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CONSUMER PROTECTION LAW

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I INTRODUCTION

IN INDIA, the need for consumer protection is paramount because of lack of education, poverty, illiteracy, lack of information and ignorance of their legal rights against the remedy available in such cases. It was therefore necessary that a forum be created where a consumer not satisfied with the goods supplied or services rendered may ventilate his grievance and machinery be devised to afford him adequate protection. Therefore Indian Government has enacted exclusive law for consumers' called Consumer Protection Act, 1986 (COPRA). This Act provides for a separate enforcement machinery and redressal forum/commission with the aim to provide the consumers, a simple, less expensive, expeditious solution to consumer problems. The COPRA is a milestone in the history of socio-economic legislation in India. The Consumer Protection Act, 1986 (COPRA) has partially been successful in achieving objects after completion of 25 years. The COPRA was amended three times in the year 1991, 1993 & 2002.

In the year 2013, the cases that came up before the Supreme Court and National Consumer Dispute Reddressal Commission centered around the procedural issues pertaining powers of consumer forum, jurisdiction, deficiency in service in telecom, electricity, medical profession, departmental gratuity *etc*.

II TELECOM

In *JK Mittal* v. *Union of India*,[1] the dispute was related to broad bandwidth and the High Court of Delhi held that the respondent no.2 is not a telegraph authority under Indian Telegraph Act, 1885. The bar under section 7B, if at all, could have applied, had the dispute arisen between the petitioner and the telegraph authority, which the respondent no. 2 is not. Merely because respondent no. 2 is a licensee under section 4 of the Indian Telegraph Act, 1885 it does not confer on it the status of a telegraph authority. If the intendment of Director General of Posts and Telegraph were to confer the status of the telegraph authority upon the licensee's under section 4, the Director General of Posts and Telegraph, which comes under

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1 2012(192)ECR 365(Delhi).

the Central Government, could have issued the requisite notification under section 3(6) of the Indian Telegraph Act, which has not been done.

In this case, Delhi High Court has referred the Supreme Court in. *The Secretary, Thirumurugan Co-operative Agriculture Credit Society* v. *M. Lalitha*[2] in which Supreme Court had given broad interpretation to section 3 of the Consumer Protection Act, 1986 (COPRA), in the light of the clear expression used by the parliament, which states that the COPRA shall be in addition to and not in derogation of the provision of any other law for the time being in force. Mere existence of an arbitration agreement, assuming there is one between the petitioner and respondent no.2, would not bar the maintainability of a consumer claim.

Further the high court set aside the impugned order. It was held that the petitioner's consumer claim is maintainable before the district forum. The district forum is, therefore, directed to entertain and consider the said claim on its merits.

On the basis of this judgment, Ministry of Communications and IT Department of Telecommunications, Government of India, issued a notification[3] and clarified that dispute against private telecom companies are maintainable before consumer forum/commission under COPRA. On the basis of this notification, Ministry of Consumer Affairs, Food & Public Distribution Department of Consumer Affairs issued notification[4] to National Consumer Commission, state consumer commissions and district forums can entertain consumer disputes against private telecom companies.

III MEDICAL NEGLIGENCE

Deficiency in service

In Jai Prakash Mehta v. *Dr. B.N. Rai* [5] case the complainant, in the year 1998, sustained serious burn injuries on his right arm due to an electric shock while working on electrification of a railway line as a contract labourer. Respondent no. 2 thereafter took him to respondent no. 1/doctor who was an ENT specialist. The complainant was under the medical treatment of respondent no. 1/doctor for a period of two weeks and thereafter he was referred to Institute of Medical Sciences and S.S. Hospital, Banaras Hindu University, Varanasi, where he was informed about the gangrene in his right upper limb and therefore was advised for the amputation of the right arm to save his life. The complainant alleged that if he had been properly treated for his serious burn injuries and referred to an appropriate health facility by the respondent no. 1 on time, then gangrene and consequent loss of his right arm could have been avoided.

The issue before court was whether there was deficiency in service by the doctors of the hospitals. The National Commission holds a doctor guilty of medical negligence leading to amputation of the right arm of complainant, and imposed a

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2 (2004) 1 SCC 305.

3 *Available at*: www.dot.gov.in/sites/defaulty/files/Doc030414-015.pd/

4 *Available at*: No.J-24/11/2-14-CPU, dated 07.03.14.

5 [2013] NCDRC 1.

fine of Rs 2 lakhs along with the interest @ 6% *p.a* from the date of filing of complaint and litigation cost upon the doctor. The forum and Bihar State Consumer Disputes Redressal Commission dismissed the complaint on the grounds that there was no credible evidence to prove that there was any medical negligence on the part of respondent no. 1/doctor. In revision petition filed before NCDRC, the commission referred the Supreme Court judgments of *Jacob Mathew* v. *State of Punjab* [6] and *Indian Medical Association* v. *V.P. Shantha* [7] and held the doctor guilty of medical negligence and observed that the doctor being an ENT specialist did not prima facie possess the medical skills to treat a serious burn injury and therefore liable to pay compensation of Rs. 2 lakh along with the interest @ 6% *p.a* from the date of filing of complaint and litigation cost.

In Singhal Maternity and Medical Centre, Uttar Pradesh v. *Nishant Verma S/o Bijendra Singh Verma* [8] the complainant no. 2/ father of complainant no. 1, who had taken his pregnant wife/complainant no. 3 to opponent no. 1 for ante-natal care and delivery under opponent no. 2 and after tests, complainants no. 2 and 3 were informed that a normal delivery was expected. Complainant no. 3 faced extreme difficulty in conducting normal delivery and child was delivered unhealthy causing paralysis. That occurred because of the medical negligence and deficiency in service on the part of opponents at all stages of the medical treatment starting from the ante natal checks to neo natal care. Complainants confined their claim of compensation to Rs.1,00,00,000/- with interest @ 24% *p.a*. before the state commission. State commission partly allowed the complaint and awarded compensation of Rs. 17,00,000/-. The state commission held that there was a clear nexus between the failure to conduct the required ante natal tests and the unfortunate repercussions which occurred subsequently. Opponents had stated that a caesarean section was not considered necessary because none of the conditions (including adverse maternal, physiological and clinical conditions) were present to warrant the same. However, if all the tests, including the test for gestational diabetes, and keeping a record of the weight gain *etc*., had been done and thereafter the ultrasound findings correlated with the maternal, clinical and physiological conditions, it was possible that conducting a caesarean section would not have been so categorically ruled out by opporent no. 2. It was clear that so far as the ante natal care and checks were concerned, even though opporent 's no. 2 and 3 were well qualified doctors, they did not exercise the reasonable degree of care and skill that was required in the instant case both in terms of conducting the ante natal checks and the diagnosis thereof. These were basic and necessary tests, which even paramedical staffs have been trained to advice/conduct.

The issue before National Commission was whether state commission was justified in passing the impugned order. The National Commission observed that, it was clear that opponent no. 2 did not adopt the practice of clinical observation

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6 (2005) 6 SCC 1.

7 (1995) 6 SCC 651.

8 II (2014) CPJ 441(NC).

and diagnosis including diagnostic tests in the case that would have been adopted by a doctor, alone as a specialist, and, therefore, she was clearly guilty of medical negligence. Further the commission has found opponent's no.1 and 2 guilty of medical negligence on lesser counts than concluded by the state commission. Hence, the commission was not inclined to interfere with the order of the state commission, awarding compensation of Rs.17,00,000/- and confirmed the same appeals disposed of.

In Dr. Balram Prasad v. *Dr. Kunal Saha* [9] is a landmark decision of the Supreme Court, the appellant/claimant's wife (deceased) was admitted in respondent/hospital for treatment. Deceased died due to medical negligence by respondents. Appellant filed a petition claiming compensation before National Commission for Rs.77,07,45,000/- and later same was amended by claiming another sum of Rs.20,00,00,000/-. The National Commission held doctors/respondents negligent in treating the wife of claimant on account of which she died and awarded compensation. Hence, an instant appeal was filed, whether claim of claimant for enhancement of compensation was justified. The apex court held, decision of National Commission in confining grant of compensation to original claim of Rs.77.7 crores preferred by claimant under different heads and awarding meagre compensation under different heads in impugned judgment was wholly unsustainable. Thus, claimant was justified in claiming additional claim for determining just and reasonable compensation under different heads.

There are three main issues involved in this case *i.e.*,[10]

i) Whether National Commission was justified in adopting multiplier method to determine compensation and to award compensation in favour of claimant. It was held, court was sceptical about using a strait jacket multiplier method for determining quantum of compensation in medical negligence claims. Therefore, National Commission requires determining just, fair and reasonable compensation on basis of income that was being earned by deceased at the time of her death and other related claims on account of death of wife of claimant.

ii) Whether claimant was entitled to pecuniary damages under heads of loss of employment, loss of his property and his travelling expenses from U.S.A to India to conduct proceedings in his claim petition. It was held, claim of Rs.1,12,50,000/- made by claimant under head of loss of income for missed work, could not be allowed since, same had no direct nexus with negligence of doctors and Hospital. However, claimant did not produce any record of plane fare to prove his travel expenditure from U.S.A to India to attend proceedings. Therefore, compensation of Rs.10/- lakhs under

9 2013 (4) CPJ (SC) 1.

10 *Id*. at 390.

head of 'travel expenses' over past 12 years. Thus, total amount of Rs. 11,50,000/- was granted to claimant under head of 'cost of litigation'.

iii) Whether claimant was entitled to interest on compensation that would be awarded. It was held, National Commission did not grant any interest for long period of 15 years as case was pending before National Commission. Therefore, National Commission had committed error in not awarding interest on compensation. Appeals disposed of.

Whether compensation awarded in impugned judgment and apportionment of compensation amount fastened on doctors and hospital requires interference. Also whether claimant was liable for contributory negligence and deduction of compensation. The Supreme Court held that claimant though over-anxious, did all that what was necessary as a part of treatment. National Commission has erred in reading the statement of Supreme Court in isolation that, claimant's action might have played some role for the purpose of damage.

The Supreme Court also held that National Commission erred in holding that claimant had contributed to negligence of doctors and hospital which resulted in death of his wife. Hence the apex court set aside finding of National Commission and re-emphasize that, claimant did not contribute to negligence of doctors /hospital which has resulted in death of his wife. Therefore, a total amount of Rs.6,08,00,550/- was awarded as compensation to the claimant under different heads with 6% interest *p.a.*

In Srimannarayana v. *Dasari Santakumari*,[11] the appellant and respondent no. 2, who are doctors, conducted an operation on the left leg of the husband of the complainant. Sometime after the operation, the patient died on 13.07.2008. Respondent no. 1, wife of the deceased, filed a complaint against the appellant and respondent no. 2, before the district consumer forum. The complaint was duly registered and notice was issued to the appellant and respondent no. 2. Against the issuance of the notice, the appellant filed a revision petition before the State Consumer Disputes Redressal Commission, Hyderabad on the ground that the complaint could not have been registered by the district forum without seeking an opinion of an expert in terms of the decision of the Supreme Court reported in *Martin F. D'Souza* v. *Mohd. Ishfaq*.[12] In this revision petition, respondent no. 2 filed an interlocutory application praying for stay of proceedings before the district consumer forum. The state commission rejected the revision petition by granting liberty to the appellant to file the necessary application before the district forum to refer the matter to an expert. He did not file any application before the district forum, but challenged the aforesaid order of the state commission by filing revision petition in 2010 before the National Commission. The revision petition has been dismissed by the National Commission by relying upon the subsequent judgment

11 (2013) 9 SCC 496.

12 (2009) 3 SCC 1.

of this court in *V. Kishan Rao* v. *Nikhil Super Speciality Hospital*[12] wherein this court has declared that the judgment rendered in *Martin F. D'Souza* case is *per incuriam*. Hence the present special leave petitions challenging the aforesaid order of the National Commission dated 15.07.2010.

The issue involved is whether there was deficiency of service by the doctors of the hospitals. The Supreme Court conceptualize that the jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of *mens rea* must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher *i.e.*, gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

Apex court further clears that to prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent. *Res ipsa loquitur*[13] is only a rule of evidence and operates in the domain of civil law especially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. *Res ipsa loquitur* has, if at all, a limited application in trial on a charge of criminal negligence. Generally speaking, it is the amount of damages incurred which is determinative of the extent of liability in tort; but in criminal law it is not the amount of damages but the amount and degree of negligence that is determinative of liability. To fasten liability in criminal law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in civil law. The essential ingredient of *mens rea* cannot be excluded from consideration when the charge in a criminal court consists of criminal negligence.

A medical practitioner faced with an emergency ordinarily tries his best to redeem the patient out of his suffering. He does not gain anything by acting with negligence or by omitting to do an act. Obviously, therefore, it will be for the complainant to clearly make out a case of negligence before a medical practitioner is charged with or proceeded against criminally. A surgeon with shaky hands under fear of legal action cannot perform a successful operation and a quivering physician cannot administer the end-dose of medicine to his patient. If the hands be trembling

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12 (2010) 5 SCC 513.

13 "the thing speaks for itself," a doctrine of law that one is presumed to be negligent if he/she/it had exclusive control of whatever caused the injury even though there is no specific evidence of an act of negligence, and without negligence the accident would not have happened. *Available at:http://dictionary.law.com/Default. aspx? selected= 1823*. (last visited on July 7, 2014).

with the dangling fear of facing a criminal prosecution in the event of failure for whatever reason. Whether attributable to himself or not, neither can a surgeon successfully wield his life-saving scalpel to perform an essential surgery, nor can a physician successfully administer the life-saving dose of medicine. In view of the above, apex court was of the opinion that the conclusions recorded by the National Commission in the impugned order do not call for any interference. The civil appeals are dismissed.

IV ELECTRICITY

In U.P. Power Corporation Ltd. v. *Anis Ahmad*,[14] Anis Ahmed filed a complaint before the District Consumer Protection Forum, Moradabad and claimed that he is a consumer of electricity having connection no.104427 with sanctioned load of 6.5 horse power. He alleged that the authorities of the U.P. Power Corporation Ltd. prepared a fictitious checking report dated 17.07.03 and falsely implicated the complainant that he had used more than sanctioned load of 10 H.P. in his factory and on the basis of fictitious report a proceeding was initiated on 15.04.04 followed by a bill dated 1506.04 demanding a sum of Rs.2,11,451/-. He prayed to direct the appellant to correct the bill, withdraw the demand notice and to pay the costs.

The appellant, U.P. State Corporation Ltd. filed the objections regarding maintainability of the above said petition. It was alleged that the complainant had industrial connection which was disconnected earlier due to the arrears of electricity dues. On a checking held on 17.03.04 by sub-divisional officer-II and junior engineer, it was found that the low tension line of three phases passing from the other side of the premises of the complainant was tapped with the cables attached with the meter though they were disconnected earlier and the complainant was using full 10 horse power load by committing theft of electricity by bye-passing the meter.

Following were the issues before court are as follows:[15]

(a) Whether complaints filed by the respondents before the Consumer Forum constituted under the Consumer Protection Act, 1986 were maintainable?

(b) Whether the Consumer Forum has jurisdiction to entertain a complaint filed by a consumer or any person against the assessment made u/s. 126 of the Electricity Act, 2003 or action taken u/ss. 135 to 140 of the Electricity Act, 2003.

The Supreme Court observed as follows:[16]

(i) In case of inconsistency between the Electricity Act, 2003 and the Consumer Protection Act, 1986, the provisions of

14 AIR 2013 SC 2766.

15 *Id*. at 2766.

16 *Id*. at 2782.

Consumer Protection Act will prevail, but ipso facto it will not vest the Consumer Forum with the power to redress any dispute with regard to the matters which do not come within the meaning of "service" as defined u/s. 2(1)(o) or "complaint" as defined u/s. 2(1)(c) of the Consumer Protection Act, 1986.

(ii) A "complaint" against the assessment made by assessing officer u/s. 126 or against the offences committed u/ss. 135 to 140 of the Electricity Act, 2003 is not maintainable before a Consumer Forum.

(iii) The Electricity Act, 2003 and the Consumer Protection Act, 1986 runs parallel for giving redressal to any person, who falls within the meaning of "consumer" u/s. 2(1)(d) of the Consumer Protection Act, 1986 or the Central Government or the State Government or association of consumers but it is limited to the dispute relating to "unfair trade practice" or a "restrictive trade practice adopted by the service provider"; or "if the consumer suffers from deficiency in service"; or "hazardous service"; or "the service provider has charged a price in excess of the price fixed by or under any law".

For the reasons as mentioned above, the order was set aside by the orders passed by the National Commission. They are accordingly set aside. All the appeals filed by the service provider-licensee are allowed, however, no order as to costs. Appeals allowed

V GRATUITY

In Dr. Jagmittar Sain Bhagat v. *Director Health Services, Haryana.*[17] The appellant joined health department, of the respondent state, as medical officer on 5.6.1953 and took voluntary retirement on 28.10.1985. During the period of service, he stood transferred to another district but he retained the government accommodation. Appellant claimed that he had not been paid all his retired benefits, and penal rent for the said period had also been deducted from his dues of retired benefits without giving any show cause notice to him. Appellant made various representations, however, he was not granted any relief by the state authorities.

The appellant approached the appellate authority, *i.e.*, the state commission. The state commission dismissed the appeal *vide* order dated 31.1.2007 observing that though the complaint was not maintainable as the district forum did not have jurisdiction to entertain the complaint of the appellant as he was not a "consumer" and the dispute between the parties could not be redressed by the said forum, but in view of the fact that the opposite party (state) neither raised the issue of

17 AIR 2013 SC 3060.

jurisdiction before the district forum nor preferred any appeal, order of the district forum on the jurisdictional issue attained finality. However, there was no merit in the appeal.

The issue involved here was whether government servants does not fall under the definition of a "consumer" under section 2(1)(d)(ii) and cannot raise any dispute regarding his service conditions or for payment of gratuity or general provident fund(GPF) or any of his retired benefits before any forum under the Act.

The Supreme Court observed on the preliminary issue of the jurisdiction submitting that the service matter of a government servant cannot be dealt with by any of the forum in any hierarchy under the Act. Therefore, the matter should not be considered on merit at all. More so, all the outstanding dues of the appellant had been paid, and none of the issues survive any more. Appellant has not been paid all his retired benefits as some of his outstanding dues have been withheld by the authorities, thus, he is entitled to recover the same with interest; whether the forum was competent to entertain the complaint ought to have been decided by the district forum first as a preliminary issue. It is difficult for a litigant to go back to any other appropriate forum after such a long time. In the instant case, the appellant approached the district forum in 1995, the matter could not be finalised till date, and at such a belated stage, the appellant if asked to approach the other forum, a great hardship would be caused to him.

Further the Supreme Court observed that, it is evident that by no stretch of imagination a government servant can raise any dispute regarding his service conditions or for payment of gratuity or GPF or any of his retired benefits before any of the forum under the Act. The government servant does not fall under the definition of a "consumer" as defined under section 2(1)(d)(ii) of the Act. Such government servant is entitled to claim his retired benefits strictly in accordance with his service conditions and regulations or statutory rules framed for that purpose. The appropriate forum, for redressal of any his grievance, may be the state administrative tribunal, if any, or civil court but certainly not a forum under the Act. In view of the above, it was held that the government servant cannot approach any of the forums under the Act for any of the retired benefits. The appellant had been entitled to have already been paid and the penal rent has also been dispensed with and the state is not going to charge any penal rent. If the state has already charged the penal rent, it will be refunded to the appellant within a period of two months. In view thereof, the order was passed.

VI CONCLUSION

The year 2013, the Supreme Court and National Commission have clarified many gray areas of the Consumer Protection Act, 1986. These clarifications will help the state commissions and district forums in deciding the pending cases quickly and effectively.

The Ministry of Consumer Affairs, Government of India has considered some of the suggestions given in these judgments and proposed amendment to the Consumer Protection Act, 1986 through Consumer Protection Amendment Bill, 2011. This Bill is still pending before the Parliament. The standing committee has

given its report on this Bill and Ministry of Consumer Affairs; Government of India has constituted a Expert Committee[18] to review standing committee report. Also Ministry of Consumer Affairs, Government of India has constituted Inter-Ministerial Committee[19] on issue of misleading advertisements. After implementing these amendment COPRA will become better than before.

18 Ministry of Consumer Affairs, Government of India letter No.J-9/1/2014-CPU, dated 11th April 2014.

19 Ministry of Consumer Affairs, Government of India letter No.J/24/7/2014-CPU, dated 11th March 2014.