9
CONSUMER PROTECTION LAW

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I INTRODUCTION

THE CONSUMER Protection Act, 1986 (CPA) has completed twenty five years of its existence. The CPA was amended three times in the year 1991, 1993, 2002 and presently Consumer Protection Amendment Bill, 2011 is pending before the Parliament. The consumers are considered to be king in a free market and the sellers are guided by the will of the consumers. Even after twenty five years of CPA, the object of the CPA has not been achieved satisfactorily since the state governments have failed to implement CPA in it true spirit. But the Supreme Court and the National Consumer Dispute Redressal Commission (National Commission) have delivered an array of landmark decisions to protect the consumers.

In the year 2011, the cases that came up before the Supreme Court and the National Commission centered around the procedural issues pertaining to appointment of members, powers of consumer forum, limitation, jurisdiction, unfair trade practice, review power of state commissions and district fora, execution, representation of agents/non-advocates as well as deficiency in service in banking sector, medical profession, educational institution, insurance, airlines etc.

II EXECUTION

In *H. K. K. Bail* v. *Cyma Exports Pvt. Ltd.,*[1] the appellants filed a complaint before the Karnataka State Consumer Disputes Redressal Commission seeking direction to the opposite party to complete the construction of a flat as per the terms of the agreement and handover the same to the appellants. The complaint was allowed. As no appeal was filed, the order of the state commission attained finality. Thereafter, the appellants filed an execution petition before the Additional City Civil Judge, Bangalore to execute the order of the state commission. The respondents filed objections therein arguing that the civil court was not empowered to execute the order passed by the consumer forum. The objection was rejected and the execution petition was allowed relying upon a decision of the Karnataka High Court in *Vishvabharati Housing Building Cooperative Society Ltd.* v. *Union of India*[2] in which it was held that the courts have jurisdiction to enforce the decree

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1 2011 (1) SCALE 597.

2 1999 (2) Kar LJ 38.

under execution. Subsequently, the additional city civil judge dismissed the execution petition on the ground that it has no jurisdiction. The revision petition filed against the order of the civil judge in the high court was dismissed. On appeal, the Supreme Court held that once the order of the state commission attained finality, the same has to be executed and hyper-technicality should not come in the way of executing the said order.

Under CPA, consumer redressal agencies do not have power to execute their own decisions like regular courts. This is a loophole in the CPA. Therefore, the Supreme Court's decision would help the consumers to execute the order of consumer fora more effectively. The central government has also noticed this loophole in the recent past. Subsequently, suggestion has been given to empower consumer reddressal agencies under section 25 to execute their orders like regular court orders under the Consumer Protection Amendment Bill, 2011, which is now pending before the Parliament.

III REVIEW POWER OF STATE COMMISSION AND DISTRICT FORUM

In *Rajeev Hitendra Pathak* v. *Achyut Kashinath Karekar,*[3] the Supreme Court has examined the review power of state commission and district fora. The district consumer fora and the state commissions do not have the power to set aside their own *ex parte* orders and do not have the power to review the orders. After the amendment of section 22 and introduction of section 22A in the CPA in the year 2002, the power of review or recall has been vested only in the National Commission. Further, the apex court opined that the tribunals are creatures of the statute and derive their power from the express provisions of the statute. The district fora and the state commissions have not been given any power to set aside *ex parte* orders or power of review; and the powers which have not been expressly given by the statute, cannot be exercised by them.

However, it is submitted that the review power should be given at least to the state commissions to rectify apparent errors, on the face of its record. The central government has considered this point and had suggested insertion of new section, i.e., 19B to CPA through Consumer Protection Amendment Bill, 2011.

IV REPRESENTATION BY NON-ADVOCATES

In *C. Venkatachalam* v. *Ajitkumar C. Shah*[4] the high court (division bench) in its impugned judgment held that a party before the district consumer forum/state commission cannot be compelled to engage services of an advocate. Against this judgment an appeal was filed, and the question was raised that whether non-advocates can represent their parties before consumer fora. The apex court held that section 32 of the Advocates Act, 1961 deals with the power of court to permit appearances of any person not enrolled as an advocate before consumer forum. CPA, 1986 is one of the benevolent social legislations intended to protect the large body of consumers from exploitation. The primary object of the Act is to render

3 2011 (9) SCALE 287: IV (2011) CPJ 35 (SC).
4 2011 (9) SCALE 479: III (2011) CPJ 33 (SC).

simple, inexpensive and speedy remedy to the consumers who complain against defective goods and deficient services and for that a quasi-judicial machinery has been sought to be set up at district, state and central levels. CPA, 1986 has come to meet the long-felt necessity of protecting common man from wrongs for which the remedy under the ordinary law for various reasons has become illusory. In the impugned judgment, the high court had aptly observed that many statutes, such as, Sales Tax, Income Tax and Competition Act etc. permit non-advocates to represent parties before the authorities and those non-advocates cannot be said to practice law. On the same analogy those non-advocates who appear before consumer forum also cannot be said to practice law. Hence, the apex court approved the view taken by the high court in the impugned judgment.

Further, the Supreme Court has given directions to the National Commission in order to ensure smooth, consistent, uniform and unvarying functioning of the consumer reddressal agencies, to frame comprehensive rules regarding appearances of the agents, representatives, registered organizations and/or non-advocates before the National Commission, the state commissions and the district fora governing their qualifications, conduct and ethical behaviour. The suggestions are as follows:

Non-advocates appearing without accreditation: Party may appoint a non-advocate as its representative provided that the representative (a) is appearing on an individual case basis; (b) has a pre-existing relationship with the complainant (e.g., as a relative, neighbour, business associate or personal friend); (c) is not receiving any form of direct or indirect remuneration for appearing before the forum and files a written declaration to that effect; and (d) demonstrates to the presiding officer of the forum that he is competent to represent the party.

Accreditation process: (a) The National Commission may consider creating a process through which non-advocates may be accredited to practice as representatives before a forum; (b) non-advocates who are accredited through this process shall be allowed to appear before a forum on a regular basis; (c) the accreditation process may consist of a written examination to test an applicant's knowledge of relevant law and ability to make legal presentations and arguments; an inspection of the applicant's educational and professional background, and (d) an inspection of the applicant's criminal record. The National Commission may prescribe additional requirements for accreditation at its discretion provided that the additional requirements are not arbitrary and do not violate existing law or the Constitution.

The fees: (a) A representative who wishes to receive a fee must file a written request before the forum; (b) the presiding officer will decide the amount of the fee, if any, a representative may charge or receive; (c) when evaluating a representative's request for a fee, the presiding officer may consider the following factors: the extent and type of services the representative performed; the complexity of the case; the level of skill and competence required of the representative in giving the services; the amount of time the representative spent on the case; and; the ability of the party to pay the fee. If a party is seeking monetary damages, its representative may not seek a fee more than 20% of the damages.

Code of conduct for representatives: The National Commission has to create a code of conduct which would apply to non-advocates, registered organizations and agents appearing before a forum.

Disciplinary powers of a forum: (a) The presiding officer of a forum may be given specific power to discipline non-advocates, agents, authorized organizations and representatives for violating the code of conduct or other behaviour that is unfitting in a forum; (b) in exercising its disciplinary authority, the presiding officer may revoke a representative's privilege to appear before the instant case or suspend a representative's privilege to appear before the forum or ban from appearing before the forum or impose a monetary fine on the representative.

On the basis of the above mentioned guidelines, the Supreme Court has given directions to the National Commission to frame comprehensive rules as expeditiously as possible. The directions to the National Commission to frame regulations for agents/ non-advocates must hence include provisions for creation of voluntary consumer organisations also.

V LIMITATION

In another case that reached before the Supreme Court, *V. N. Shrikhande* (*Dr.*) v. *Anita Sena Fernandes*[5] the respondent-patient had stones in her gall bladder and the appellant-doctor performed open cholecystectomy on her in the year 1995. For the next about nine years, the patient neither contacted the appellant nor consulted any other doctor despite the fact that after the surgery she suffered pain in the abdomen off and on, for which she took pain killers. She had to remain on leave at regular intervals owing to the pain. The Maharashtra State Consumer Disputes Redressal Commission dismissed the complaint filed by the respondent as barred by limitation. However, the National Commission reversed the said order and remitted the case for disposal on merits. On appeal, the Supreme Court took note of the following facts:

The respondent was not an ordinary layperson. She was an experienced nurse and was employed in the government hospital, Goa. It was the respondent's case before the state commission and the National Commission that after the surgery, she suffered pain in the abdomen off and on, and on that account, she was restless at home and also at work place and had to take leave including sick leave on various occasions. Therefore, it was reasonably expected of her to have contacted the appellant and apprised him about her pain and agony and sought his advice. That would have been the natural conduct of any other patient. If the respondent had got in touch with the appellant, he would have definitely suggested measures for relieving her from pain and restlessness. If the respondent would not have relieved by medication, the appellant may have suggested her to go for an x-ray or C.T. scan. In the event of discovery of gauze in the respondent's abdomen, the appellant would have taken appropriate action for extracting the same without requiring the respondent to pay for it. But at no point of time she contacted the appellant and sought his advice in the matter. Moreover, she did not consult any other doctor including those who were working in the government hospital where she was employed. The respondent had not explained as to why she kept quiet for about nine years despite pain and agony. The long silence on her part militates against the

5 AIR 2011 SC 212.

bona fides of the respondent's claim for compensation and 'discovery rule'[6] cannot be invoked for recording a finding that the cause of action accrued to her in November, 2002 when the guaze was discovered in her abdomen. Therefore, the complaint filed by the respondent in year 2004 would be barred by limitation.

The Supreme Court thus allowed the appeal. In cases of medical negligence, no straitjacket formula can be applied for determining as to when the cause of action has accrued to the consumer. Each case is to be decided on its own facts. If the effect of negligence on the doctor's part or any person associated with him is patent, the cause of action will be deemed to have arisen on the date when the act of negligence was done. If, on the other hand, the effect of negligence is latent, then the cause of action will arise on the date when the patient discovers the harm/injury caused due to such act or the date when the patient or his representative-complainant could have, by exercise of reasonable diligence discovered the act constituting negligence. Though open cholecystectomy was performed on the respondent on 26.11.1993, it is only in November, 2002 when she received Histopathology report from Lilavati Hospital she came to know about the piece of gauze said to have been left in her abdomen during the open cholecystectomy. However, the court did not record a finding to the effect that the cause of action accrued to her only on discovery of the pieces of gauze. On the contrary, the apex court observed that "if the respondent had not suffered pain, restlessness or any other discomfort till September, 2002, it could reasonably be said that the cause of action accrued to her only on discovery of the pieces of gauze…" It is submitted that even with such a finding the Supreme

6 The 'discovery rule' was evolved by the courts in United States as medical negligence cases were getting defeated by strict adherence to the statutes of limitation. In Pennsylvania, the discovery rule was adopted in *Ayers* v. *Morgan*, 397 Pa. 282, 154 A.2d 788, where a surgeon had left a sponge in the patient's body when he performed an operation. It was held that the statute of limitation did not begin to run until years later when the presence of the sponge in the patient's body was discovered. In West Virginia, the discovery rule was applied in *Morgan* v. *Grace Hospital Inc.*, 149 W. Va.783, 144 S.E.2d 156 where a piece of sponge had been left in the wound during a surgical operation. But its presence in the body did not come to light until 10 years later. The court while rejecting the objection of limitation observed: It simply places an undue strain upon common sense, reality, logic and simple justice to say that a cause of action had 'accrued' to the plaintiff until the x-ray examination disclosed a foreign object within her abdomen and until she had reasonable basis for believing or reasonable means of ascertaining that the foreign object was within her abdomen as a consequence of the negligent performance of the hysterectomy. In *Billings* v. *Sisters of Mercy of Idaho*, 86 Idaho 485, 389 P.2d 224 the plaintiff underwent a surgical operation in 1946. A sponge was left in the wound when the incision was closed. The same was discovered in the patient's body in 1961. During the intervening period the patient sustained considerable suffering, during which she consulted various physicians. After reviewing numerous authorities at great length, the court adopted the discovery rule and observed: Where a foreign object is negligently left in a patient's body by a surgeon and the patient is in ignorance of the fact, and consequently of his right of action for malpractice, the cause of action does not accrue until the patient learns of, or in the exercise of reasonable care and diligence should have learned of the presence of such foreign object in his body.

Court could have condoned the delay looking into the object of the CPA and on the basis of *res ipsa loquitor* principle.

VI JURISDICTION

In *Punjab State Power Corporation Board* (formerly Punjab State Electricity Board) v. *Ekta Farmers Welfare Deep Tubewell Society,*[7] the National Commission referred *Phool Chand Agarwal* v. *Bihar State Electricity Board*,[8] where it was established that the district forum and the state commission would not have any jurisdiction to decide the tariff chargeable from the complainant. The facts therein were that the complainant had installed and was simultaneously using two motors of 20HP each. The complainants invoked jurisdiction under the CPA, when the Bihar Electricity Board billed him for 40 HP. As per the National Commission the facts in the instant case were very different:

> Here is a case of a connection sanctioned under AP (agriculture pumping supply) category. Consumer forums have intervened when - despite the evidence on record to show that it was an agricultural supply used for agricultural purposes - the Punjab State Power Corporation has chosen to raise the bill under Industrial category. The Consumer forums have not decided the tariff but directed the RP to raise the bill under the applicable category, in terms of the PSEB's own circular applicable to such cases.

Trans Mediterranean Airways v. *Universal Exports*[9] was an appeal against the order of National Consumer Disputes Redressal Commission directing the appellant to pay sum equivalent to US $71, 615.75 with interest from date of complaint, till its realization, and costs of Rs. 1 lakh for deficiency of service. Against this order an appeal was filed before the apex court.

The appellant therein before the Supreme Court was an international cargo carrier, with its principal place of business at Beirut, Lebanon. The respondent no.1 was a garment exporter and respondent no. 2 was an accredited international air transport association agent. In this appeal, the apex court examined and reconciled the area of operation of the CPA on the one hand, and the Carriage by Air Act, 1972 [the CA Act] along with the Warsaw Convention of 1929 [the Warsaw Convention] on the other. The appellant, respondent no. 1 and respondent no. 2, hereinafter, for the sake of brevity, referred to as "appellant carrier," "the consignor" and "agent" respectively.

The core issues that arose for consideration and decision in this appeal were: (i) Whether the National Commission under the CPA has the jurisdiction to entertain and decide a complaint filed by the consignor claiming compensation for deficiency of service by the carrier, in view of the provisions of the CA Act and the Warsaw Convention; or whether domestic laws can be added to or substituted for the provisions of the conventions; and (ii) whether the appellant can be directed to

7 1 (2011) CPJ 299 (NC).
8 (1994) CPJ 45 (NC).
9 2011(10) SCALE 524.

compensate the consignor for deficiency of service in the facts and circumstances of the case. Both issues have been answered affirmatively by the court.

The National Commission, in the impugned order, has concluded that the agent was not only the agent of the consignor, but also of the agent of the appellant-carrier, and hence any mistake committed by the agent would make the principal (appellant-carrier) liable for such damages. Further, it was held by the National Commission that the appellant-carrier was duty bound to have contacted the consignor in case it was not able to locate the address of the consignee or in the event, the consignee refused to accept the consignment. It was further held that it was not open to the appellant-carrier to have delivered the consignment to the notified party without informing the consignor. In the light of the above findings, the National Commission has held that the services provided by the appellant-carrier were deficient and ordered payment of the compensation to the consignor.

Due to the importance of the question of law involved, Shyam Divan, senior counsel, was requested to assist the Supreme Court. He stated before the court that it is clear from section 3 of the CPA that consumer courts are additional forums to ensure that consumers get speedy disposal of their cases/complaints with regard to deficiency of service. He laid emphasis on the phrase "an action for damages must be brought" in the opening words of rule 29 and stated that the rule gives an option to the plaintiff to sue in the courts on any one of the places mentioned. He further stated that rule 33 provides an alternate remedy to parties to resort to proceedings of arbitration in case of disputes between the parties. Hence he concluded that there is no express bar in the CA Act to oust the jurisdiction of the fora under the CP Act.

The Supreme Court, therefore, noted that the National Commission has jurisdiction to decide the dispute between the parties and it is a court and that there was deficiency in service by the appellant-carrier.[10] The Supreme Court found no merit in the matter. As per this decision, there was no legal infirmity in National Commission exercising its jurisdiction, as it was considered a court within territory of high contracting party for purpose of rule 29 of second schedule to CA Act and Warsaw Convention. So, National Commission under CPA had jurisdiction to entertain and decide complaint filed by consignor claiming compensation for deficiency of service by carrier, in view of provisions of CA Act and Warsaw Convention.

VII IMPLEADMENT OF PARTY AT APPEAL STAGE

The matter for consideration before the Supreme Court in *Vinod Kumar Thareja* v. *Alpha Construction,*[11] was related to the impleadment of a party at appeal stage. The issue was whether a respondent against whom an order for payment has been made in a complaint under the CPA, 1986, can in an appeal filed by him, seek impleadment of a third party by contending that such third party is also liable either partly or wholly, even if the complainant has not sought any relief against such third party?

10 *Id*. at 544.
11 AIR 2011 SC 996.

The court clarified that the scheme of CPA did not permit a service provider, who has been made liable to refund the amount paid towards the price under the order of the district forum, to file an appeal and pass on a part of the liability to some third party, on the ground that the contract between them enabled him to do so. In an appeal by a respondent in a complaint, aggrieved by the order made in favour of the complainant, the only issue is whether the liability of the respondent should be upheld, modified or rejected. If a service provider who has been made liable in a complainant wants contribution from anyone else, on the ground that such third party had also contributed to the deficiency in service, it is for the service provider to take independent action against such third party, in respect of the liability.

In the instant case, as the complainants neither impleaded nor sought any relief against the appellant, neither the state commission nor the National Commission could make the appellant liable along with the respondent.

VIII APPOINTMENT OF MEMBERS

In *P. Subburaj* v. *The State President cum Chairman, Selection Committee*[12] the petitioner was a practising advocate and was appointed as president of the district consumer redressal forum at Madurai and thereafter at Namakkal. He filed a writ petition seeking for a direction to the state government to consider his representation dated 14.10. 2010 and to reappoint him as president of the district consumer disputes redressal forum as per the proviso to section 10(2) of the CPA, 1986. The court held that the directive issued by the National Commission under section 24-B of the CPA cannot be said to be contrary to the provisions of section 10(1-A) of the CPA. The directive says that precedence should be given to the district judges or retired district judges having regard to the experience gained by them in discharge of their duties as judicial officer. If serving or retired district judges are not available, it is always open to the committee to make appointments from amongst advocates, and it is not correct to say that the advocates are excluded from consideration for the post of president of the district fora. The National Commission has issued this directive keeping in view the purpose sought to be achieved by the enactment of section 10(1-A) and in the interest of better administration of the district fora.

IX DEFICIENCY IN SERVICE

Vicarious liability of bank

In *Haryana Gramin Bank* v. *Madan Lal*,[13] the respondent filed a complaint under section 12 of the CPA against the petitioner bank submitting that he had deposited certain amount in fixed deposit, however, when he wanted to withdraw the same, the bank authorities declined to entertain his request. The respondent also alleged that some bank officials fabricated the records and withdrew the amount deposited in his account and for the acts of its officers/officials, the bank was liable. The bank contended that it cannot be held liable for the wrong actions of some officers/officials.

12 MANU/TN/3411/2011: W.P. No.9356 of 2011 (Madras High Court).
13 2011 (2) SCALE 417.

The Supreme Court, on appeal, held that the bank did not produce any evidence to prove that even though there were no entries in the passbooks showing withdrawal of the amount deposited by the respondent in the savings bank accounts or by way of FDRs, he had, in fact, withdrawn the amount, as reflected in the ledgers maintained by the bank. The bank was vicariously liable for the wrong actions of its officials/ employees which resulted in monetary loss to the respondent and the consumer fora did not commit any error by entertaining and allowing the complaint filed by him.

Educational institutions

In *Course Coordinator and Centre In-charge, Indian Institute of Hotel Management, Kolkata* v. *Reshmi Dutta*[14] in response to an advertisement published by the Indian Institute of Hotel Management as the facts of the case reveal the complainant took admission by depositing Rs. 45,460/- in the institute in December, 2008. After her admission, she attended classes for three days. Then she came to know that the course had already commenced sometime in May, 2008 and that the examinations for 2nd semester would commence in the month of March, 2009. However, she was advised to attend classes assuring her that the institute would manage her attendance. But it was not possible for her to cope up with the studies at that stage when even the practical examinations had already been completed. The complainant, therefore, requested the opposite parties to consider her candidature for the next session. In the meantime, she got a job in Kolkata and she joined there on 02.05.2009. She also received a communication from the course coordinator that her classes would commence from 27.05.2009. However, the institute did not adhere to the organised schedule. Hence, the complainant requested for refund of the amount deposited by her but to no avail.

The National Commission recorded a finding of deficiency of service as thus:

> If the intention was not to invite students for admission, there was no need for the Institute to have indicated the procedure. On the contrary, they ought to have stated that the next course would commence from May, 2009. In so far as the objection with regard to whether the Institute has suffered any financial loss as a result of the respondent/complainant not joining the course commencing May, 2009 is concerned, the same has to be rejected outright for the simple reason that the respondent/complainant had not joined the Institute even for a single day and, therefore, it can be safely presumed that the Institute would have filled up the resultant vacancy, entailing no financial loss whatsoever.

Airline

In *Deccan Aviation Limited* (presently known as Kingfisher Airlines Limited), *Mumbai* v. *J. L. Roy,*[15] the complaint related to the complainant's travel to Mumbai and Ahmadabad by Deccan Airlines. Deficiency of service was alleged against Deccan Airlines on account of (i) demand and payment of extra luggage charge of

14 11(2011) CPJ 274 (NC).
15 11 (2011) CPJ 252 (NC).

Rs.1,400/- for journey from Kolkata to Mumbai, when he had already been made to pay Rs. 2,100/- from Agartala to Kolkata; (ii) and excess flight time taken in the travel from Kolkata to Mumbai, due to diversion to Hyderabad. Deccan Aviation Ltd. also insisted on the payment of rescheduling charge by credit card only, for return to Agartala from Kolkata. As the complainant did not possess a credit card, he had to cancel these tickets and buy new tickets from Indian Airlines, resulting in extra-expenditure.

The state commission has observed that as the complainant was traveling from Agartala to Mumbai by the same airlines, though on different flights, the luggage should have been directly booked from Agartala to Mumbai instead of being handed over to the complainant at Kolkata. This amounted to deficiency in service. Furthermore, insistence on payment through credit card and "refusal to accept Indian currency by the respondent at the Kolkata airport amounted to serious deficiency in service". The rules of the airline company permitted payment of airfare by credit card or by Indian currency.

The National Commission by upholding the decision of the state commission added that "for an air traveller from Agartala to Mumbai, performing the entire journey in a single day, the most acceptable route will be shortest and the most direct flight available. The stop over at Hyderabad can, therefore, by no stretch of imagination, be treated as a matter of facility or convenience sought by him".

Any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a person in pursuance of a contract or otherwise amounts to a 'deficiency in service' under COPRA and the airline ticket is a contract under which the airline undertakes to transport the passenger from one place to another. The acts of the airline company in this case were clearly inadequate and deficient and this decision thus appears to be correct.

X FIRE INSURANCE

Surveyor's report is not conclusive

Surveyors are appointed under the statutory provisions and are the link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor would become the basis for settlement of a claim by the insurer in respect of the loss suffered by the insured. In the case of *New India Assurance Company Ltd.* v. *M. M. Krishan,*[16] the National Commission, while highlighting the significance of the surveyor's report, observed that the same may not be relied upon if it was arbitrary and biased.

The respondent had taken an insurance policy from the petitioner insurance company for a sum of Rs.1,57,000/- covering the risk of loss due to earthquake, fire etc. and also various types of clinical lab/medical equipment which were lying inside or installed at the clinic of the respondent. Subsequently, a fire occurred in the respondent's clinic destroying all the medical equipment lying at the clinic. The respondent lodged an insurance claim with the petitioner who appointed a surveyor.

16 11 (2011) CPJ 301 (NC).

The surveyor totally ignored the documentary and other evidence given by the respondent to substantiate the value of various items destroyed in the fire and gave a report that the total loss was Rs.19,000/- and recommended that out of this loss, Rs.10,000/- be deducted as 'excess as per policy'. Subsequently a complaint was filed in the district forum. The district forum had dismissed the respondent's complaint by relying on the surveyor's report. However, the state commission had allowed the appeal and directed the petitioner to pay the respondent Rs. 1,45,443/- as insurance claim and Rs.10,000/- on account of harassment and mental agony along with interest @ 9% per annum after the expiry of 2 months from the report of surveyor.

On appeal, the National Commission had noted that generally the surveyor's report was an important document and was to be relied upon unless it was arbitrary and biased. However, in the instant case, the surveyor's report was biased and the loss suffered by the respondent was not correctly assessed as surveyor had not assessed any value on the loss of cardiac monitor costing Rs.1,69,000/- on the grounds that there was no evidence that the cardiac monitor was destroyed in the fire. On the other hand, the state commission had clearly ruled that the remnants of the partially burnt PCB found on the spot were obviously those of the cardiac monitor. Similarly, the surveyor had also wrongly stated that the electrical goods which were destroyed were not valued because they were not covered under the insurance coverage while a perusal of the policy taken by the respondent shows that these were covered under the insurance policy. The order of the state commission was found to be well-reasoned and convincing, hence, there was no reason for the National Commission to disagree with the findings therein.

XI UNFAIR TRADE PRACTICE

In *Max New York Life Insurance Co. Ltd.* v. *Insurance Ombudsman,*[17] the appellant was an insurance company. The insured approached the insurance ombudsman stating that he had taken an insurance policy for which the premium was fixed at Rs. 4,810/- which was collected for the first three years. In the fourth year, the insurer demanded 10.3% of the premium amount as service tax. The insured contended that he was made to believe that he need to pay only Rs. 4,810/- as the premium and no further payment need be made. The ombudsman held that the premium of Rs. 4,810/- is inclusive of the service tax component and that the insured need not pay any amount in addition to the premium. The insurer challenged the order in the High Court of Kerala and the court held that this would amount to the unfair trade practice under section 2(r)(1)(ix) of the CPA. It further stated that offering insurance policy without disclosing that the insured would have to pay tax in addition to the insurance premium, amounts to unfair trade practice. If the tax component is not revealed to the insured at the time of issuing the policy, then the insurer cannot claim such tax from the insured during the term of the policy. The court added thus:

17 ILR 2011 (4) Ker. 301.

> The policy document and premium receipts issued for the first three annual premiums do not contain a statement that premium demanded and accepted doesn't include statutory taxes and levies. Since the tax now demanded was then in force, if the premium demanded and payable was excluding the taxes and levies it should have been fairly disclosed to the 2nd respondent, namely by stating taxes extra. It was not only done at the time of issuing policy, but also for the next two years no such disclosure was made. Multinational companies offering services to public including rural mass have a duty to disclose the real price at which the service is provided along with prevailing statutory taxes and levies. Suppression of the prevailing taxes and levies would amount to material misleading concerning the price. Such misleading in turn would come within the definition of unfair trade practice which we cannot allow, but to deprecate and condemn such greedy devices of the multinational companies in attempt to make pigmy profit exploiting the public including illiterate rural mass. Therefore, we rule that a service provider who doesn't disclose the prevailing statutory duties and levies at the time of transaction is not entitled to claim such taxes and levies from the consumer at a later stage during the course of continuing service.

XII MEDICAL NEGLIGENCE

Improper insertion of copper-T

In *Anita Bhushan* v. *Sumita Sharma*[18] as per the facts of the case the complainant, one Sumita Sharma delivered a baby girl on 15.08.1999 at general hospital Chandigarh, thereafter on 21.09.1999 she got a copper-T inserted by Dr. Anita Bhushan. Four months later, she found that she was pregnant again. According to the complainant, Dr. Anita Bhushan, tried to remove the copper-T but failed and thereafter aborted the child.

The complainant alleged medical negligence in insertion of the copper-T and resultant suffering, financial loss and loss of a child for which she claimed compensation of Rs. 1,50,000/- along with costs. The District Forum, Ambala came to the conclusion that the case of negligence is made out for which compensation of Rs. 50,000/- together with costs of Rs. 10,000/- were awarded. The appeal filed by Dr. Anita Bhushan was dismissed by the state commission.

In the revision petition, the National Commission has observed thus:

> Undisputedly, the complainant had given birth to a female child on 15.08.1999. It is also admitted that Copper-T was got inserted by the complainant from the opposite party and inspite of Copper-T, she conceived. It is also admitted that at the time of examination by the opposite party on 28.1.2000 the pregnancy was of four months and it was a male child. Thus, the plea taken by the opposite party that the complainant herself wanted to get the child aborted is proved falsified in view of

18 II (2011) CPJ 258 (NC).

admission of the parties. It is matter of common knowledge that in the Indian society a lady who is having only a female issue, would not allow to abort a male child. More so, it is admitted case of the opposite party that despite of installation of copper-T, the complainant had conceived a child. Thus, the medical negligence and deficiency of service fully stands proved on record against the opposite party.

The National Commission by dismissing the revision petition held that the impugned order of the Harayana State Consumer Disputes Redresal Commission did not suffer from any jurisdictional error, material irregularity or illegality.

XIII CONCLUSION

The year 2011 is a silver jubilee year for the CPA, 1986. During the year 2011, the Supreme Court and the National Commission have clarified many gray areas especially in procedural matters of consumer dispute redressal agencies under the CPA, 1986. These clarifications would hopefully help the state commissions and district fora in deciding the pending cases quickly and effectively. Also the Supreme Court had given directions to the National Commission to frame regulations on some of the gray areas as discussed in *C. Venkatachalm*. By considering the landmark decisions of the Supreme Court on CPA, 1986, the central government has considered to legislate on some of the suggestions given by the apex court and thus proposed certain amendments to the CPA, 1986 through Consumer Protection Amendment Bill, 2011. This Bill is still pending before the Parliament. It is hoped that the CPA, 1986 would become more strong and effective with the proposed 2011 amendment.