compensation for land acquisition. As just demonstrated, all the three pleas of the board had been accepted by the Supreme Court to be correct. Therefore, it is submitted that there was no justification for remand of this case which had taken its birth in or about the year 1993. In the same context it may also be submitted that in para 11 of the Supreme Court, the court recorded a positive finding that the intending purchasers were aware of the fact that the final price was to be fixed by the board and that in fact an agreement to that effect was executed by all the prospective allottees wherein they had agreed that they would pay the amount

22d *Ibid*.

which would be finally fixed by the board. The execution of the agreement was not denied by the allottees. At the time of execution of agreement they paid the amount demanded by the board and took possession. Therefore, following *Premji Bhai Parmar and Chief Administrator, PUDA* v. *Shabnam Virk*,[23] which still holds the field, complaints deserved to be dismissed outright and the appeals deserved to be allowed with costs. In any case, it is respectfully submitted, that the remand of the case was not justified.

At the same time it is to be noted that the relevant points of consumer law have been correctly stated, rather reiterated, in this judgment. However, it would also be pertinent to draw attention to *HUDA* v. *Balbir Singh*[24] which deals with a large number of appeals on the rate of interest to be allowed. Instead of remanding the appeals, the court took them up one by one and determined the rate of interest in each case having regard to facts of each case, and finally itself disposed of these appeals. On perusal of *Sea Shore Apartments*, one tends to hold the view that further enquiry was not required. Even if some little further enquiry, rather calculation/ computation was required to be made, the better course would have been to follow the approach of *Balbir Singh* instead of remanding the case. That would have earned the gratitude of much battered litigants.

Under the rubric "Housing" the question of rate of interest arose in *HUDA* v. *Prem Kumar Aggawal and others*.[25] In this case HUDA had allotted a plot to the complainant on payment of a certain price. But he was subsequently directed to pay more than the aforesaid price for an alternative plot. He insisted that he should be charged same price on the alternative plot as for the plot originally allotted. HUDA did not agree. He filed a consumer complaint on which the forum directed that the price of the alternative plot should also be charged as that of the original one. The National Commission directed that in addition to this, HUDA should refund the excess price charged by it with interest @ 18% per annum. HUDA appealed by special leave to the Supreme Court challenging the rate of interest fixed by the National Commission. The court disposed of this appeal following *Balbir Singh*[26] and held that interest should be awarded at current rate. Keeping in view the facts of the case in hand the complainant was held to be entitled to interest @12% per annum only.

## IV MISCELLENOUS

**Electricity Act 2003 v. Consumer Protection Act 1986**

As noted in the previous survey in *Accounts Officer, Jharkhand State Electricity Board & another* v. *Anwar Ali*,[27] the apex court after hearing the

23 (2006) 4 SCC 74.
24 (2004) CTJ 605 (SC).
25 2008 CTJ 117 (SC).
26 2004 CTJ 605 (SC).
27 (2007) 11 SCC 753.

counsel of the parties, observed that the question which arose for determination and which had not been decided by the National Commission was whether the consumer forum had jurisdiction to determine tortious acts (of users of electricity) and liability arising therefrom. In that case the National Commission had also not addressed the question as to whether the consumer of electricity was covered under section 2 (1) (d) of the Consumer Protection Act, 1986. Therefore, the matter was remitted by the court to the National Commission for recording a positive finding on this issue. In compliance with this order the matter was disposed of by the National Commission in *Jharkhand State Electricity Board & Anr.* v. *Anwar Ali*.[28] It is a split verdict. The majority order was prepared by M.B. Shah, J. President of the National Commission to which Rajyalakshmi Rao, member also subscribed. The minority view was authored by R.C. Jain J, member of the commission. Both orders are quite exhaustive and have sufficient significance both to the providers and consumers of electricity services. Therefore, a summation of their verdict as formulated by the majority and minority opinion may be worth reproducing. The majority opinion summed up the effect of the Electricity Act, 2003 on the Consumer Protection Act, 1986 and laid down the following propositions:

(i) Section 3 of the Consumer Protection Act and Section 175 of the Electricity Act, provide that they are in addition to and not in derogation of rights under any other law for the time being in force. Therefore, the rights of the consumer under the Consumer Protection Act are not affected by the Electricity Act.

(ii) A bare reading of Sections 173, 174 and 175, makes it clear that the intent of the Legislature is not to bar the jurisdiction of the Consumer Fora constituted under the Consumer Protection Act. The provisions of the Electricity Act have overriding effect qua provisions of any other law except that of the Consumer Protection Act, 1986, the Atomic Energy Act, 1962 and the Railways Act, 1989.

(iii) Section 42(8) of the Electricity Act specifically provides that the remedies conferred on consumer under sub sections (5), (6) and (7) of Section 42 are without prejudice to the right which the consumer may have apart from the rights conferred upon him by these sub sections.

(iv) Section 145 of the Electricity Act specifically bars the jurisdiction of the Civil Court to entertain any suit or proceedings in respect of any matter which an assessing officer referred to in Section 126 or an Appellate Authority referred to in Section 127 of the Electricity Act or the Adjudicating Officer appointed under the Electricity Act is empowered to determine.

28 2008 CTJ 837 (NC).

Second part of Section 145 provides that no injunction shall be granted by any Court or Authority in respect of any action taken or to be taken in pursuance of any power conferred, by or under the Act. For this purpose, if we refer to Sections 173 and 174 and apply the principle laid down thereunder, it would mean that qua the Consumer Fora there is inconsistency and, therefore, 'other Authority' would not include Consumer Fora.

(v) Consumer of electrical energy provided by the Electricity Board or other Private Company, is a consumer as defined under Section 2 (1)(d) of the Consumer Protection Act and a complaint alleging any deficiency on the part of the Board or other private company including any fault, imperfection, shortcoming or inadequacy in quality, nature and manner of performance which is required to be maintained by or under any law or in pursuance of any contract in 'relation to service, is maintainable under the Consumer Protection Act.

Against the Assessment Order passed under Section 126 of the Electricity Act, a consumer has option either to file appeal under Section 127 of the Electricity Act or to approach the Consumer Fora by filing complaint. He has to select either of the remedy. However, before entertaining the complaint, the Consumer Fora would direct the consumer to deposit an amount equal to one third of the assessed amount with the licensee [similar to Section 127(2) of the Electricity Act].

(vi) Consumer Fora have no jurisdiction to interfere with the initiation of criminal proceedings or the final order passes by any Special Court constituted under Section 153 or the civil liability determined under Section 154 of the Electricity Act.

Formulation of the minority opinion is as under:

(i) The provisions contained in Sections 126 and 127 of Part XII of the Electricity Act, 2003' are not inconsistent with the provisions of Consumer Protection Act, 1986 and consequently there is no need to have resort to the provisions of Sections 173 and 174 of the Electricity Act. The provisions of the Consumer Protection Act and Electricity Act can be given their full meaning and effect on the ground.

(ii) Consumer Fora constituted under the Consumer Protection Act would have jurisdiction to entertain only the complaints filed by a consumer of electricity alleging any defect or deficiency in the supply of electricity or alleging adoption of any unfair trade practice by the supplier of electricity.

(iii) The Consumer Fora established under the Consumer Protection Act have no jurisdiction over the matter relating to the assessment of charges for unauthorised use of electricity, tampering of

> meters etc. as also over the matters which fall under the domain of Special Courts constituted under the Electricity Act.

As is obvious from these split verdicts the matter is bound to travel to the Supreme Court and the consumer activists would be eagerly awaiting final verdict.

**RBI guidelines on fair practices code for lenders**

RBI Guidelines on Fair Practices Code for Lenders and the provisions of section 482 of the Criminal Procedure Code, 1973 came up for consideration before the apex court in *ICICI Bank* v. *Shanti Devi Sharma and others*[29]. In the peculiar circumstances of this case, Shanti Devi Sharma, respondent, filed a criminal writ petition before the Delhi High Court seeking a writ of *mandamus* to direct the commissioner of police to take action against the appellant bank. In the FIR dated 29.11.2005 she had alleged that on 16.10.2005 at about 10 PM, two recovery agents referred to as "goons' forcibly entered her son's room and started harassing him for loan repayment that was overdue. As a result of this humiliation and harassment he committed suicide. It appears that while disposing of this writ petition the high court, *inter alia*, directed the investigating officer to "conclude the investigation into the matter as expeditiously as possible and take necessary action against those who may be found guilty of abetting the deceased to commit suicide." The appellant bank felt aggrieved by some observations made by the high court in its judgment and requested it to clarify or delete these paragraphs by filing an application for impleadment and necessary clarification/deletion/ modification under section 482 of the Code of Criminal Procedure, 1973. By its order dated 11.8.2006 the high court declined to expunge the impugned observations because these were made consciously. Nevertheless the high court clarified the matter by stating as under:[29*a*]

> However, it is clarified that any observation made against ICICI Bank in the order passed by this Court on 13.07.2006 shall not influence or affect the proceedings, if any, taken against the said bank or its employees.

Against this order of the high court the bank appealed to the Supreme Court. Keeping in mind that investigation had not been completed it held that the high court could have prefaced its observations by stating that the facts were alleged. The court deemed it appropriate to remind the financial institutions that they are bound by law and that the recovery of loan or seizure of vehicles can only be done through legal means. The court referred

29 (2008) 7 SCC 532.
29*a* *Id.* at 534.

to the RBI Guidelines on Fair Practices Code for Lenders dated 5.5.2003. Clause (v) (c) of these guidelines stated that "In the matter of recovery of loans, the lenders should not resort to undue harassment viz. persistently bothering the borrowers at odd hours, use of muscle power for recovery of loans, etc." The apex court sounded an appropriate warning to the banks and financial institutions in the following words:[29*b*]

> We deem it appropriate to remind the banks and other financial institutions that we live in a civilized country and are governed by the rule of law.

A very timely and appropriate warning ensuring self respect and dignity of the borrowers.

**Supervisory powers of high courts under article 227**

*Surinder Mittal and another* v. *National Consumer Disputes Redressal Commission and another*[30] has got peculiar facts of its own. It appears that the appellant had appeared in person and argued the appeal before the National Commission on 9.5.2002. The National Commission had, while reserving its order in first appeal No.49 of 1995 titled *Ravinder Kumar* v. *Surinder Kumar Mittal*, granted time to the parties to file written synopses and these were subsequently filed. But it proceeded to dispose of the appeal itself on 9.7.2002 by dictating its order in chamber. It was also stated by the appellant that no arguments were heard and addressed by the parties on 9.5.2002, thus there had been violation of the rules of natural justice. The review/recall applications filed by the appellant before the National Commission were also dismissed by it. He, then filed a writ petition before the Delhi High Court which was dismissed. Undaunted, he challenged the order of the single bench in a letters patent appeal.

Having regard to the facts and circumstances of the case, the division bench, *inter alia,* ruled that availability of the written synopsis before the National Commission hardly made any difference. It observed that written synopsis only records in writing arguments addressed orally and the contentions made at the time of hearing. In the facts of the case the division bench held that the National Commission in fact took the synopsis into consideration while dismissing the review/ recall applications. It ruled that though such pleas may be raised in appeal, yet in a writ petition the power of judicial review by its very nature was limited. Interference could be made only when there was grave miscarriage of justice; there was a palpably wrong order against law; and natural justice was bypassed or there was lack of jurisdiction. The division bench noted that the appellant was unable to prove that any prejudice had been caused to him and so the appeal was dismissed.

29*b* *Id.* at 537.
30 2008 CTJ 684 (Del).

This case shows the tenacity and grit of a disgruntled litigant who like Oliver Goldsmith's Village School Master though vanquished, could argue still.

Scope of supervisory jurisdiction under article 227 of the Constitution was also examined by the Delhi High Court in *Cox and Kings (I) Ltd.* v. *Raj Kumar Mittal and another*.[31] In this case the complainant took a foreign tour with the appellant. After availing the tour he alleged multifarious deficiencies in service and filed a consumer complaint against the appellant which was allowed by the district forum awarding compensation for deficiency in service. Appeal filed in the state commission failed. Aggrieved, the appellant approached the Delhi High Court in writ proceedings under article 227 of the Constitution. The high court after examining the scheme of the Consumer Protection Act as well as the scope of article 227, refused to intervene and dismissed the writ petition.

**Valuation of a consumer complaint for the purpose of pecuniary jurisdiction**

In *Sarla Prasad* v. *Karvy Computershare Pvt. Ltd. and others*,[32] the complainant valued her consumer complaint for the purpose of pecuniary jurisdiction at Rs.25,11,810/- taking into consideration the value of the listed shares on the date of filing of consumer complaint. However, the state commission observing that the value of the shares was assumed by the complainant on a hypothetical ground as the value of these shares was lower than what was claimed, transferred the consumer complaint to the district forum for disposal in accordance with law. This order was challenged in writ petition before Delhi High Court. After examining the provisions of section 17 of the Consumer Protection Act and hearing the counsel for the parties, the high court observed that fluctuation in the value of the shares should not come in the way of deciding pecuniary jurisdiction of the state commission. The court went on to observe that value of goods, (in this case) is to be seen on the date of filing of the complaint. Accordingly, the writ petition was allowed and the impugned order of the state commission was set-aside. It is submitted that same rule should apply where the consumer complaint is in respect of hiring of services.

**Consumer fora expanding their jurisdiction**

*HDFC Bank* v. *Rajender Jaina and others (I)*;[33] and *HDFC Bank* v. *Rajender Jaina and others (II)*,[34] are two cases which show that the National Commission is making subtle inroads into the jurisdiction of TRAI. Shorn of details, it may be stated that in *Rajender Jaina (I)* the National Commission held that unsolicited calls for telemarketing undoubtedly disturbed the

31 2009 CTJ 122 (Del).
32 2008 CTJ 1051 (Del).
33 2008 CTJ 449.
34 2008 CTJ 446.

citizens at any point of time. Since the matter was also pending before the Supreme Court, the case before the National Commission was adjourned. It was directed that it would be just and proper to direct the petitioner banks not to disturb the privacy of consumers by making unsolicited telemarketing calls. In *Rajender Jaina (II)* the state commission had directed Cellular Operators Association of India (COAI) and Bharti Airtel not to disclose the mobile numbers (of their subscribers) to banks and other financial institutions. Issue was also taken up by the concerned bank before the Delhi High Court, which had granted conditional stay of the impugned order passed by the state commission. National Commission found that some connected matters were also pending before the Supreme Court as well, therefore, considering the statement made by COAI and Bharti Airtel in course of the proceedings before the National Commission, both these entities were restrained from disclosing the names and numbers of their subscribers to any bank, financial institution or insurance company. COAI was also separately directed to ensure that even its associates/agents follow these directions. Further question taken up by the National Commission was whether the regulation framed by TRAI providing for maintaining a "Do not call register" caused nuisance to the mobile telephone subscribers instead of providing them any relief. It also posed the question whether there should instead be a "Do call register" as suggested. For considering these questions including the issue of privacy of the citizens in light of the constitutional provisions, the matter was adjourned by the National Commission to a further date and it was directed by it that in the meanwhile a notice be issued to TRAI for obtaining their views. She indeed is a wise judge who extends her jurisdiction!

In fact it appears that during the year under review the consumer fora have gone on a spree of expanding their jurisdiction. In *Society of Catalysts* v. *Vodaphone - Essar Mobile Services Ltd.,*[35] the opposite party launched a business promotion scheme or a contest. It had an alluring slogan "Baaton se banaiya sona, bees minute mein". Prizes in the form of gold coins and a bumper prize of Maruti SX were offered. The scheme or contest was open to only subscribers of opposite party's services and that too only to those whose talk time on their cell phone exceeded 20 minutes in a day. Many of the subscribers alleged to have felt induced to make unnecessary calls to participate in the contest. The scheme had evidently been floated for business promotion. Broadly it came within the ambit of lottery. Allegedly it served no interest of the subscribers. A highly misleading impression was created that the participation in the contest was free of charge. As found by the state commission the cost of organising the contest including the cost of prizes was covered in the transaction as a whole. In these circumstances the state commission held the opposite party to be guilty of indulging in unfair trade practice by adopting unfair and deceptive method to promote its

35 2008 CTJ 751 (SCDRC).

business interests directly as well as indirectly. Considering that it affected a large number of the opposite party's subscribers, the state commission imposed punitive damages of Rs.50 lakh as provided by section 14(1) of the Act against the opposite party. Further the state commission under section 14(1)(f) of the Act directed the opposite party and other cellular operators to discontinue such contest forthwith and not to repeat it.

Almost a similar feat was achieved by the National Commission in *Awaz, Punita Society, Ahmedabad and others* v. *Reserve Bank of India and others*.[36] A question arose in this case whether the charging of interest @ 36% to 49% per annum by the issuing banks for the credit card holders for their default in making timely payment can be said to be excessive or usurious. A further question posed was that if the answer to the first question was in the affirmative whether the consumers (credit card holders, borrowers, debtors) required to be protected. Considering various factors like Banking Regulation Act, 1949, the role of Reserve Bank of India, the practices adopted by the respondent banks, the bargaining position of the parties, namely, banks and credit card holders and the interest rates for the credit cards in some big and small countries, the National Commission held as under:[36*a*]

(i) charging of interest at rates excess of 30% per annum by the banks from the credit card holders for their failure to make full payment on date or not paying the minimum amount due, is an unfair trade practice;
(ii) penal interest can be charged by the banks only once for one period of default and shall not be capitalised;
(iii) charging interest with monthly rests is also an unfair trade practice.

It may be stated that some jurists, corporate houses and banking corporations have their scepticism whether the consumer fora have got jurisdiction over the matter adjudicated in the last mentioned two cases. Appeal against the judgment of the National Commission in *Awaz Punita Society* is now before the Supreme Court which has stayed the operation of the order of the National Commission. Final verdict of the Supreme Court on both these cases is being eagerly awaited by the consumer activists, banking corporations and corporate houses.

**Disputed questions and contentions**

In *Punj Lloyd Limited* v. *Corporate Risks India Pvt. Ltd.*[37] the complainant filed complaint alleging deficiency in service against the

36 2008 CTJ 813 (NC).
36*a* *Ibid*.
37 2009 CTJ.I (SC) [Decided on 1.12.2008].

respondent before the National Commission. However, the commission dismissed the complaint *in limine* without issuing notice to the respondent on the ground that it involved disputed questions and contentions. Aggrieved by this, the complainant appealed to the apex court. Having regard to the facts and circumstances of the case and after hearing the counsel for the parties, the court observed that the National Commission was not justified in relegating the complainant to approach the civil court for decision only on the ground that the complaint disclosed disputed questions and contentions which was not required to be dealt with under the Act. The apex court after a careful examination of the statements made in the complaint observed that, "from a look at the statement made in the complaint it would be difficult to say that the complaint had disclosed complicated questions of facts which cannot be gone into by the Commission and the same can only be gone into by the Civil Court before bringing the respondent on record and asking him to file his defence". Quoting from *CCI Chambers Coop. HSG Society Ltd.* v. *Development Credit Bank Ltd.*,[38] the court observed "... The decisive test is not the complicated nature of question of fact and law arising for decision. The anvil on which entertainability of a complaint by a forum under the Act is to be determined is whether the questions, though complicated they may be, are capable of being determined by summary enquiry i.e. by doing away with the need of a detailed and complicated method of recording evidence. It has to be remembered that the fora under the Act at every level are headed by experienced persons. We do not think that mere complication either of facts or of law can be a ground for the denial of hearing by a forum under the Act."[38a] The court further observed that every complaint of the consumer is related to dispute and will raise disputed questions and contentions. If there was no dispute there would be no complaint. Therefore, the ground for rejection of the complaint, namely "it raises disputed questions and contentions" was definitely irrelevant. In conclusion the court was of the view that the commission was not justified in rejecting the complaint merely by stating that the complicated nature of the facts and law did not warrant any decision on its part before even issuing notice to the respondent and directing the filing of his defence which in the opinion of the court cannot be said to be decisive. Therefore, the appeal was allowed. The decision of the National Commission was set aside, the complaint was sent back to the commission to be heard afresh in consonance with the observations made by the court.

**Reappointment of a sitting member of a district forum**

The question whether while considering re-appointment of a sitting member of the district forum was it necessary to comply with qualifications and other conditions prescribed for fresh appointment arose in *Govt. of NCT*

38 (2003) 7 SCC 233.
38a *Id.* at 237.

*Delhi and others* v. *Dr Prem Lata*.[39] Prem Lata who was a sitting (female) member of the district forum, Delhi applied for reappointment. Though her name figured at a fairly high position in the merit list prepared by the selection committee, yet the Lt. Governor did not give her appointment. She challenged the decision of the Lt. Governor before the Delhi High Court. While allowing the writ petition the court observed that for reappointment of a member the procedure as applicable to the fresh appointment may not be followed. This was challenged before the Supreme Court. It was submitted by the Delhi Administration before the apex court that even if a candidate was eligible for reappointment she had to fulfil the qualifications and conditions for (initial) appointment mentioned in section 10(1)(b) of the C.P. Act, 1986. The court, *inter-alia*, ruled as under:[39*a*]

> On going through the relevant provisions particularly first proviso to Section 10(2), we are of the view that the contention of the learned Additional Solicitor General is well founded. The reasoning of the High court that the respondent being a sitting Member of the District Consumer Forum and being considered and the selection is for reappointment, there is no need to comply with qualification and all other conditions for fresh appointment cannot be sustained.

**Institutional discipline in consumer fora**

In its order dated 4.4.2008 in appeal no.183 of 2007, the Delhi State Commission had the audacity to, *inter alia,* state that the orders passed by the National Commission were not binding on the state commission. It also (adversely) commented on the constitution of benches of the National Commission. This order was challenged before the *National Commission in NCDRC Bar Association (Regd.)* v. *Davinder Malhotra and others*.[40] Pain and anguish of the National Commission over these observations made by the Delhi State Commission is reflected in its order dated 18.7.2008, which is reproduced in extenso as under:[40*a*]

> 1. Prima facie, it appears that the State Commission forgets that, in addition to the appellate and revisional jurisdiction under Section 24-B of the Consumer Protection Act, National Consumer Disputes Redressal Commission (hereinafter referred to as the National Commission for brief) is having supervisory jurisdiction over Consumer Fora in the country. This should be remembered by the State Commission before commenting that the orders passed by the National Commission are not binding to the Delhi State

39 2009 CTJ 6 (S.C.) [Decided on 1.1.2.2008].
39*a* *Ibid*.
40 2008 CTJ 954 (NC).
40*a* *Ibid*.

Commission. Hence, unless there is a contrary judgement by the apex court, the State Commission is bound to follow the decision rendered by the National Commission, the State Commission may decide the matter appropriately accepting one or the other judgment.

2. Further, the State Commission must remember that constitution of Bench of the National Commission is absolutely within the jurisdiction of the President of the National Commission and the Benches are to be constituted on the basis of power conferred under Section 20 of the Act. The State Commission has no business to interfere and criticize whether the constitution of Bench is justified or not.
3. In view of the above, Notice to the parties returnable on 28th August, 2008.
4. Meanwhile, observations made by the State Commission in the impugned order (reported at 2008 CTJ – (CP) are stayed because it may lead to indiscipline and insubordination with other consumer fora.
5. Registry is directed to call for the record of this matter from the State Commission.

No further comments on the legality of the order of the state commission need be added. A disciplined mind is a necessary pre-requisite for a judicious/ judicial mind. That is traditional wisdom.

**Pre-deposit for filing of appeal**

Second proviso to section 19 of the Consumer Protection Act, *inter alia,* lays down as under:

> Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty per cent of the amount or rupees thirty-five thousand, whichever is less.

Scope of this second proviso to section 19 came under consideration of the Delhi High Court in *Ashuthosh Bajpai (Dr.)* v. *Union of India and others*.[41] In this case, the state commission awarded compensation of Rs.22,00,000/- with 12% interest to the complainant against the opposite party – doctor, who was a medical practitioner. The latter appealed to the National Commission. Pending appeal the National Commission stayed the operation of the impugned order subject to deposit of 50% of the awarded

41 2008 CTJ 950.

amount. Aggrieved by this, the doctor filed a writ petition before the Delhi High Court assailing this direction of the National Commission. It was urged before the high court that in view of the statutory requirement of the second proviso, under section 19 of the Consumer Protection Act the National Commission could direct the appellant to deposit only Rs.35,000/-which is lesser amount than 50% of the amount awarded by the state commission. However, this contention was repelled by the high court. It examined the meaning of the word "entertainment" occurring in the second proviso to section 19. This word was interpreted by the Supreme Court in *M/s. Lakshmiratan Engineering Works Ltd.* v. *Assistant Commissioner-1, Sales Tax, Kanpur Range Kanpur and another*,[42] which in brief holds that the word 'entertain' according to dictionary meaning means 'admit to consideration'. The high court held that entertainment of an appeal and the staying of execution proceedings in pursuance of the order impugned in appeal are two different things. It ruled that the provisions cannot be read to mean that the pre-deposit under second proviso to section 19 *ipso-facto* operates as stay of the operation of the order of the state commission without any further order of the National Commission to that effect and if that were the intention, the Parliament would have expressly stated so. Examining the facts of the case before it, the division bench was of the opinion that the National Commission had exercised its discretion properly keeping in mind the facts and circumstances of the case and so they found no reason to interfere with the discretion exercised by the National Commission in exercise of its jurisdiction under article 226 of the Constitution.[43]

**Criminal liability v. civil liability (arising out of medical negligence)**

Respective scope of criminal liability arising from medical negligence and civil liability arising from the same negligence came up before the Allahabad High Court in *Dr. Brijesh Kumar Misra and another* v. *State Consumer Disputes Redressal Commission, U.P. Lucknow and another*.[44] Shuja Alia, the grandson of respondent no.2 (in the writ petition) was treated by the petitioners (doctors) but he died. A criminal complaint was filed by the grand father of the deceased against the doctors alleging medical negligence. In the meantime, a complaint was also filed before the state commission for compensation and for refund of the amount spent on treatment. The petitioners challenged the maintainability of the complaint. As regards the jurisdiction of the state commission to entertain the complaint it was observed by the high court that there were no such law that the consumer forum could not be approached when civil or criminal

42 AIR 1968 SC 688.

43 *Dr. (Mrs.) K. Kathuria* v. *National Consumer Dispute Redressal Commission*, 2007 CTJ 223 though not specifically overruled, has been overruled by implication.

44 209 CTJ 18 (All).

proceedings were pending. Relying on *Indian Medical Association* v. *V.P. Shantha and others*,[45] it held that the services of a medical practitioner came under the definition of service as defined under section 2(i)(o) of the Consumer Protection Act. The court further held that criminal proceedings launched by the complainant on the same cause of action was no bar to the maintainability of the complaint under the Consumer Protection Act.[46] Consequently, the writ petition was found to be devoid of merits and was dismissed accordingly.

**Jurisdiction/extent to which consumer fora can grant relief**

Important issues touching on the jurisdiction of the consumer fora and the nature and extent to which they can grant relief were decided by the apex court in *Citibank N.A.* v. *Geekay Agropack Pvt. Ltd.*[47] Stated very briefly, the facts were that M/s.Geekay Agropack (P) Ltd. and another (complainant) had exported certain goods to M/s.ASK Ingredients Inc. of USA. For collection of the proceeds from the buyer in the USA, the exporter/ complainant handed over the necessary documents to the State Bank of Mysore alongwith collection order according to which Citibank N.A., New York was to collect proceeds from ASK Ingredients. Despite this, the Citibank and the State Bank of Mysore failed to collect the sale proceeds which resulted in loss of Rs.14,37,000/- to the exporter/ complainant. So it filed a complaint before the Karnataka State Commission which dismissed the same. The complainant then filed an appeal to the National Commission which partly allowed the appeal and awarded Rs.5 lacs as compensation and costs of Rs.50,000/- to the exporter/ complainant. Still aggrieved by this order, the complainant filed an appeal to the Supreme Court praying for compensation on loss of Rs.14,37,000/- suffered by it. The two banks also filed separate appeals against the order of the National Commission. While disposing of the appeals, the Supreme Court agreed with the view taken by the National Commission holding both the banks guilty of deficiency in service. It also ruled that compensation and cost awarded by the National Commission for deficiency in service and the expenses incurred by the exporter/ complainant need no interference. However, the court dismissed the appeal of the exporter/ complainant for award of compensation for the value of goods and the loss suffered by it. It observed:[47a]

> The appeal filed by Geekay for not granting adequate compensation for the total amount of loss incurred by it is misconceived. For the recovery of total amount of loss, it is open for the appellant Geekay

45 (1995) 6 SCC 651.

46 Reliance was placed on *M.K.S. Balaasubramanian* v. *Jayalakshmi Planers*, 1992 (1) CPR 133; *Powerware India Pvt. Ltd.* v. *Economics Transport Organisation,* 2006 (2) CPJ 269.

47 2008 CTJ 561 (SC).

47*a* *Ibid*.

> to file a civil suit before the appropriate Court which we are informed has already been filed. The National Commission could have awarded compensation only for the deficiency of service only. The said compensation has been awarded by the National Commission. Therefore, there is no reason to interfere in the appeal filed by Geekay also. In the result, all these appeals are dismissed....

This observation of the court to award compensation for the total amount of loss and its directions to the complainant to file a civil suit before the appropriate court for its recovery is not in line with the law laid down by it in earlier cases. In *Lucknow Development Authority* v. *M.K. Gupta*,[48] the court ruled that the C.P. Act 1986 has a very wide reach and the redressal agencies set-up thereunder have very vast jurisdiction. It was held "….. the Commission has been vested with the jurisdiction to award value of goods or services and compensation. It has to be construed widely enabling the Commission to determine compensation for any loss or damage suffered by a consumer which in law is otherwise included in wide meaning of compensation. The provision in our opinion enables a consumer to claim and empowers the Commission to redress any injustice done to him. Any other construction would defeat the very purpose of the Act. *The Commission or the Forum in the Act is thus entitled to award not only value of the goods or services but also to compensate consumer for injustice suffered by him*." In *J.J. Merchant and others* v. *Shrinath Chaturvedi*,[49] the apex court, *inter alia,* ruled as under:[50]

> [P]rior to the Act consumers were required to approach the Civil Court for the wrong done to them and it is known fact that decision in suit takes years. Under the Act, consumers are provided with an alternative efficacious and speedy remedy. *As such, the Consumer Forum is an alternative Forum established under the Act to discharge the functions of a Civil Court.*

Even the bare text of the C.P. Act states that if after the proceedings conducted under the Act, the district forum, state commission or the National Commission, as the case may be, is satisfied about the allegations levelled against the opposite party for supply of defective goods or deficiency in service and/or the indulgence of unfair trade practice it can direct the opposite party to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by him due to the negligence of the opposite party. Practice of consumer fora hitherto has been that compensation has been granted to the aggrieved consumers for all

48 (1994) 1 SCC 243.
49 (2002) 6 SCC 655.
50 *Ibid*.

the elements of their grievance and they have not been asked to approach the civil courts for getting compensation for some elements of their grievances. As an aftermath of this ruling the consumer fora may no longer be alternate courts. This verdict of the court is bound to result in the consumer fora awarding compensation for negligence/deficiency in service for the supply of defective goods and services, but they will not be able to compensate the complainants for the loss suffered by them for which they would be directed to approach the civil court. However, after a careful reading and analsyis of this judgment, it is possible to argue that the directions of the Supreme Court to the complainant to file a civil suit before the appropriate court were perhaps influenced by the peculiar facts of that case because as is clear from the reading of para 9 of the report the court was informed that the complainant had already filed a civil suit for recovery of the total amount of his loss. In any case, it is submitted that this judgment requires reconsideration, or atleast clarification, in some future case as and when an occasion arises.

## V CONCLUSION

Some trends of development of consumer protection law which can be discerned from this survey are that by and large the high courts and the Supreme Court have been supportive of the CP Act and the fora established thereunder.

Survey of the insurance law suggests that the Supreme Court has been liberal to the insured insofar as it held that section 149(2)(1)(ii) of the Motor Vehicles Act does not empower the insurance company to repudiate a claim for damages which has occurred due to the acts to which the driver has not in any manner contributed, i.e. damage occured due to reasons other than the act of the driver. The holding that a clause like clause 6(ii) in the insurance policy did not offend section 28 of the Contract Act is a pragmatic and realistic approach. If the insurance claims become stale it becomes difficult for the insurance company to verify their genuineness. The detailed postulates enunciated by the court in *Manubhai Dharmasinhbhai Gajera*, identifying the duties, obligations and responsibilities of the public sector as well as the private sector insurance companies would go a long way in checking the waywardness of some of the insurance companies. Similarly, the terms and conditions and the procedure for revival of an abandoned/ lapsed policy as has been authoritatively explained in *Jaya Chander* would be of practical help to the policy holders. The court's harshness on the holders of fake driving licences is expected to contribute to public safety and also contain road rage.

Perspicacity with which the court has identified the elements of "service" and "consideration" in the complicated and complex matrix of facts in *Faqir Chand Gulati* is refreshing. In *Shanti Devi Sharma* the court has given a stern warning to the banks and other financial institutions that we live in a civilised world and are governed by rule of law.

Perhaps the most important and interesting aspect of consumer protection law in the year under survey has been the subtle attempt made by the higher consumer fora to expand their jurisdiction. As is evident from *Rajender Jaina (I); Rajender Jaina (II); Society of Catalysts* and *Awaz, Punita Society, Ahmedabad*. However, there has been some set-back as well. In *Geekay Agropack Pvt. Ltd*. the Supreme Court granted to the complainant only compensation for the deficiency in service committed by the bank. For recovery of total amount of his loss the court directed the complainant to file a civil suit before the appropriate court. Real impact of this authority, if it is not reviewed or reconsidered in some future case, would be that many of the complainants would have to shuttle between the consumer fora and the civil courts for seeking distinct reliefs apparently on the same cause of action.