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CONSUMER PROTECTION LAW

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I INTRODUCTION

IN THE year 2015, the cases that came up before the Supreme Court and National Consumer Dispute Redressal Commission (NCDRC) centered around the procedural issues pertaining powers of consumer forum, jurisdiction, unfair trade practice, deficiency in service in insurance, banking, education, real estate and medical profession *etc*. Although the Consumer Protection Act, 1986 (COPRA) is a milestone in the history of socio-economic legislation in India it has its own shortcomings, with advancement in technology, resources and knowledge, new lapses in services and deficiencies in products have emerged. Consequently the adaptive approach of the judiciary has been very helpful in developing new principles in the area of challenging consumer legislation.

II UNFAIR TRADE PRACTICE

Multiplex: Drinking water

In *Rupasi Multiplex* v. *Mautusi Chaudhuri*,[1] the respondents/complainants purchased tickets on November 4, 2014 for watching a movie in a cinema hall owned by the petitioner, paying a sum of Rs.330/- for the purpose. They were barred from taking a water bottle inside Rupasi multiplex, and were compelled to buy highly priced mineral water bottles inside. The said multiplex had not made any arrangements for free drinking water inside the hall, and was instead providing mineral water which was priced much more than its prevailing market price. Alleging deficiency in service, respondents approached district consumer forum. However, their complaint was dismissed. In appeal, state commission ruled in favour of the respondents. The landmark order of commission came upon a revision petition filed by the multiplex challenging the order of Tripura

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1 IV (2015) CPJ 48 (NC); 2015 SCC online NCDRC 2331.

State consumer commission *vide* its order directed the multiplex to pay Rs.10,000/- to the respondents as compensation for the deficiency in the service, along with the cost of litigation quantified at Rs.1000/-. The multiplex owner was further directed to deposit a sum of Rs.5,000/- as cost of appeal in the legal-aid-account of the state commission.

The National Commission after perusal of relevant documents and hearing from both the parties on the issue held that the multiplex had adopted an unfair trade practice under section 2 (1) (r) of the COPRA by restricting the cinema goers not to carry drinking water inside the cinema hall, where free potable drinking water is not provided and they are made to purchase it at a price which is substantially higher than the prevailing market price. Water is a basic necessity for human beings and therefore free portable and pure drinking water must be provided inside the cinema halls and directed the multiplex owner to pay compensation of Rs. 11,000/- to the respondents for refusing to allow them to carry a water bottle inside the hall.

III DEFECTIVE PRODUCT

In *General Motors (India) Private Limited* v. *Ashok Ramnik Lal Tolat*,[2] the respondent complainant purchased the motor vehicle Chevrolet Forester AWD Model on May 1, 2004 for Rs. 14 lakhs and also its accessories worth Rs. 1.91 lakhs. The purchase was made on the basis of an advertisement given by the appellant wherein the motor vehicle was shown as an SUV suitable for on road off-road or no road driving. The respondent found that the vehicle was not SUV but mere passenger car, not fit for off-road no road and dirt-road driving as represented and had defects. Terming the action of the appellant as amounting to unfair trade practice, the respondent filed a consumer complaint seeking refund of the price paid with interest and also compensation of Rs. 50,000/- and the costs. The district forum directed the respondent to refund the price with interest @9% p.a. from the date of complaint to the date of payments, apart from compensation of Rs. 5,000/- for mental agony and Rs. 2000/- as costs of litigation. The state commission modified the order of the district forum and the respondent was held entitled to Rs. 50,000/- as compensation which included costs of ligation. The respondent was required to pay Rs. 5,000/- towards costs for undeserving claim. The appellant was directed not to describe the vehicle in question as SUV in any form of advertisement, website, literature etc and to make the correction that it was passenger car as mentioned in the owner's manual. The appellant had complied with the direction by issuing a disclaimer. The National Commission affirmed the findings of the state commission that the appellant had committed unfair trade practice. The National Commission considering that the vehicle was used by the respondent for a period of about one year and it had run approximately 14,000 km directed the appellant to refund a sum or Rs. 12.5 lakhs to the respondent subject to the return of the vehicle to the appellant without the accessories for which the respondent

2 (2015) 1 SCC 429.

had paid the money. A further sum of Rs. 50,000/- was awarded in favour of the respondent to meet his cost of litigation before the consumer fora. The National Commission further held that a period of four years has passed and other consumers had not approached the National Commission. The appellant should pay punitive damages of Rs. 25 lakhs and out of the said amount, a sum of Rs.5 lakhs was directed to be paid to the respondent while the rest was directed to be deposited in the consumer welfare fund of the Central Government. The issues are whether there was unfair trade practice on the General Motors and whether the order passed by the National Commission is valid or not?

The Supreme Court held that the there is not any averment in the complaint about the suffering of punitive damages of the other consumers nor was the appellant aware that any such claim is to be met by it. Punitive damages are awarded against a conscious wrong doing unrelated to the actual loss suffered such a claim has to be specifically pleaded. The respondent complainant was satisfied with the order of the district forum and did not approach the state commission. He only approached the National Commission after the state commission set aside the relief granted by the district forum. The National Commission in exercise of revisional jurisdiction was only concerned about the directions or otherwise of the order of the state commission setting aside the relief given by the district forum and to pass such order as the state commission ought to be passed. The National Commission has gone much beyond the jurisdiction in awarding relief, which was neither sought in the complaint nor before the state commission. The view that to extent the order of the National Commission cannot be sustained. The said order of the National Commission and the appellant having no notice of such a claim the said order is contrary to the principles of fair procedure and natural justice. It also makes clear that this order will not stand in the way of any aggrieved party raising a claim before an appropriate forum in accordance with law.

In *Hindustan Motors Limited* v. *Ashok Narayan Pawar*,[3] the opposite parties Ashok Narayan Pawar, Executive Engineer, Irrigation Department, Dhule, Maharashtra, purchased four Ambassador cars from the opposite parties Hindustan Motors Ltd. Calcutta opposite party 1 (hereinafter OP) Hindustan Motors Ltd., New Delhi OP-2 through the Kailas Agencies (P) Ltd. 3, on June 12, 1998. In one of the cars, bearing No. MH-18-E/400, Ashok Narayan Pawarthe complainant was going with other officers to visit percolation tank of Abhanpur taluqa, Shirpur, district, Dhule. Suddenly, the car engine caught fire and the of all the officers, including the complainant were saved. Information was given to the fire brigade. However, before the fire brigade reached there, the car was wholly burnt. The police were informed. The police prepared the panchnama on the same day. The vehicle was totally burnt and reduced to ashes. The OPs were informed. The OPs were asked to replace the car which was burnt within four months from the date of purchase, due to manufacturing defect. The issue was whether there was a manufacturing defect in the car.

3 I (2015) CPJ 457 (NC).

The National Commission held that the opposite parties are directed to provide a new car to the complainant. In case they have stopped manufacturing this car, in that eventuality, they will pay the current price of the car, along with 9% interest from the date of incident, till its realisation. If they choose to give him new car, they are also liable to pay compensation in the shape of interest @ 9% p.a., from the date of incident, till its realisation, to the complainant.

IV MEDICAL NEGLIGENCE

In *Amit Sarkar* v. *PGIMER*,[4] the only daughter of complainant Anupama, aged about 16 years, studying in class XI was travelling in a Chandigarh transport undertaking (CTU) bus on July 7, 2012 from her school to her residence. The bus was being driven rashly and negligently by the bus driver. It is stated, that in the absence of the conductor, she fell down from the bus and her left leg was crushed under the rear tyre of the same. She was taken to Post Graduate Institute of Medical Education and Research, Chandigarh (for short, 'PGI') where she died on July 24, 2012 due to medical negligence. It was stated that injured Anupama was taken to Advance Trauma Centre of PGI (for short, 'ATC') by the police, where her left leg was bandaged by Jujhar, junior resident doctor (OP no.3). It is alleged that bandaging was done in a most incompetent manner, as blood kept on oozing out. It is further stated, that complainants were told that injured girl required an emergency operation which was being arranged by the doctors concerned, whereas X-rays and other tests were carried out. It is alleged, that the required operation was never arranged and injured continued to suffer in excruciating pain, both mentally and physically. The condition of injured started deteriorating day by day but no medical attention was given to her by PGI doctors. Even the bandage was not changed nor the wounds washed for days together, by ATC doctors. The attitude of doctors on duty was most insensitive and opposed to the medical norms. Ultimately, it resulted in development of gangrene and septicemia and OP no.1- hospital amputated the left lower limb of Anupama, in a projected attempt to prevent the gangrene from spreading to other parts of the body. The doctors of OP no.1 failed to check or control the spread of gangrene, leading finally to the untimely death of Anupama on July 24, 2012 at OP 1-hospital. It is further stated, that OP no1 hospital itself conducted the post-mortem *vide* PMR No. 16969 on July 24, 2012. The perusal of PMR clearly showed, that Anupama was duly admitted to OP 1 hospital on July 17, 2012. Thus, there was medical negligence on the part of OP 1hospital and its concerned doctors. It is further stated that OP 1 hospital was taking the plea of overcrowding in its operation theater. However, the precious life could have been saved even without operation, had adequate medical care and treatment been provided. In case, OP 1hospital was unable to provide adequate and proper medical care to the patient, it should have referred her to some other hospital, which also it failed to do. It is further alleged, that OP 1hospital was deliberately keeping the treatment history and medical papers of the deceased under wraps, so that the same could be manipulated

4 III (2015) CPJ 357 (NC).

to their advantage and help them escape the charge of medical negligence and apathy. The issue was whether there was medical negligence on the part of the opposite party?

The National Commission held that the negligence on the part of OP 1hospital has been clearly established. Therefore, appeal no.333 of 2013, is liable to be dismissed. Now, coming to (first appeal no.320 of 2013) for enhancement, the state commission has awarded a sum of Rs. 7,00,000/- to the complainants. In addition, CTU has already paid Rs. 3,00,000/- to the complainants on humanitarian ground. The complainants have lost their only child who was aged about 16 years old. It is only the parents of such child can feel the trauma under which they have to go through past several years and for future also they have to bear with this irreparable loss. No amount of money can compensate their sufferings and agony, since complainants have high hope from their brilliant daughter. So, keeping in view the principles of law for awarding compensation in medical negligence cases, as laid down by Supreme Court in *Kunal Saha* v. AMRI[5] "we deem it appropriate to award a further sum of Rs.10,00,000 to the complainants, since they have to bear with all the trauma, mental agony, pain and sufferings, throughout their remaining life.'' Accordingly, (first appeal no.320 of 2013) filed by the complainants is partly allowed. The appellants in this appeal, shall be entitled to a further sum of Rs.10,00,000/- in addition to sum of Rs.7,00,000/- as already awarded by the state commission besides Rs.3,00,000/- already paid by the CTU. OP no.1hospital is directed to deposit the entire awarded amount by way of demand draft in the name of complainants with this commission, within eight weeks. OP no1hospital shall make adjustment for the amount already paid to the complainants or deposited with consumer fora, if any. In case, OP 1hospital fails to comply with the aforesaid directions, within the specified period, then it shall be liable to pay interest @ 9% p.a. till realisation.

In *Bibekananda Panigrahi* v. *Prime Hospitals Ltd.*,[6] the commission was hearing an appeal filed by a person, whose father had appendicitis, and after the operation was performed by the respondent doctor, the patient developed fecal fistula, subsequently suffered septicemia and thereafter passed away. Alleging medical negligence, appellant approached state consumer commission and argued that his father had appendicitis, which could be treated by medicines. Also the operation was not performed properly by the respondent doctor, due to which the patient developed fecal fistula and died. The issue was whether there was a deficiency in services by the opposite parties (doctors).

The National Commission after perusing the medical history of the patient and hearing both the parties, NCDRC observed that patient was presented with acute appendicitis and high fever. The patient's blood sugar at the time of admission was also very high. As the patient was diabetic; it was the additional cause for poor healing of wound. The commission also went through medical literature and several books on

5 III (2006) CPJ 142 NC.

6 IV (2015)CPJ 322 (NC); 2015 SCC online NCDRC 1404.

surgery and noted that when the appendix is perforated or gangrenous with periappendicitis, the frequency of septic complications reaches as much as 30% which includes wound infection, intra-abdominal abscess, fistula formation, and localised or diffused peritonitis. The OP (doctor) had taken utmost care and operated upon him as an emergency. The fecal fistula developed due to patient's health condition. The patient was highly diabetic with high blood urea and creatinine levels. Further, OP (doctor) had taken proper care of the fistula by providing regular dressing and antibiotics to the patient. The death occurred due to multiple factors. Thus there was not any negligence either during the appendicectomy surgery or during treatment of fecal fistula. Therefore the appeal was dismissed.

In *V. Krishnakumar* v. *State of Tamil Nadu*,[7] the appellant's wife gave premature birth to a girl in the government hospital. The treatment was administered at appellant's home. The only advice given to the appellant by the doctors was to keep the daughter isolated and confined to the sterile room to protect her from infection. The doctors didn't suggested the check-up for Retinopathy of Prematurity (ROP) which was their duty which was discovered after over 4 months of birth by a pediatrician. Subsequent examinations determined ROP was at its terminal stage and the appellant's daughter was blind. The appellant incurred enormous expenses for surgery in the United States (US) but to no avail. The issue was whether respondents are liable for the medical negligence as it was the duty of doctors to suggest the check-up for ROP?

The National Commission held that, the aggrieved person should get at least that sum of money, which would put him in the same position if he had not sustained the wrong. It must necessarily result in compensating the aggrieved person for the financial loss suffered due to the event, the pain and suffering undergone and the liability that he/she would have to incur due to the disability caused by the event.

In Alka Srivastava v. *Base Hospital, Delhi Cantonment*,[8] the complainant, Alka Srivastava, the wife of armed forces personnel, who delivered a girl suffering from deformities which need supervision throughout the life, due to the negligence and deficient services of the doctors of Army Hospital and Base Hospital at Delhi Cantonment. During her pregnancy, the complainant took treatment and attended to regular check-ups and ultrasound study (USG) at Base Hospital and Army Hospital. Even after transvaginal ultrasound, performed at Army Hospital it was informed to the complainant that the foetus was well developed. Later, when she suffered pain, she was rushed to Singhal Nursing Home, where doctor performed ultrasound and found fetal anomalies like Spinal Bifida, Meningomyelocele, and hydrocephalus. This was also confirmed at Base Hospital. Later, complainant delivered a female child with lack of spontaneous movements of lower limbs, lack of anal reflex and open neural tube defect. The attending doctor opined that the child may need a number of surgeries, throughout the life and there are no chances of proper cure. Hence, alleging deficiency in service and for the negligence caused by the doctors at Base Hospital

7 AIR 2015 SC 2836.

8 IV (2015) CPJ 592 (NC); 2015 SCC online NCDRC 17.

and Army Hospital, Complainant approached district forum which allowed the complaint and directed Base Hospital and Army Hospital to pay Rs.5 lakh as compensation to the complainant along with Rs.5,000/- as costs. The issue was whether there was a medical negligence on the part of the hospitals?

The National Commission held that while rendering relief to the complainant, directed Base Hospital and Army Hospital to abide by their undertaking that the child, who was the daughter of a serving armed forces personnel, was entitled for free medical care for her entire life along with the required social and infrastructure support, and in addition, to pay Rs. 5 lakh compensation and Rs. 5,000/- as litigation charges, to the complainant.

In *Parveen Sharma* v. *Anne Heart & Medical Centre*,[9] the complainant was declared successful in written examination for the post of sub inspector. He also qualified physical test and was to undergo echo cardiography test in OP3 that is hospital and OP3 advised him to get test done from PGI but department of PGI had closed, OP3 directed- petitioner to get tests done from OP1 and 2/respondent no. 1 and 2. The test was conducted and as per report, there was 3 mm patent foramen ovale-hole in the heart. On the basis of this report, he was declared medically unfit. Again complainant approached PGIMER and got echo cardiography test done and as per report there was no hole in the heart. Complainant again approached the selection committee but with no result. Complainant filed writ before High Court of Punjab and Haryana and the high court directed that the complainant be examined by a review of medical board. Review medical board examined the complainant and found him medically fit and he again appeared for interview but as there were only three posts in general category, he was not selected. Alleging deficiency on the part of opposite party, complainant filed complaint before district forum. OP no.1 and 2 resisted complaint and submitted that test report given by them was perfectly correct. It was further alleged that complainant suppressed test report of TTE, test advised by the PGI and also did not place report of the review medical board and prayed for dismissal of complaint. OP3 resisted complaint and submitted that as services were provided free of charge, complainant is not a 'consumer'. It was, further, submitted that neither complainant was examined by OP3 nor referred by OP3 to OP1 and 2 but after obtaining report by the complainant from OP1, he visited OP3 and on his request the Reader of Department of Medicine, just endorsed the same report but never declared complainant unfit and prayed for dismissal of complaint. District forum after hearing both the parties allowed complainant and directed OP1 and 2 to pay Rs. 2,00,000 and OP3 to pay Rs. 1 lakh to the complainant and further directed to pay Rs. 2,500 as litigation cost. All the parties preferred appeals against order of district forum before the state commission and state commission *vide* impugned order allowed appeals of opposite parties but dismissed appeal of complainant and set aside order of the district forum and dismissed complaint against which this revision petition has been filed. The issue was whether the

9 II (2015) CPJ 50 (NC).

complainant was a consumer under the definition of COPRA and whether there was deficiency in service on the part of the opposite party.

The National Commission held that the complainant was not a consumer under the definition of the consumer in COPRA. The counsel for the OP3 argued that the services were provided free of cost hence he does not fall within the purview of 'consumer'. Further the complainant could not provide proof for the charges if any he had paid. As the complainant could not provide the report of review medical board to the commission hence it cannot be inferred that any wrong report was given by OP 1and 2. Hence the commission upheld the decision of state commission.

In *Handa Nursing Home* v. *Ram Kali*,[10] the complainant Ramkali felt some pain in the right side of her abdomen and was taken to Madan Jain who referred her to Saroj Singla for ultrasound. The ultrasound report was shown to Madan Jain and Jain referred the case to Handa Nursing Home, OP/petitioner. On seeing the ultrasound report, A.K. Handa diagnosed it as right ureterie stone and therefore, advised operation through laser technology. Consequently, she was operated upon and was discharged from the nursing home, though complainant was suffering from pain but Handa informed the family members of the complainant - Ramkali that the operation had been successful, and the stone had been broken and DJ Stent had been inserted which was to be removed after one week and the complainant could be taken to home. Complainant - Ramkali paid Rs. 14,000 to Handa Nursing Home. After one week the stent was removed yet the complainant/Ramkali kept complaining pain and temperature. She was readmitted to nursing home *i.e.*, OP/petitioner. On the advice of Handa, once again the stent was inserted in the right side of the abdomen and complainant - Ramkali was discharged. The stent was removed after 10 days, medicines were changed but despite this, the condition of the complainant/Ramkali did not improve and the pain and temperature continued. The condition of the complainant further deteriorated and was admitted to AIIMS. She was put to dialysis and hemo-dialysis couple of times. The complainant/respondent was completely bedridden and unable to support herself on her own. Alleging deficiency on the part of opposite parties/petitioners, complainant filed complaint before district forum. OP/petitioners resisted complaint and denied the allegations and submitted that the treatment given was nowhere stated to be wrong by the doctors of the AIIMS; therefore, there was no negligence in administrating the treatment to the complainant by the doctors. District forum after hearing both the parties allowed complaint and directed opposite party to pay Rs.7 lakh as compensation including cost of litigation to the complainant. The issue was whether the treatment given by the petitioner was a standard practice or not?

The National Commission held that according to a report of the medical board constituted by the Medical Superintendent AIIMS, which consists of six members the

10 I (2015) CPJ 700(NC).

treatment given was as per standard practice. The expert committee indicated that the tests would have been advisable prior to the operative intervention but nowhere mentioned that without these tests petitioner committed deficiency in giving treatment to Ramkali. Consequently the revision petition filed by the petitioner was allowed and order passed by state commission was set aside.

V INSURANCE SECTOR

In *Madhumita Bose* v. *The Manager Retail*,[11] the complaint mother Sucheta Bose had obtained an accident protection plan-HC policy form the opposite party/insurance company with the coverage upto Rs. 25.00 lakhs for the period from November 4, 2011 to January 3, 2012 as per the allegations in the complaint Sucheta Bose met with an accident on May 5, 2011and was admitted in medical college and hospital with injury at the back of her head first information report (FIR) dated May 5, 2011 was lodged. She was shifted from the medical college and hospital to saviour clinic and then to SVS Marwari Hospital for better treatment opposite parties were informed of the death of the insured. The necessary documents inspite of several e-mails between the complainant and the advocates notice dated April 3, 2012 urging upon the opposite party to settle the intimated that the claim did not fall within the policy coverage because the death was not as a result of accidental injuries. By that time the Claims settlement Commissioner and Director, Public Vehicles Department, Kolkota had passed an order for payment of a sum of Rs. 25,000/- for the accidental death of Sucheta Bose. The complainant also approached the insurance ombudsman who vide his letter dated June 11, 2012 showed his inability to admit the complaint because the claim of Rs. 25 lakhs was beyond the financial limit of the insurance ombudsman. Ultimately the complainant knocked the door of the consumer forum by filing a consumer complaint before the state commission praying for direction to the opposite parties to make payment of Rs. 25 lakhs along with interest @18% p.a. besides compensation of Rs. 10.00 lakhs for harassment and mental agony and the litigation cost of Rs. 50,000/-**.** The issue was whether the accidental injury was covered under the policy.

The National Commission held that Rs. 25 lakhs has been provided on account of accidental death as also on account of permanent disablement. In the present case the claim of the complainant was for accidental death. Before the claim could be admitted by the insurance company it was incumbent on the apart of the complainant to provide proof to establish that the death was accidental. As per the allegation, which has not been disputed, the insured person fell from the bus, which obviously would constitute an accident but as rightly held by the state commission, it could not be established that the cause of death of the insured was the injury caused by the accident. This aspect is required to be established by clear evident and the pleas taken by the appellant to be effect that settlement commissioner of the state government had

11 I (2015) CPJ 647 (NC).

sanctioned payment of Rs. 25,000/- on account of death of the insured by the accident cannot provide necessary proof to establish the fact that the death of the insured person could actual be attributed to the accident and the injury caused in that accident such there was a gap of 11 days between the accident and the death these circumstance we do not find any basis on dismiss the appeal and uphold the order passed by the state commission but with no order of costs.

In *Central Bank of India* v. *Jagbir Singh*,[12] the respondent purchased a tractor after getting loan sanctioned from the appellant bank. In terms of conditions of loan the respondent was making deposits of the loan installments of loan to the bank. The vehicle was initially insured as required under Motor Vehicles Act, 1988, but no premium of insurance was paid by the respondent for the period after May 25, 2005. On September 24 2007 an accident occurred between the above vehicle and motorcycle in which Pankaj died due to rash and negligent driving on the part of Diwan Singh, driver of the tractor owned by respondent. The parents of the deceased filed claim petition before Motor Accident Claims Tribunal-II, Dwarka Courts, New Delhi, which was allowed by said tribunal, *vide* its order on November 17, 2012 awarding compensation to the tune of Rs. 4,01,460/- with 7.5% interest per annum, against driver and owner of the vehicle. It has not been disputed between the parties that on the date of accident the vehicle of the appellant were not insured with any of the insurance companies, as required under section 146 of the Motor Vehicles Act, 1988. The issue was whether creditor bank should be made liable to pay compensation?

The Supreme Court held that there is a common thread that the person in possession of the vehicle under the hypothecation agreement has been treated as the owner. Needless to emphasise, if the vehicle is insured, the insurer is bound to indemnify unless there is violation of the terms of the policy under which the insurer can seek exoneration. The bank was not liable to pay the costs of insurance because the vehicle was in control and possession of another person and not the registered person and the bank (appellant) was the insurer of registered owner.

In *Chandan Singh* v. *National Insurance Company Ltd.*,[13] the policy was issued by the respondent-Insurance Company and the same was subsisting on the date of the accident occurred and the insured vehicle was burnt and the surveyor of the insurance company, who conducted the survey, submitted the report on this aspect. The issue was whether the appellant is entitled to the amount resulting from insurance of vehicle?

The National Commission has failed to examine the sufficient and good cause shown in the application for condonation of delay, therefore, the court is of the view that declining to condone the delay is not correct while exercising the discretionary powers keeping in view of the catena of decisions of this court. Therefore, the court is of the view that the revision petition is required to be examined on merits by the National Commission keeping in view the finding and material evidence on record in justification of the claim made by the appellant herein. With the above-said

12 AIR 2015 SC 2070.

13 2015 (1) RCR (Civil) 920.

observations, the impugned order is set aside and the matter is remanded to the National Commission with a direction to re-examine the matter on merits and dispose of the same within three months from the date of receipt/production of a copy of this order.

In *Amira Foods (India) Limited* v. *National Insurance Company Ltd.*,[14] the complainant no.1 is engaged in export business. The company procures and exports rice and other food grains to the foreign buyers. The other complainant (complainant no.2) is based in Ukraine is also engaged in export and import business. It placed an order for import of rice from India on complainant no.1. The complainant no.1 arranged the cargo and insured it with National Insurance Company here the OP. The policy provided coverage against all risks including the risk of pilferage, theft, non-delivery, shortage *etc*. The complainant no.1 exported a consignment of rice to the complainant no.2. In the middle of the journey the ship with the cargo got some mechanical failure and had to be salvaged back to the land. When the complainants approached the insurance company for the insured value, the insurance company refused to give the insured value. The issues are the complaint filed for seeking the insured value of goods shipped but not delivered at the destination along with the interest and also remunerations for metal agony and harassment caused to the complainants; Whether the complainants were 'consumers' under the definition of Consumer Protection Act of 1986. And also were they entitled to get insured value of the goods?

The National Commission ruled in the favour of the complainants. Both the consigner complainant no.1 and the consignee complainant no.2 were considered as consumers. The complainant no.1 had paid the premium to the insurance company. The complainant no.1 realised the said premium in value in an approved manner from the complainant no.2. Also the insurance was arranged for the benefit of the complainant no.2 and had paid the value of consignment to the complainant no.1, hence he stands as a consumer

In *United India Insurance Co. Ltd.* v. *Florals India*,[15] the complainant received an order from a US based company for the supply of iron art ware and handicraft items. The complainant took an Open Marine Cargo policy each for air and sea from insurance company in order to ensure the safe delivery of the goods. The policy covered all the risks from warehouse in Jaipur to warehouse in US. The goods reached the destination in damaged condition. Though the consignee received the goods in damaged condition he made the full payment to the consignor. The consignor (the complainant) forwarded the claim for the insured money from the insurance company. The insurance company denied to accept the claim. The issue was whether the complainant is entitled for the insurance claim after being fully paid by the consignor?

The National Commission held that the insurance policy provides claim for the actual loss incurred by the insured. But in this case the complainant received the full consideration for the consignment therefore it could not plead that it had suffered monetary loss in relation to subject export. In furtherance it gave the decision in favour

14 II (2015) CPJ 429 (NC).
15 III (2015) CPJ 232 (NC).

of the insurance company and set aside the order of the state commission in which it ordered the insurance company to provide the claim to the complainant.

In *Say Siangshai* v. *New India Assurance Co. Ltd.* ,[16] the appellant bought two vehicles that were insured with the respondent. Later, the two vehicles were stolen. The appellant approached the respondent for indemnifying the losses. It has been alleged in the writ petitions that for different reasons, the respondent has not yet decided the claim of the appellant for indemnifying the loss of the said two vehicles insured with respondent. The issue was whether the respondent is liable for deficiency in services?

The high court held that the writ petitions are disposed of by directing the respondent to decide the claim of the writ petitioner for indemnifying the loss of the two vehicles insured with the respondent within a period of two months from the date of receipt of the certified copy of the judgment and order. It goes without saying that if the petitioner is aggrieved by the decision of the respondent, the appellant may seek appropriate remedy under the COPRA. It is also reiterated here that the respondent is the service provider as provided under the provision of the COPRA.

In *Mahender Goel* v. *National Insurance Co. Ltd*.,[17] the complainant who is the proprietor of a firm M.R. Jewellers, engaged in export of jewellery, had taken cash in transit policy to cover any single cash in transit upto Rs. 10 lakhs from National Insurance Company. It was alleged by the complainant that one day when the complainant was carrying a cash bag of Rs. 9,85,000/-, on the rear seat of the car, two young boys on a motorcycle indicated the complainant that the rear left side tyre of his car was punctured. Therefore, complainant stopped the car on the side of the road and got down and took out stepany from the dickey of the car and changed the rear left side tyre within 10 to 12 minutes. When complainant entered the car after change of wheel, he found cash bag missing from the car. The issue was the insurance company had committed any deficiency in repudiating claim of cash in transit policy?

Before state commission, insurance company stated that it had repudiated the claim on the ground of breach of policy's terms and conditions as complainant's conduct was not inconformity as provided in condition no. 3 and 6 of the insurance policy at the time of alleged incident and complainant had failed to take reasonable steps and care to ensure safety of the cash being carried in transit, and had not locked the main lock of driver side door and the locks of the other doors as well, while changing the tyre. State commission dismissed the complaint against which complainant filed appeal before National Commission.

Then the National Commission, after perusal of documents and hearing both the parties, observed that, "Condition no. 3 of the policy provides that insured was required to take all reasonable steps to safeguard the property insured against accident, loss or damage. Perusal of surveyor's report indicates that complainant left driver side unlocked on account of which all other three doors of the car also remained unlocked and it

16 MANU/MG/0106/2015.

17 2015 SCC online NCDRC 2612.

appears that culprits after taking advantage of door being unlocked, had taken away the bag with cash. When complainant himself was negligent in taking reasonable care to safeguard his bag by keeping door of car unlocked, opposite party had not committed any deficiency in repudiating claim and learned state commission had not committed any error in dismissing the complaint. While holding that the complainant had violated the conditions of the policy, NCDRC dismissed the appeal and upheld the order of state commission as well as the repudiation of the claim by the insurance company.

VI REAL ESTATE

In *Jalandhar Improvement Trust* v. *Munish Dev Sharma*,[18] in the year 2011, Jalandhar Improvement Trust framed a 'Development Scheme' for allotment of residential plots in Surya Enclave Extension at Jalandhar and after taking substantial amount of money from the respondents, the appellants issued allotment letters to them, allotting specific plots. However, appellants failed to handover possession of the plots to the respondents for more than three years. Earlier, the legal defence of trust was that acquisition of land for the aforesaid scheme was challenged by various land owners by way of various writ petitions before the High Court of Punjab and Haryana and there was a stay, hence, appellants were not in a position to handover the possession of the plots. When the respondents approached Punjab State Consumer Commission, it directed Jalandhar Improvement Trust to refund Rs. 28,22,950/-along with interest at the rate of 9% per annum from the date of filing of the complaint till the date of payment and to pay Rs. 2,00,000/- as compensation along with Rs. 5,000/- as litigation costs. It was further moved to National Commission. The issue was whether there was deficiency in service by Jalandhar Improvement Trust?

The National Commission held that. "It was well within the knowledge of the appellant-trust, that there was an impediment in allotment of the plots in question. In spite thereof, appellant-trust had gone ahead and allotted plots in question to the respondents, which it could not have done so. In this manner, appellants have played fraud with the general public and thus collected huge amount of money." While referring to various judgments of Supreme Court, National Commission held strict stand towards frivolous and uncalled for litigations and noted that if any litigant approaches the court of equity with unclean hands, suppress the material facts, make false averments in the complaint/ appeal and tries to mislead and hoodwink the judicial forums then his complaint/ appeal should be thrown away at the threshold. National Commission also held that the said act of Jalandhar Improvement Trust is a "deceptive practice" which falls within the meaning of "unfair trade practice" as defined under the Consumer Protection Act, 1986. "Such type of unscrupulous act on the part of builders should be dealt with a heavy hand, who after grabbing the money from the purchasers, enjoy and utilize their money but do not hand over the plot, on one pretext or the other,"

18 IV (2015) CPJ 309 (NC); 2015 SCC online NCDRC 919.

commission added. National Commission further directed the appellants to pay a sum of Rs 2.5 lakh out of Rs. 5 lakh to the respondents and deposit the rest Rs. 2.5 lakh in the commission's consumer legal aid account. National Commission has imposed a fine of Rs. 5 lakh upon Jalandhar Improvement Trust, for abusing the process of law and filing meritless appeals before various consumer foras in order to cover up its own fault and negligence. "No leniency should be shown to litigants who in order to cover up their own fault and negligence, goes on filing meritless complaints/ appeals in different foras. Equity demands that such unscrupulous litigants whose only aim and object is to deprive the other party of the fruits of the decree must be dealt with heavy hands".

In *Adelkar Pratibha* v. *Sivaji Estate Livestock*,[19] the OP Shivaji Estate Livestock and Farms Pvt. Ltd., invited the potential investors to invest in its goat farming and allied activities by purchasing units of several schemes floated by it. In the brochure issued by it, the said opposite party represented to the prospective investors, *inter-alia* that they had arranged about 500 goats in each goat shed with 25-50 such sheds in each rearing centre; 100% of the live stocks would be insured and there would be 100% guarantee of the invested amount. It was also represented to them that the investors would have hypothetical charge on 1000 sq. ft. of land of the company and one time investment would offer consistent benefit for 15 years, live stocks would be looked after by the experienced vets and professionals. The OP offered attractive returns on the capital invested in the units sold by it. It is alleged that the OP represented to the complainants that there would be minimum expected return on the investment made by them and if the targets are achieved, they would also get additional bonus. The schemes also provided for pre-mature withdrawals by giving 45 days' notice. The case of the complainants, who number as many as 373 is that in view of the attractive schemes offered by the OP, they invested their hard-earned savings into those schemes. Initially, the OP made payment of some installments due to the investors under the said schemes but later on they did not fulfill the terms made by them. When the investors applied for pre-mature withdrawal of the investment made by them, the opposite party failed to honour its commitment. The issue was whether there was a deficiency in services by the OP.

The National Commission held that the opposite party Shivaji Estate Livestock and Farms Pvt. Ltd., has been deficient in rendering services to the complainants. Hence, it consequently direct the said opposite party to refund the investment made by the complainants in the schemes floated by it and as detailed in exhibit-A annexed to the complaint, along with interest on the said amount @ 9% per annum from the date of filing of the complaint till the date of payment. It was also directed the said opposite party to pay 10% of the amount invested by the complainants as compensation and Rs.1,000/- each as the cost of litigation to each of the complainants. No relief against the other opposite party is made out. The complaint stands disposed off.

19 II (2015) CPJ 221(NC).

In *Bengal Dcl Housing Development Co. Ltd.* v. *Subhra Dutta and Rumia Dutta*,[20]the complainant (here respondent) bought a flat from the opposite party (here appellant). The appellant handed over the flat to the respondent with the delay of one year. When the appellant handed over the flat to the respondent it was not fully complete. It was not fit for residential purpose as the promised amenities were not provided. So the complainant filed a complaint with the state commission alleging deficiency on the part of the opposite party. The OP argued that the delay in handling the flat was not because of them, it was on the part of the other approved institutions involved in the matter of electricity, water connection, *etc.*, that the delay occurred. Hence there was no deficiency on their part. The state commission decided that the opposite party had to pay a compensation of Rs.5 lakhs to the complainant. The issue was whether the complainant was entitled to the compensation beyond the terms and conditions of the agreement that too without any specific prayer in the complaint**.**

The National Commission held that the complainant has nowhere claimed compensation of Rs. 5 lakhs or more but has asked only compensation for the delay of the possession of the property. Hence it partly allowed and impugned order passed by the state commission and substituted the amount of compensation from Rs.5 lakhs to Rs.28 thousand.

In *Punjab Urban Planning and Development Authority* v. *Shivbir Singh*,[21] the Punjab Urban Planning Development (PUDA) set up residential urban state, Kapurthala for the allotment of plots. PUDA had issued a brochure while inviting applications for allotment of plots, one of the conditions mentioned in the brochure was regarding the refund of the earnest money as follows: "After the draw of lots, the unsuccessful applicants shall be refunded the earnest money within 180 days from the closing date of scheme. However, 10 percent interest shall be allowed from 181st day onwards in case refund is made after 180 days. In case applicant asks for refund before the draw of lots, refund shall be allowed after deducting token amount of Rs. 500." The respondent has certain grievances regarding deficiencies in the development work by PUDA and claim for compensation. The issue was whether the respondents herein could start the construction and complete the same without basic amenities having been provided by the PUDA?; Whether the PUDA was entitled to charge any interest prior to providing of basic amenities?

The Supreme Court upheld the decision of state commission. The amount should be refunded with a rate of interest of 10 percent. It was also held that the respondent herein would be entitled for a compensation of Rs. 20,000 on account of escalation of prices but without any interest. However, if the amount is not paid within a period of two months of the receipt of copy of the order, then the same shall carry interest at the rate of 10 percent p.a.

20 II (2015) CPJ 272 (NC).

21 2015 (4) RCR (Civil) 240.

VII EDUCATION

In *Rithvik K.R.* v. *Union of India*,[22] four students applied for admission in KIMS against management quota for I year MBBS course for the academic year 2014-2015 along with fees and donations amounting to approximately eighty lakhs. The father of one of the student was also made to sign an undertaking that he understands that the admission given to his son was only provisional and subject to approval by *Rajiv Gandhi University of Health Sciences* /Medical Council of India (MCI) and in excess of the stipulated management seats. In case of non-approval, the management and the college will not be responsible. Later, three of the students were discharged from the college on the ground that their admission to the course was in excess of the admission capacity fixed for the college. The college discharged them only after the expiry of the last date of taking admission in colleges for that academic year. The issue was whether there was a deficiency in service by the college authorities in admission process.

The high court found the conduct of the college of taking such an undertaking from the parents of the student along with huge amounts of donation disturbing and ordered the MCI and Central Government to take serious note of the matter and take measures to ensure transparency in the admission process even against management quota, especially by making it more technology based. The high court also found the college's act of not discharging the students with illegal admission and not refunding the amount received from them well before the last date for admission in colleges for that academic year as grossly irresponsible and as it resulted in them losing one academic year and unnecessary litigation causing unimaginable mental agony to them the high court ordered the college to pay Rs.1 crore each to all the three students as compensation along with refund of the amount paid by them to the college for the admission.

VIII SWIMMING POOL

In *Niranjan Nath Sharma* v. *Bangalore Mahanagara Palika*,[23] wherein a young person, named, Smruti Ranjan Sharma, died in a government swimming pool, while he was learning to swim. The present complaint has been filed by his father, Niranjan Nath Sharma (since deceased), and the case is now represented by the legal representatives of the deceased Niranjan Nath Sharma, against the Municipal Corporation of Bangalore City and owner of the corporation swimming pool, Jaya Nagar, Bangalore, OP1. OP1, *vide* lease deed dated December 17, 2004 leased out the said swimming pool to PM Swimming Centre, OP2, on contract basis for a period of 35 years. OP2 has been running the swimming pool on commercial basis by providing swimming and coaching facilities for swimmers and learners. True copy of the lease deed, ex. c-1 has been placed on record. The said swimming pool was insured with Oriental Insurance Co. Ltd., OP3. OP2 used to conduct coaching camps in the said swimming pool and one said camp was held between April 2, 2008 and April 22,

22 ILR 2015 Kar 4459; 2015 SCC online Kar 2305.

23 Consumer Complaint No. 67 of 2009, NCDRC, New Delhi, decided on Dec. 2, 2014.

2008. Late Smruti Ranjan Sharma got registered himself for the said coaching centre on April 1, 2008 *vide* application for learning swimming and paid the requisite fee of Rs. 2,200/. He was admitted for 20 day s'coaching *w.e.f.* April 2, 2008 between 8.45pm and 9.45pm. The deceased was regularly attending the swimming camp. However, on April 16, 2008 due to gross negligence and deficiencies in the service of OP2, Smruti Ranjan Sharma got drowned in the swimming pool. The swimming pool was quite crowded on that day. However, there were no coaches/ life guards or other employees of OP2, present at the time of the incident and nobody noticed his drowning, except by one Venkatesh, that too, after some time. No immediate steps were taken by OP2 either to give first aid or to rush the deceased to the hospital. A doctor (one of the swimmers present there) gave the necessary first aid and after a long persistence, the deceased was taken to Apollo Hospital for treatment. The deceased kept on mechanical ventilation during his treatment in the said hospital. The family members of Smruti Ranjan Sharma were not informed. While undergoing treatment in the said hospital, Smruti Ranjan Sharma, breathed his last. All records, including that of Apollo Hospital from 16.04.2008 till his death, on April 19, 2008, have been placed on record. The father of the deceased Smruti Ranjan Sharma/complainant (now deceased) (had spent more than Rs. 5,00,000/- towards medical expenses at Apollo Hospital for the treatment during the said period. The post-mortem report, death summary, *etc*., Smruiti Ranjan Sharma was employed with CG-Core EI Programmable Solutions Pvt. Ltd., Koramangala, Bangalore, since the past four years. On July 1, 2004, he was appointed as application engineer and his services were later given due recognition.. The deceased was about 27 years' old at the time of his death. He was the sole breadwinner of the complainant and his family members. The deceased is survived by his father (the complainant, now deceased), a brother and three sisters. The issue was whether there was negligence on the part of the opposite parties in maintaining the swimming pool ?

The National Commission held that the said amount appears to be almost correct. A total amount of Rs. 2 crores is adequate. It therefore, direct the insurance company/ OP3, to pay a sum of Rs. 16,00,000 to the complainant/legal representatives (LRs) out of the total amount of 2.00 crores. OP1 will pay Rs. 50 lakhs to the complainants/ LRs, out of the total Rs. 2.00 crores, as their liability is limited upto that extent only. Rest of the amount in the sum of Rs. 1,34,00,000 be paid to the complainants/LRs, by OP2. All the OPs *i.e*., 1 to 3, shall pay their respective amounts to the complainants/ LRs, within 90 days' from the date of receipt of this order, otherwise, the same will carry interest @ 12% p.a. from the expiry of said 90 days', till their realization.

IX AIRLINE

In *Air India* v. *Geetika Sachdeva*,[24] Geetika Sachdeva, the complainant / respondent, purchased an open air ticket from Air India, OP, through its agent International Students Travel Pvt. Ltd., for Delhi - London - Toronto - London - Delhi and she was given a confirmed status. She travelled to Toronto on September 9, 2001

24 III (2015) CPJ 185 (NC).

and intended to return to Delhi on December 6, 2001. On November 2, 2001, she informed the Air India of her intention to travel from London to Delhi on December 7, 2001 and in turn she was informed that her ticket was confirmed for December 7, 2001 from London to Delhi by Flight No. AI 120. She boarded an Air Canada Flight from Toronto on December 6, 2001 and reached London from where she was to board the flight for Delhi. However, at London, she was informed that the validity of her ticket had expired and she was denied boarding. She was all alone, was not having sufficient funds to buy another ticket and had to wait for about eight hours at the air port when she met another passenger, named, Shobit Sinha. Shobit Sinha had come from Chicago and was also denied boarding on the same ground. She borrowed money from Shobit Sinha and purchased another ticket by Virgin Atlantic Airways and came to Delhi. Her baggage was allowed by the airlines - Air India, which was delivered to her after a long delay and she had to pay a sum of Rs. 665/- on December 12, 2001. She filed a complaint before the district forum. The district forum allowed the complaint, directed the OP-Air India, to pay a sum of Rs.40,000/-, the price of the air ticket, along with interest @ 9% p.a., from 07.12.2001, till the date of payment. Compensation in the sum of Rs.1,00,000/- was also imposed for mental and physical torture and convenience, besides costs of litigation in the sum of Rs.5,000/-. The state commission dismissed the appeal filed by the OP/petitioner. The issue was whether there was negligence on the part of Air India ?

The National Commission held that the complainant has been dragged into litigation for about one-and-a-half decade. Consequently, we dismiss the revision petition with costs of Rs.25,000/-, which be paid to the complainant, by the petitioner/ OP, directly through demand draft, drawn in favour of the complainant. The said amount be paid within 90 days' from the date of receipt of copy of this order, otherwise, it will carry interest @ 12% p.a., after the expiry of the said 90 days, till realisation.

In *Air India* v. *Sushil Kumar*,[25] the daughter of the respondent purchased an air ticket from Amritsar to Pittsburgh *via* London, Toronto and Chicago by Air India, American Air Lines and United Air Lines with total cost of $983.59 USD on line. The officials of Air India questioned the issue of boarding card who took the daughter of the respondent to his superior and explained the entire matter. Thereafter the daughter of the respondent was compelled to return the boarding card and luggage tags and respondent's daughter was asked to wait outside, as they will be contacting the embassy for transit visa. The daughter of the respondent kept on waiting and was later on informed that they could not get the transit visa and hence, she cannot board the flight. Consequent thereupon the daughter of the respondent informed the respondent about the entire situation telephonically and the respondent immediately rushed to the airport and met the officials of the petitioner and told the respondent that the immigration officials objected for want of transit visa, hence, the daughter of the respondent cannot take the flight but they assured the respondent and his daughter that the daughter of the respondent will be sent in the evening flight of the same day

25 2015 (113) ALR 524.

where no transit visa was required by way of rescheduling the same ticket and further the respondent and his daughter to report city office at 10.00 hours. After waiting for some time, the luggage was brought back from the aircraft and the same was handed over to the respondent. The dealing official informed that an additional amount $1000 USD would be required to reschedule the flight but no seat is available in the coming few days. It was a great shock for the respondent and his daughter. The respondent explained the urgency to reach his daughter to avoid any further financial loss of scholarship agreement *etc*. without which it was very difficult to carry on further studies but of no avail. Ultimately the respondent and his daughter left Air India office around and started running to travel agents for help in getting Air Ticket to reach Pittsburgh within stipulated time. One agent was able to give ticket for Continental Air Lines for Rs.72,000 which was paid by respondent, *i.e.*, Rs.45,000/- through cheque and the remaining amount of Rs.27,000/- after borrowing from friends and the daughter of the respondent was sent from Amritsar to Delhi through Jet Airways and further by Continental Air Lines. Neither the respondent nor his daughter had been intimated by the petitioner about the requirement of obtaining a transit visa in time. The issue was any inefficiency in service on the part of airlines and whether the complainant was entitled to the imbursement through the airline?

In this case the National Commission referring to the rules of IATA General Conditions of Carriage (Passenger and Baggage) and held that no airline has the duty to inform its passengers about documents and other requirements to travel in another country. It is the duty of the passenger to enquire about the requirements. In this case the respondent was negligent on his part in not knowing the requirements to travel in a country and also they were negligent in reading the terms and conditions of online booking. The order of the district forum and the state commission was quashed and revision petition was allowed.

X BANKING SECTOR

In *ICICI Bank Ltd.* v. *Mahara j Krishan Datta*,[26] the respondents availed home loan to the extent of Rs.13,35,100 from the appellant bank for purchase of a flat in Zirakpur. The loan was sanctioned *vide* letter on November 14, 2005 and it carried an interest at 7.25% per annum. Later, it was confirmed by the bank that *w.e.f.* April, 2006 the loan would carry an interest at 7.75% per annum. It was further case of the respondents that an additional loan of Rs. 3,00,000 was sanctioned on October 30, 2006 with an obligation to pay interest at 8.75% per annum. The grievance expressed by the respondents was that instead of charging interest at the agreed rate, the bank had charged the same at 11.25% per annum for the period from April 1, 2007 to March 31, 2008 besides charging interest during pre-EMl period at 9.5% per annum. The issue was whether appellant is liable for deficiency in the service?

The Supreme Court upheld the decision of the state commission. It was held that in view of the agreement between the parties, payment of interest at minus 1.5% of the

26 2015 (8) SCALE 623.

prevalent FRR, which could be reset by the bank based on the guidelines issued by the Reserve Bank of India. It was further held that the intimation of such resetting should be given to the respondents.

In *Standard Chartered Bank* v. *Subramaniam Ganeshan Iyer*,[27] the complainants availed a housing loan of Rs. 37 lakhs advanced by opponent-bank by mortgaging. Lalna Rajendra Kadam and Rajendra Shivaji Rao Kadam (purchasers of the mortgaged flat) entered into an agreement with the complainants for purchase of said flat. Sale consideration agreed was for '61 lakhs. Since purchase deal was not completed on or before the stipulated date as per memorandum of understanding (MOU) condition, the agreement executed between the parties was automatically got cancelled. The payment received by way of cheque from the purchasers of mortgaged flat was deposited in the loan account of the complainants by opponent-bank and the loan account was foreclosed and accordingly, complainants were intimated. Complainants did not give their consent to pre termination quote (PTQ) issued by the opponent-bank for depositing the cheque in loan account received from the purchasers of mortgaged flat within validity period of 15 days. The complainants asked the bank for the refund of the amount deposited in the loan account by the purchasers of the mortgaged flat as the deal could not materialise. Alleging deficiency in service on the part of the opposite party, complainants filed complaint before state commission. Opposite party resisted complaint and submitted that disputed flat was mortgaged by complainant with opposite party against release of housing loan but they were not intimated about MOU between complainants and purchasers of mortgaged flat. It was further submitted that complaint was barred by limitation and prayed for dismissal of complaint. The issue was there deficiency in service on the part of the bank?

The National Commission held that the deal between complainants and third party was called off and as per instructions of the complainant money was refunded by opposite party to third person. The commission did not find the allegation of deficiency in service on the part of the OP correct.

In *Small Industries Development Bank of India (Sidbi)* v. *Saraswati Gupta*,[28] the complainant/respondent purchased two deep discount bonds bearing certificate of Rs. 2,500 each in the year 1993 from OP/petitioner. The face value of those bonds as mentioned in the bond certificate was Rs.1.00 lakhs each as on January 1, 2018. The complainant/respondent had an option to get encashed the said bonds at the end of 5th, 9th, 12th, 15th or 20th year as per their face values at the end of every such year. It was alleged that on June 27, 2008 when complainant/respondent visited OPs, she was informed that the scheme in question had been cancelled, so she should withdraw her amount. Accordingly the complainant/respondent applied for the encashment of her bonds. Thereafter, she received two cheques of Rs.17,752 issued by OPs/petitioners and the interest paid on the principal amount of said bonds was only for the period from 1993 till 2002 whereas it should have been paid till June, 2008, the date on

27 II (2015) CPJ 517 (NC).
28 II (2015) CPJ 11 (NC).

which it was withdrawn as the amount was being utilized by the OPs/petitioners up to that period. The OPs/petitioners had neither informed the complainant/respondent that the scheme had been cancelled and she should withdraw her amount, nor on the cancellation of scheme the OPs/petitioners sent the deposited amount with interest at the address of complainant/respondent. Alleging deficiency on the part of opposite party/petitioner, complainant filed complaint before district forum. The opposite party submitted that it had published public notice in all leading national as well as regional newspapers intimating to the unit holders about call options and also sent individual letters under certificate of postings (UPC) to all the investors requesting them to surrender duly discharged bond certificates for redemption. It was further submitted that subsequent letters were also sent to remaining bond holders who did not surrender their bond certificates. As complainant/respondent did not surrender bond certificates well in time, she was not entitled to interest after the year 2002 and prayed for dismissal of complaint. The issue was whether intimation was given to the complainant by opposite party regarding exercise of option for redemption of bonds?

The National Commission held that in the absence of some secondary evidence to prove that the intimation was given to the complainant by OP as per terms and conditions of bonds, the complainant was entitled to interest on the amount retained by the OP.

XI LIMITATION FOR FILING WRITTEN STATEMENT

In *New India Assurance Co. Ltd.* v. *Hilli Multipurpose Cold Storage Pvt Ltd*,[29] the three judge bench of the apex court said district consumer forums can grant a further period of 15 days to the opposite party for filing his version and not beyond that holding that the law laid down in *J.J. Merchant* case (2002) prevails over latter view taken in *Kailash* case (2005). The bench comprising of Anil R. Dave, Vikramajit Sen and Pinaki Chandra Ghose JJ, rejected the contention that the provisions of section 13(2) (a) of the COPRA are merely directory and not mandatory in nature. The issue was whether the law relating to period of limitation in for filing the written statement or giving version of the opponent as per the provisions of section 13(2) (a) of the COPRA are directory or mandatory in nature?

In this case Supreme Court referred two cases namely *J.J. Merchant* v. *Shrinath Chaturvedi*,[30] and *Kailash* v. *Nanhku*.[31] Section 13(2) (a) of the COPRA reads, "The District Forum shall,……., refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum". In *J.J. Merchant* case, a three judge bench of apex court had held "there is legislative mandate to the District Forum or the Commissions to dispose of the complaints as far as possible within prescribed time of three months by adhering strictly to the procedure

29 2015 SCC online SC 1280.
30 (2002) 6 SCC 635.
31 (2005) 4 SCC 480.

prescribed under the Act. The OP has to submit its version within 30 days from the date of the receipt of the complaint by him and Commission can give at the most further 15 days for some unavoidable reasons to file its version." *Kailash* case, another three judges bench, held that limit of 90 days, as prescribed by the proviso to Rule 1 of Order 8 of the Civil Procedure Code,1908 is not mandatory, but directory in nature, and further time for filing reply can be granted, if the circumstances are such that require grant of further time for filing the reply. In *J.J. Merchant* case it was also discussed and held that the observations made in that case, to the extent it deal with the rule 1 of order 8 of CPC was obiter. *J.J. Merchant* case holds the field the court said that since the issue discussed in *J.J. Merchant* case is identical to the issue in the present case, it holds the field and not the latter view in *Kailash* case, since it deals with CPC provisions. Further the Supreme court observed that *J.J. Merchant* case was decided in 2002, whereas *Kailash* case was decided in 2005 and as per law laid down by this court, while deciding the case of *Kailash*, the court (being it of the same strength) ought to have respected the view expressed in *J.J. Merchant* case as the judgment delivered in the case was earlier in point of time. The court said that this view is supported by the dictum laid down in *Central Board of Dawoodi Bohra Community* v. *State of Maharashtra*[32] by the Constitution bench of the apex court, wherein it was held that a decision delivered by a bench of larger strength is binding on any subsequent bench of lesser or co-equal strength. Not only this three-judge bench, but even a bench of coordinate strength of this court, which had decided the case of *Kailash*, was bound by the view taken by a three-judge bench in the case of *J.J. Merchant*, the bench said. Thus Supreme Court held that district consumer forums can grant a further period of 15 days to the opposite party for filing his version and not beyond that in which *J.J. Merchant* case prevails over *Kailash* case.

XII CONCLUSION

The year 2015 the Supreme Court and National Commission have clarified many grey areas of the COPRA. These clarifications will help the state commissions and district forums in deciding the pending cases quickly and effectively. Supreme Court has delivered judgements in the area of banking, insurance medical negligence and education which provide guidelines to the authorities for handling such lapses. The apex court has also adopted a liberal approach in the law relating to period of limitation for filling of the consumer complaint.

The Ministry of Consumer Affairs, Government of India has considered some of the suggestions given in these judgments and expert suggestions and trying to incorporate them in the proposed Consumer Protection Amendment Bill, 2015. This Bill is still pending before the Parliament. The Parliament has referred it to the standing committee. Once this new Act comes into force COPRA will get more teeth and become stronger to protect the consumers.

32 (2005) 2 SCC 673.