10

CONSUMER PROTECTION LAW

*Ashok R. Patil**

I INTRODUCTION

THE CONSUMERS are spread widely all over a country who many a times are poor, illiterate and are generally not aware of their rights, though their awareness has recently increased. The manufacturers and suppliers of goods or services often exploit consumers by adopting a number of unfair and restrictive trade practices. They often merge and also form tacit cartels to raise prices for maximising their profits at the expense of consumers. Therefore, Indian parliament enacted the Consumer Protection Act, 1986 (COPRA). This COPRA 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 COPRA was amended three times in the year 1991, 1993 and 2002. The Consumer Protection Bill, 2015 was introduced and then it was referred to the standing committee. In 2016 the standing committee has submitted its report. Now revised version Consumer Protection Bill, 2015 is pending before the Parliament. In the year 2016, the cases that came up before the Supreme Court and National Consumer Dispute Redressal Commission (NCDRC), related to the procedural issues pertaining powers of consumer forum, jurisdiction, deficiency in service in insurance, banking, multiplex, education, real estate and medical profession *etc*.

II CONSUMER FORA

Deficiency of infrastructure in consumer fora/ commission

In *State of Uttar Prasdesh* v. *All U.P. Consumer Protection Bar Association*,[1] the deficiency of infrastructure in the adjudicatory fora constituted under the COPRA has led to several directions of Supreme Court in the course of the proceedings in this

* Chair Professor, Chair on Consumer Law and Practice National Law School of India University, Bangalore.

1 AIR 2016 SC 5368: 2016(12) SCALE 182.

case. On January 14, 2016 Supreme Court constituted a committee presided over by Arijit Pasayat J., a former judge of Supreme Court, to examine: the infrastructural requirements of the state commissions, deficiencies in infrastructure and remedial measures; the position of vacancies of members at the national, state and district level; the need for additional benches at the national, state and district level; conditions of eligibility for appointment of non-judicial members; administrative powers which have been or should be conferred on the presiding officers of the state and district fora; service conditions including pay scales governing the presiding officers and members; requirements of staff; creation of a separate cadre of staff at the national, state and district level; and other relevant issues. The committee was requested, while examining these issues, to submit its recommendations. The important issue whether the deficiency of infrastructure in the adjudicatory fora constituted under the COPRA.

According to the directions of the Supreme Court of India, the Arijit Pasayat J Committee started its work in February 2016 inquired extensively into the matters referred to it and has made an assessment of the prevailing conditions in the States of Orissa, Maharashtra, Punjab, Haryana, Andhra Pradesh, Telangana, Jammu and Kashmir, Tamil Nadu, Bihar and Jharkhand. The committee has also analysed the prevailing position at the NCDRC, as well as the state commission in New Delhi.

The facts which have emerged from the interim report submitted by the committee on October 17, 2016 constitute a sobering reflection of how far removed reality lies from the goals and objectives which Parliament had in view while enacting the COPRA. The committee has observed that the fora constituted under the enactment do not function as effectively as expected due to a poor organisational set up, grossly inadequate infrastructure, absence of adequate and trained manpower and lack of qualified members in the adjudicating bodies. Benches of the state and district fora sit, in many cases for barely two or three hours every day and remain non-functional for months due to a lack of coram. Orders are not enforced like other orders passed by the civil courts. The state governments have failed to respond to the suggestions of the committee for streamlining the state of affairs.

On the basis of interim report, the Supreme Court took it very seriously and observed the pathetic state of infrastructure of consumer dispute redressal system with many other issues. Therefore, the Supreme Court has issued following directions keeping writ petition pending asking report of compliance: (i) The union government shall for the purpose of ensuring uniformity in the exercise of the rule making power under section 10(3) and section 16(2) of the COPRA frame model rules for adoption by the state governments. The model rules shall be framed within four months and shall be submitted to this court for its approval; (ii) The union government shall also frame within four months model rules prescribing objective norms for implementing the provisions of section 10(1)(b), section 16(1)(b) and section 20(1)(b) in regard to the appointment of members respectively of the district fora, state commissions and National Commission; (iii) The union government shall while framing the model rules have due regard to the formulation of objective norms for the assessment of the ability, knowledge and experience required to be possessed by the members of the respective fora in the domain areas referred to in the statutory provisions mentioned

above. The model rules shall provide for the payment of salary, allowances and for the conditions of service of the members of the consumer for a commensurate with the nature of adjudicatory duties and the need to attract suitable talent to the adjudicating bodies. These rules shall be finalised upon due consultation with the President of the NCDRC, within the period stipulated above;

Upon the approval of the model rules by Supreme Court, the state governments shall proceed to adopt the model rules by framing appropriate rules in the exercise of the rule making powers under section 30 of the COPRA;

The NCDRC is requested to formulate regulations under section 30A with the previous approval of the Central Government within a period of three months from today in order to effectuate the power of administrative control vested in the National Commission over the state commissions under section 24(B)(1)(iii) and in respect of the administrative control of the state commissions over the district fora in terms of section 24(B)(2) as explained in this judgment to effectively implement the objects and purposes of the COPRA.

After this decision, as per the directions of the Supreme Court the Ministry of Consumer Affairs, Government of India has constituted an expert committee to frame rules. After framing rules, Ministry of Consumer Affairs has submitted its report to the Supreme Court for its consideration. The Supreme Court will take it in next hearing.

Jurisdiction of the consumer fora: Availing the services of a bank by a stock broker for expanding his business is a commercial purpose and hence not a consumer

In *Shrikant G. Mantri* v. *Punjab National Bank*,[2] the complainant who was working as stock broker in his capacity as member of Mumbai Stock Exchange opened an account with the opposite party bank and took overdraft facility to expand his business profits. The overdraft facility was increased at the instance of the complainant from initial Rs.1 crore to 6 crores against the security including pledging of shares. The important issue involved here can the stock broker invoke the jurisdiction of the consumer fora for raising a consumer dispute.

The National Commission observed that as the complainant had availed of the services of the opposite party bank *i.e.,* overdraft facility against the security of shares with the intention to expand his business and increase his business profits. Therefore, it cannot be said that complainant had availed of services of the opposite party exclusively for the purpose of earning his livelihood by way of self-employment. The commission came to the conclusion that the complainant is not a consumer as envisaged under section 2(1)(d) of the Act because he had availed of the services of the opposite party bank for commercial purpose. As the complainant is not a consumer, he cannot invoke jurisdiction of consumer fora by raising a consumer dispute. Thus, the instant

2 III (2016) CPJ 588 (NC).

complaint does not fall within the jurisdiction of this commission. Complaint was accordingly dismissed.

III MEDICAL NEGLIGENCE

Medical negligence by doctors in diagnosis

In *Anil Dutt* v. *Vishesh Hospital, Indore*,[3] Anju Dutt, the wife of complainant no.1 (patient) was pregnant and was under consultation of Indira Vyas, a Gynaecologist. She advised for ultrasonography (USG) to ensure well-being of child, it was done on January 20, 2009 by G.S. Saluja, the opposite party (OP3) and reported it as intrauterine 20 weeks and 6 days gestational age, with no abnormal findings. The "Foetal Spine, Trunk & Limbs are Normal". On the basis of the said report Indra Vyas continued her regular treatment and check-ups. After three months, *i.e.* at 32 weeks of pregnancy, on April 22, 2009second USG was performed by OP2 Kushalendra Soni. It was reported as 32 weeks 01 day (+ 2 weeks) "Severe Oligohydramnios" and the "Foetal Spine, Trunk & Limbs are Normal". The allegation of complainants is that, both the doctors, OP2 and OP3 are qualified radiologists/sonologists, but due to casual approach, negligence and lack of care towards the patient, gave wrong reports at both occasions, which resulted into serious consequences. On the basis of 2nd USG report, Indra Vyas continued the treatment till May, 2009. Thereafter, patient went to Devas where she remained under treatment in Devas Hospital from Shakuntala Jadhav, a Gynaecologist and Obstetrician. On May 18, 2009 patient gave birth to a female baby which was found not fully developed. New-born's left arm and kidney were missing and even lungs were not completely developed. The foetal weight was 1500 gm. only, instead of 2500 gm. Thus, it was medical incompetence and gross medical negligence. Patient approached Dr. Maheshwari, Child Specialist at Devas District Hospital, he advised to consult various experts. Also expressed that on account of wrong USG reports, no proper treatment was given for mother and child before birth, hence, the child did not develop fully. Therefore, the doctors expressed need for surgery in future for her neck and spine because of fused spinal cord. Child may have increased chances of paralysis. As the baby had a single kidney, there are chances of renal failure in near future. In this regard complainant produced expert opinion from R.K. Sharma, a Forensic Medicine expert. It was further alleged that, due to wrong report, the patient did not go for medical termination of pregnancy as per law under the Medical Termination of Pregnancy Act, 1971 (MTP Act). It was anxiety, agony and distress to the parents. Further, the grandmother of the child, Kala Dutt suffered severe heart attack after seeing the deformity in the new-born baby. She underwent by-pass surgery, it caused expenses of Rs. 2.5 lakhs at Fortis Hospital, New Delhi. Since after that, the grandmother was under physiotherapy, incurring regular expenses. Therefore, for

3 2016 Indlaw NCDRC 773.

alleged medical negligence, Anju Dutt/ patient lodged an FIR on June 8, 2009 at Police Station, Palasia, Indore. Thus she files a case against the OPs 1, 2 and 3

The issues here were, whether there was a deficiency of service by the opposite parties (doctors of the hospital). The NCDRC held it to be a medical negligence case and directed to the OPs (1, 2 and 3) to pay a sum of Rs.15,00,000/- jointly and severally to the complainants. It is further directed that, the OPs shall deposit entire amount in a fixed deposit, in any nationalised bank, in the name of the child and the regular periodic interest accrued on it, be paid to the mother, till the baby attains 21 years. The order shall be complied with within 6 weeks, from the date of receipt of this order, otherwise, it will carry interest @ 12% per annum, since the date of pronouncement, till realisation. There shall be no order as to costs.

In *Pushpa Bhatnagar* v. *Varun Hospital, Through its Director, Vishnupuri, Uttar Pradesh*,[4] Jaiprakash Bhatnagar, an advocate by profession since deceased (patient), on the evening of January 17, 2002, sustained fracture of upper arm near shoulder and took treatment in the nearby Ortho Care Centre. In the evening of January 19, 2002, he was admitted in Varun Hospital, *i.e.* OP 1 under care of K.K. Singh (OP 3), an orthopaedic surgeon. Without performing any pre-operative examination, the anaesthetist Dr. Sanjay Bhargava (OP 2) fixed the operation on the next day morning. Accordingly, on January 20, 2002 at 6:30 A.M. the patient was taken to operation theatre, OP 2 and OP 3 performed the operation. At about 10 A.M., the OP-doctors came out of the operation theatre and informed the patient's relatives that operation was successful at 9:15 A.M and patient will come out soon. Thereafter, at 10:45 A.M. the OP 2 and 3 came out and first time informed the complainants and the other relatives that the patient expired due to heart attack in operation theatre, Ajay Singhal, a cardiologist was called, it took almost 30 minutes, thereafter, the patient passed away. The post-mortem was conducted. At 11.00 A.M. the complainant-1, Pushpa Bhatnagar (wife of deceased) lodged a FIR under section 304A, Indian Penal Code, 1860 (IPC) against the OP for causing death due to negligence. Thereafter, in 2003, the complainants filed complaint before the state commission. Pushpa Bhatnagar, the complainant/appellant, filed this first appeal under section 19 of the Consumer Protection Act,1986 against the order dated October 16, 2014 passed by Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow in state commission in complaint case no.71 of 2003.The issue here was whether there was a deficiency of service by the opposite parties (doctors of the hospital)

It was held that the doctors were liable for the medical negligence due to which the family suffered distress and mental agony, therefore, we award compensation in the sum of Rs. 2,00000/- and Rs. 25,000/- towards cost of litigation. Therefore, the total compensation will be Rs. 13,80,000/-. For the reasons stated herein above, we direct the OP's (1,2 and 3) pay Rs. 13,80,000/- to the complainants, jointly and severally, within two months from the date of receipt of this order, failing which,

4 IV (2016) CPJ 140(NC).

entire amount will carry the interest @ 10 % per annum from today *i.e.,* date of pronouncement, till its realisation.

In *Renu Aggarwal* v. *Director, Christian Medical College and Hospital*,[5] here the complainant, Renu Aggarwal was initially operated by Mary Abraham for ectopic pregnancy on October 4, 2010 and discharged on October 12, 2010 from CMC, Ludhiana (OP1). Thereafter, she approached OP-hospital for persistent pain in abdomen. The second operation was performed by a team of doctors. Second emergency operation was performed by the team of doctors on October 25, 2010. It was for removal of foreign body and resection of bowel. The team of doctors performed the resection anastomosis of intestine and the patient was discharged on November 8, 2010. Therefore, alleging medical negligence, the complainant filed complaint before the state commission against OPs praying compensation of Rs.40,00,000/- for medical negligence. The instant first appeal is filed by Renu Aggarwal, the complainant, against the order dated August 27, 2015 of Punjab State Consumer Disputes Redressal Commission (hereinafter state commission) in the consumer complaint no.60 of 2011 whereby the state commission awarded compensation of Rs. 3,00,000/- for the gross negligence committed by the team of doctors at OP1 *i.e.,* Christian Medical College, Ludhiana. The issue arose, whether there was a deficiency of service by the opposite parties (doctors of the hospital)

This appeal was filed for enhancement of compensation. The relevant facts in brief to dispose of this appeal are that it was settled law that hospital is vicariously liable for the acts of the doctors. The OP1 is vicariously liable for the act of late Mary Abraham. This view dovetails from the judgment of apex court in *Savita Garg* v. *National Heart Institute,*[6] it was also followed in case of *Balram Prasad* v. *Kunal Saha*.[7] Therefore, considering the facts and circumstances of instant case, the first appeal and modify the order of the state commission as to enhance the compensation from Rs. 3,00,000/- to Rs. 6,00,000/-. Accordingly, the OP1 is directed to pay Rs. 6,00,000/- to the complainant, within four weeks from the date of receipt of copy of this order, otherwise, it will carry interest at the rate of 9% per annum, till its realisation. Appeal was disposed of.

Deficiency of service on the part of the hospital and the doctors

In *Sheela Hirba Naik Gaunekar* v. *Apollo Hospitals Ltd.*,[8] the complainant is the wife of the deceased Gaunekar, who underwent angioplasty treatment in the Apollo Hospitals Ltd., Chennai. Angioplasty procedure was conducted on May 14, 1996. The deceased died shortly thereafter of a heart attack on May 18, 1996. The complainant-wife preferred a claim petition before the National Commission alleging that the death of her husband was on account of the medical negligence on the part of

5 2016 Indlaw NCDRC 689.
6 (2004) 8 SCC 56.
7 (2014) 1 SCC 384.
8 2016(10) SCALE 18.

the hospital and its doctors and due to deficiency of service. Thus, she is entitled to compensation for a sum of Rs.70 lakhs. The commission heard the complainant-wife and the respondent hospital, recorded evidence adduced by both the parties and examined the correctness of the claim made by the complainant-wife. The commission also examined Mathews Samuel Kalarickal, the doctor who performed the surgery. The commission after examining the evidence and the relevant records came to the conclusion that there was negligence on the part of the hospital. The commission also awarded an amount of Rs. 2 lakhs along with interest at 6% p.a as compensation to the complainant. Thus, the correctness of these findings has been questioned by the respondent-Apollo Hospitals in the connected appeal filed by it, urging that the said findings are not based on proper evaluation of evidence on record. Who further contended that the death of the deceased had been caused due to heart failure and therefore, the finding recorded by the commission that death had occurred as a result of medical negligence is an erroneous finding. It further contended that the finding recorded by the commission in awarding the amount as compensation, is also not legally correct based on any substantial evidence. The issue here was whether the death of the deceased has occurred due to medical negligence

The Supreme Court affirmed the findings recorded by the commission on the question of medical negligence and deficiency in services rendered by the respondent-hospital. With respect to the decision of the commission on awarding compensation, the income tax declaration filed by the deceased to the during the financial year in which the death had occurred was taken on record as evidence on behalf of the complainant. The court also applied the multiplier method as adopted in the Motor Vehicles Act, 1988. As the litigation has been going on for nearly twenty years, it awarded Rs. 40 lakhs as compensation. On account of mental agony, loss of head of the family, loss of consortium and loss of love and affection, a consolidated sum of Rs. 10 lakhs was awarded. Thus, a total amount of Rs. 50 lakhs was awarded as compensation *in toto*. Further, interest has to be awarded at 9% per annum, instead of 6% per annum, from the date of the institution of the complaint till the date of payment. Mathews was also directed to pay Rs. 10 lakhs with proportionate interest to the complainant, out of total of Rs. 50 lakhs. The hospital was directed to comply with this order and submit compliance report to the registry of this court within eight weeks from the date of receipt of the copy of the order.

IV REAL ESTATE

Deficiency of service: Failing to handover possession of flat within 36 months from the date of commencement of construction

In *Aditya Laroia* v. *Parsvnath Developers Limited, through Its Managing Director, New Delhi, NCDRC,*[9] the complainant booked a residential flat in a project

9 2016 Indlaw NCDRC 744.

namely "Parsvnath Privilege", which the opposite was to develop in Greater Noida. A Flat Buyer Agreement was executed between the parties on July 17, 2007. The booking was made on May 1, 2006 against payment of Rs.10 lakhs. As per the terms and conditions agreed between the parties, the possession was to be delivered within 36 months from the date commencement of construction of the particular block in which the flat to be located, on receipt of requisite approvals including sanction plan, environment clearances *etc.* The grievance of the complainant is that the construction of the flat booked by him is far from complete and when he visited the site he found not a single worker employed at the site and was informed that the builder has stopped the construction work. Being aggrieved from failure of the opposite party to deliver upon its promise the complainant files a case. Since the developer failed to deliver possession of the flats to them, they approached the commission seeking refund of the amount paid by them along with interest and compensation *etc.* Whether there was deficiency in service by the opposite party *i.e.,* Parsvnath Developers Limited in handing over the possession of flat within 36 months from the date of commencement of construction.

The complaint was disposed of with a direction to the opposite party that it was a deficiency in service by the builder and he had to refund the entire amount received by it from the complainant along with compensation to him in the form of simple interest @ 18% per annum from the date of each payment till the date on which the said refund along with compensation in the form of interest is paid. The payment in terms of this order shall be made by the opposite party within three months from today failing which the complainant shall be entitled to seek execution of this order in accordance with law.

In *Devikarani Rao* v. *Emaar MGF Land Limited, Hyderabad,*[10] Devikarani Rao Nallamala, widow of late Nallamala Radhakrishna Rao, aged about 72 years, the complainant, had filed the petition against builder Emaar Hills Township Land Ltd. She applied for a 3-BHK apartment bearing No. BH EXCL TB-F07-B1-02/B2, the unit in Tower B, Floor 7, Core B1, Unit No. 2, Unit Type B2 with an approximate super built up area of 2723.13 sq. ft., for a total consideration of 1,93,89,597/- on July 12, 2008. She paid the first instalment in the sum of Rs. 19,38,960/- on July 26, 2008. She entered into an agreement with Emaar MGF Land Ltd., OP-1 and Emaar Hills Township Pvt. Ltd., OP-2, wherein it was agreed that OP-1 was to complete the construction of the apartment within a period of 36 months from the commencement date, *i.e.,* May 2, 2008 with a grace period of six months. Thereafter the OP-1 was required to handover the possession of the apartment and simultaneously execute and duly register the sale-deed in favour of the complainant. The complainant paid all the instalments of Rs. 16,69,506/- on November 20, 2010, for a total consideration of Rs.1,93,89,597/- which date is crucial and determinative of present controversy. In the meantime, the complainant received orders from the High Court of Andhra Pradesh

10 2016 Indlaw NCDRC 759: I (2017) CPJ 43(NC).

wherein CBI investigations were ordered against the OPs. Special leave petitions were filed before the apex court. The complainant came to know that they were not going to receive the possession in near future. Legal notice was sent by the complainant to the OPs that her amount is refunded with interest. The legal notice was replied. It also transpired that OPs had invoked force majeure clause. Whether there was deficiency in service by the opposite party in handing over the possession of flat.

It was held that there was deficiency of service by the builder and he was directed to pay the amount which was paid by the complainant along with interest @10% simple interest from the dates of deposits till its realisation. There shall be no order as to costs.

M. S. Tewari v. *Delhi Development Authority, Through its Vice Chairman, New Delhi*[11] on October 18, 1979, *vide* his application no. 36056, the complainant had got himself registered with the Delhi Development Authority (DDA) for allotment of a flat under the 'New Pattern Scheme, 1979'. He deposited the registration amount of Rs. 4500/-. His priority number was 32919. After 23 years of registration, on May 31, 2002 the draw of lots for allotment of Middle Income Group (MIG) flats was held by the DDA for the applicants with priority nos. 32416 to 34055. The complainant found that his priority number was not included in the draw held, as neither his name nor priority number figured in the result list for the said draw. Responding to his representations dated June13, 2002 and July 4, 2002, the DDA included his name in the next draw held on July 5, 2002, and allotted an MIG flat, bearing no. 74, Pocket-E, Sector-17, Dwarka, Phase-II, *vide* Demand-cum-Allotment letter dated August 1, 2002/ August 9, 2002, on cash down payment of Rs. 8,80,232/-. Since, according to the complainant, even the basic amenities were missing in Pocket-E; the flat allotted had location disadvantages and above all, the draw was not meant for the registrants in his category, *vide* his letters dated August 22, 2002 and September 5, 2002, he requested the DDA to include his name in the next draw for allotment of another flat, in the category he was entitled to. The request was rejected by the DDA and the same was intimated by it to the complainant, *vide* DDA's letters dated January 7, 2003 and February 10, 2003. After protracted correspondence between the parties, on November 19, 2004, the DDA cancelled the allotment of the flat allotted to the complainant. He alleging deficiency in service on the part of the DDA in not including his name in the draw of lots held on May 31, 2002 and not allotting the flat in the phase/sector, where the allotments to the applicants, having priority number just preceding and succeeding to him, were made, the complainant filed a complaint, being complaint case no. 203 of 2005, before the district forum. The complainant, *inter-alia,* prayed for a direction to the DDA to allot to him an MIG flat in phase/sector in which flats were allotted to the priority numbers just preceding and succeeding to his priority number, in the draw held on May 31, 2002, by restricting its cost as charged from the allottees in the said draw and to pay him a compensation of Rs. 5,00,000/- towards mental shock,

11 2016 Indlaw NCDRC 704.

agony, huge loss and injury suffered by him. Then issue involved here is whether there was deficiency in service by the opposite party DDA.

The petition was allowed; the orders passed by the fora were set aside and the DDA was directed to deliver a peaceful and vacant possession of flat no. 84, Pocket 2, Sector 12 Dwarka, New Delhi to the complainant on his making payment of the total cost of flat (Rs. 31,52,916/-), as demanded in terms of Demand-cum-Allotment letter no. 77626, dated July 13, 2010 to July 19, 2010, within two months of the receipt of a copy of this order. Since, admittedly, the flat has remained unoccupied throughout, the DDA shall ensure that it is in a perfect habitable condition, at the time of delivery of its physical possession, on a mutually agreed date and time. The revision petition stands disposed of in the above terms, with no order as to costs. Petition was allowed.

MOU entered for construction and selling of flats is not a commercial purpose

In *Bunga Daniel Babu* v. *Sri Vasudeva Constructions,*[12] The complainant was the land owner of three plots entered into a Memorandum of Understanding (MOU) with Vasudeva Constructions on July 18, 2004 for development of his land by construction of a multi-storied building comprising of five floors, with elevator facility and parking space. Under the MOU, the apartments constructed were to be shared in the proportion of 40% and 60% between the complainant and the opposite party. Additionally, it was stipulated that the construction was to be completed within 19 months from the date of approval of the plans by the Municipal Corporation and in case of non-completion within the said time, a rent of Rs. 2000/- per month for each flat was to be paid to the complainant. An addendum to the MOU dated July 18, 2004 was signed on April 29, 2005 which, inter alia, required the opposite party to provide a separate stair case to the ground floor. It also required the opposite party to intimate the progress of the construction to the complainant and further required the complainant to register 14 out of the 18 flats before the completion of the construction of the building in favour of purchasers of the opposite party. The plans were approved on May 18, 2004 and regard being had to schedule, it should have been completed by December 18, 2005. However, the occupancy certificates for the 12 flats were handed over to the occupants only on March 30, 2009 resulting in delay of about three years and three months. In addition, the complainant had certain other grievances pertaining to deviations from sanction plans and non-completion of various other works and other omissions for which he claimed a sum of Rs. 19,33,193/-. These claims were repudiated by the opposite party. A complaint was filed to the district consumer forum who came to the conclusion that the complainant is a consumer within the definition under section 2 (1) (d) of the Act as the agreement of the complainant and the opposite

12 AIR 2016 SC 3488: III (2016) CPJ 1(SC): (2016) 8 SCC 429.

party was not a joint venture. On appeal, the state consumer disputes redressal commission had reversed the view of the district forum. The state commission had opined that the claim of the appellant was not adjudicable as the complaint could not be entertained under the Act inasmuch as the parties had entered into an agreement for construction and sharing flats which had the colour of commercial purpose. Thus, the state commission concluded that the appellant was not a consumer under the Act. The said conclusion had been affirmed by the National Commission. Thus, an appeal was made before the Supreme Court.

The issue involved here was whether the MOU entered between the appellant and the respondent for construction and sharing of flats can be considered as commercial purpose

The appeal was allowed. It was held that the whole approach of the National Commission in affirming the order passed by the state commission on the ground that the complaint was not a consumer as his purpose was to sell flats and had already sold four flats was erroneous. The appellant was neither a partner nor a co-adventurer. He had no say or control over the construction. He did not participate in the business. He was only entitled to, as per the MOU, a certain constructed area. Therefore, the appellant was a consumer under the Act. It was directed that an appropriate adjudication had to be done with regard to all the aspects except the status of the appellant as a consumer by the appellate authority. Consequently, the appeal was allowed, the orders passed by the National Commission and the state commission were set aside and the matter was remitted to the state commission to re-adjudicate the matter treating the appellant as a consumer.

Delay in handing over the physical possession of land

In *Chief Administrator, H.U.D.A*. v. *Shakuntla Devi*,[13] the complainant was allotted a particular plot, measuring 40 marlas in sector 8, Urban Estate, Karnal on April 3, 1987. As physical possession of the plot was not given to the complainant by the opposite party, a complaint was filed before the state commission. In the said complaint, the complainant alleged that she had paid the full price of the plot including the enhancement fee as per the terms and conditions of the allotment letter. She averred that she was not given the possession of the plot in spite of repeated requests. The complainant also pleaded in the complaint that the opposite party were required to complete the development work within two years from the date of the allotment letter and hand over the physical possession. She further stated that she wanted to construct a house and the delay in handing over physical possession of the plot resulted in additional expenditure for the building as the price of construction material increased manifold from 1988 to 1997. The opposite party filed a written statement in which it was stated that the complainant was allotted the plot from the government discretionary quota. The opposite party alleged that the complainant did not seek delivery of

13 AIR 2017 SC 70: (2017) 2 SCC 301.

possession prior to July 16, 1997. It was also stated in the written statement that an amount of Rs. 28,000/- was still outstanding. It was further alleged that the complainant was not interested in constructing a house and that no building plan was submitted for approval. The state commission by its order dated December 21, 1998 held that the respondent has established deficiency of service by the opposite party as there was delay in handing over physical possession of the plot. The complaint was allowed and the opposite parties were directed to deliver vacant physical possession of the plot, if not already done, to the complainant within one month from the date of receipt of the order. There was a further direction to pay interest on the amount deposited by the complainant at the rate of 12% with effect from April 3, 1989 and to pay a sum of Rs. 2 lakhs as compensation on account of escalation in the cost of construction *etc*. The opposite parties were also directed to pay Rs. 20,000/- towards compensation for monetary loss and mental harassment suffered by the Respondent. The opposite parties filed an appeal to the National Commission. The National Commission remanded the matter for re-consideration of compensation for escalation of cost of construction in accordance with CPWD rates. The state commission reconsidered the matter and held that the opposite parties did not commence construction till 2006 with a view to get more compensation. Therefore, she was awarded a compensation of Rs. 15,00,000/- towards increase in the cost of construction. The order was confirmed by the National Commission. Thus, aggrieved by the order appeal has been made to the Supreme Court. Issue involved here was whether it is justified in awarding Rs.15 lakhs as compensation for escalation in the cost of construction?

It was held that the respondent is not entitled to such compensation awarded by the state commission and confirmed by the National Commission. The respondent suffered an injury due to the delay in handing over the possession as there was definitely escalation in the cost of construction. At the same time the respondent has surely benefited by the increase in the cost of plot between 1989 to 2000. The award of interest would have been sufficient to compensate the respondent for the loss suffered due to the delay in handing over the possession of the plot. The compensation of Rs. 15 lakhs awarded by the state commission is excessive. Thus, the order of the state commission dated as confirmed by the National Commission is set aside and the appeal is allowed. No cost was allowed.

V INSURANCE SECTOR

Deficiency in repudiating claim in accident insurance policy

In *Lakshmi Rohit Ahuja* v. *SBI Life Insurance Company Limited, Maharashtra,*[14] late Rohit Ahuja, husband of the petitioner / complainant obtained a cash credit card from the G E Countrywide Consumer Financial Services Ltd., opposite party no.3 in the complaint. As per the scheme of the said card, in the event of the card holder

14 2016 Indlaw NCDRC 687: IV (2016) CPJ 267 (NC).

dying before the payment of the arrears outstanding against him, the same were to be paid by the insurer and a further sum of Rs.3,00,000/- was payable to his legal heirs. The deceased died in an accident on April 24, 2009. An amount of Rs.16,821/- being outstanding against him, in the said card. The aforesaid amount was paid by the insurer but the accidental benefit amount of Rs. 3,00,000/- was not paid. Being aggrieved, the complainant approached the concerned District Forum by way of a complaint, impleading the insurer as well as the G E Countrywide Consumer Financial Services Ltd. as opposite parties. Here the issue was whether insurance company had committed any deficiency in repudiating claim on accident insurance policy**.**

The commission, relying upon medical literature produced by appellant, held that deceased was under intoxication as a result of consumption of alcohol found in his blood sample, making him ineligible to benefits of double accident policy. Purpose of prohibiting driving after consuming liquor beyond prescribed quantity is to ensure that driver does not commit an accident on account of effect of liquor. Purpose of insurer behind excluding cases of accident when insured is under influence of intoxicating liquor is to ensure that consumption of liquor does not lead or contribute to happening of accident in which insured dies or injured. Therefore, consumption of liquor beyond a safe limit must necessarily disqualify insured from getting benefits of insurance policy taken by him. Thus commission was of opinion that, if a person is found to have consumed more than 103.14 mg of alcohol/100 ml of his blood, which is position in case before us, it would be reasonable to say that he was under influence of intoxicating liquor at time he died or got injured. In case insured was under influence of intoxicating liquor at time of the accident and policy does not require any nexus to be shown between case of accident and consumption of liquor. It can hardly be disputed that deceased having 120 mg of alcohol per 100 ml of his blood was clearly under influence of intoxicated liquor when accident, in which he died took place. Therefore, insurer was not liable to make any payment to complainant in terms of policy applicable to cash card taken by her husband. Therefore, no ground for interfering with impugned order was made out. Revision petition was dismissed.

In *Pawan Kumari Wd/o Late Kishan Babu* v. *Life Insurance Corporation of India, through Branch Manager, Mahowa*,[15] Kishanbabu Shivhare was murdered on March 21, 1995 in a property dispute with some persons in his area. The petitioner filed claim under the three policies to the LIC for getting the sum insured, along with accidental benefit and bonus. On the failure of the LIC to pay the claim, the consumer complaint was filed before the State Commission. During the proceedings before the state commission, the LIC filed their written statement stating that they had already approved death claim along with bonus payable under the said policies and the same had been offered several times for payment to the complainant, but she avoided receiving the same. The LIC took the stand that the claimant was not entitled to the 'accident benefit' under the policies because it was a "death due to murder" and not a

15 2016 Indlaw NCDRC 724.

case of 'accidental death'. The state commission observed in the impugned order that the sum insured including bonus, amounting to Rs. 11,26,332/- had already been released to the petitioner by the Insurance Co. on November 16, 2000. The state commission ordered that simple interest should be paid on the said amount @ 9% p.a. for the period November 28, 1998 to the date of payment, *i.e.,* November 16, 2000. The state commission also held that the petitioner was not liable for accidental claim separately as compensation. Being aggrieved with this order, the petitioner was before National Commission by way of the present two appeals. During hearing, the learned counsel for the appellant argued that the appellant was entitled to get the benefit of accidental claim as well, because under the terms and conditions of the policy, "murder" came under the definition of accident. Whether there is deficiency in repudiating claim in LIC.

The two appeals were allowed and a direction was given to the LIC to provide accident benefit under the three policies to the appellant in addition to the grant of other benefits allowed by the state commission. The state commission *vide* impugned order had granted simple interest @ 9% per annum on the payment made already to the appellant *w.e.f.* November 28,1998, *i.e.,* the date on which the complaint was filed. The interest on the amount of accident claim shall also be paid @ 9% per annum *w.e.f.* November 28, 1998 till realisation. There shall be no order as to costs. Both the appeals were allowed.

Driving vehicle without a fitness certificate amounts to violation of the insurance policy conditions, hence not eligible to claim insured amount

In *Bhagu Ram* v. *National Insurance Company Ltd.*,[16] the complainant has got his turbo truck vehicle with registration insured from the opposite party company. The period of insurance was from July 6, 2011 to July 5, 2012. According to the complainant, the turbo truck met with an accident and the petitioner had to incur an expenditure of Rs. 13,50,819/- for its repair. A claim was filed but the opposite party has not settled the claim. The opposite party has stated in their reply that the surveyor had assessed the damage at Rs.7,57,059/- in its survey report. As there was no valid and effective fitness of the said vehicle of the complainant and due to violation of the policy conditions, the amount was not payable. The District Consumer Disputes Redressal Forum, Nagaur directed that the complainant is entitled to get Rs. 7,57,059/- from the opposite party and the opposite party shall also pay interest @ 9% per annum from the date of filing of the claim petition till recovery. Along with this the opposite party shall pay Rs. 5000/- for litigation expenses and shall also pay Rs. 5000/- for mental agony to the complainant. Aggrieved by the order of the district forum, the opposite party filed an appeal before the state commission. The state commission set aside the order of the district forum and dismissed the complaint. The

16 Revision Petition No. 2283 of 2016, decided on August 24, 2016; MANU/CF/0339/2016.

issue involved here was whether an insurance company is liable to pay compensation to the owner of the vehicle who was driving a vehicle without a fitness certificate.

The National Commission observed that as there was no fitness certificate of the vehicle on the date of the accident, driving the vehicle without a fitness certificate was a breach of the terms and conditions of the insurance policy and hence, he is not liable to be compensated under the said policy. Thus, the revision petition was dismissed and the order of the state commission was upheld.

A person cannot claim for goods which is not covered by the Insurance Policy

In *Mahendrakumar and Bros*. v. *National Insurance Co. Ltd*.,[17] the complainant took a Fire Floater Policy from the opposite party for the stock/material stored in their godown since 1992 and they got the policy renewed from time to time. On October 11, 2013 a fire occurred in the insured cold storage of the complainant due to which the goods of its customers worth Rs. 5,62,745/- were totally burnt and destroyed during the policy period from 2013 to 2014. The description of risk is mentioned as on stock of chilli or kirana items of ed. stored and or lying in various (7) cold storages for a total of Rs. 30,00,000/-. The incident was reported to the police and also to the insurance company. The insurance company repudiated the claim on the ground that loss occurred to the stocks held in trust and hence were not covered by the insurance policy. Aggrieved by the repudiation, the petitioner filed a complaint before the District Consumer Disputes Redressal Forum, Ahmadabad seeking relief of Rupees 5,62,745/- with interest @ 12% p.a. with Rs. 50,000/- as compensation and Rs. 25,000/- as penalty and Rs. 40,000/- as cost. The district forum dismissed the complaint. On appeal, the state commission dismissed the appeal and upheld the decision of the district forum. Thus, the review petition was filed. Issue here was, whether compensation for loss of stocks held in trust can be claimed from the insurance company which was not covered by the insurance policy.

The counsel for the petitioner states that goods in trust were not covered due to the mistake on the part of the insurance company. However, he has not given any evidence to prove the same. He could not also explain why the petitioner did not point out the mistake and let it rectified. Thus, the National Commission dismissed the review petition. The decision of the state commission was affirmed.

VI AIRLINE

Deficiency in service by the Air India airline

In *Station Manager, Air India, Aizawl* v. *K. Vanlalzami D/o K. Lalthanmawia*,[18] the complainant, K. Vanlalzami, is a student at S. N. Medical College, Jodhpur,

17 Revision Petition No. 2004 of 2016, decided on November 10, 2016; MANU/CF/0599/2016.
18 2016 Indlaw NCDRC 710: IV (2016) CPJ 56(NC).

Rajasthan, pursuing her M. D. degree. She booked Air India flight no. AI23 for 08.01.2015 with PNR YVW1 for undertaking journey from Lengpui airport, Aizawl to New Delhi. The flight was scheduled to depart at 2.20 pm on January 8, 2015 from Lengpui Airport for Kolkata, from where the passenger was to take flight to Delhi. It has been stated that the said flight was rescheduled for departure at 4.15 pm on that very day, and the passengers including the complainant were duly informed through messages. The complainant arrived at Lengpui airport at 3.15 pm, *i.e.,* one hour before the rescheduled time of departure, but she was told that the counter had already been closed, as the flight was overbooked. As a result, the complainant was prevented from boarding the train from Delhi to Jodhpur of the same date. The complainant was asked by the Air India to arrange her own flight on future date, but following protest made at the spot, she was rescheduled to fly from Silchar on January13, 2015, saying that no flights were available from Lengpui airport before January 20, 2015. The complainant had to incur extra expenditure for stay at Aizawl and in commuting to Silchar. It has, further, been alleged in the complaint that she was issued an open ticket for travel from Silchar to Kolkata and then to Delhi on January 13, 2015, as a result of which, no seat was allotted to her. She was subjected to harassment by the staff at Silchar and then at Kolkata, as they objected to her check-in, saying that no seat had been allotted to her. The complainant alleged that she was put to a lot of hardship, stress, tension and inconvenience, because of the failure of Air India to ensure that she could travel as per the booking made with them. The complainant sent a legal notice also on January 13, 2015, which was ignored by the Air India. The complainant filed the consumer complaint in question, claiming an amount of Rs. two lakhs as damages and compensation. The district forum allowed the complaint, vide their order dated December 15, 2015 and held the Air India liable to pay a compensation of Rs. one lakh for preventing the complainant from travelling from Lengpui airport on January 8, 2015. Being aggrieved from the order, the opposite party, Air India, filed an appeal before the state commission, which was dismissed vide impugned order. Being aggrieved, the opposite party Air India filed before National Commission by way of the present revision petition. This revision petition had been filed against the impugned order dated February 24, 2016, passed by the Mizoram State Consumer Disputes Redressal Commission, Aizawl (hereinafter referred to as "the State Commission") in first appeal no. 1 of 2016, *Station Manager, Air India* v. *K. Vanlalzami*,[19] *vide* which, while dismissing the said appeal, the order passed by the District Consumer Disputes Redressal Forum, Aizawl, dated December 15, 2015 inconsumer complaint no. 11/2015, was confirmed. The issue was whether there was deficiency in service by the Air India Airlines

It was held that the opposite parties were negligent in providing service to the complainant, for which, they were liable to pay suitable compensation to her. As per the guidelines issued by the Director General of Civil Aviation are concerned, it is an

19 IV (2016) CPJ 56 (NC).

admitted case of the opposite party that they never took this plea before the district forum. Moreover, looking at the facts and circumstances of the case, in which a professional student had to wait for as many as five days to get the next flight and that also from a distant place, it is quite apparent that she deserves to be properly compensated. Further, the complainant missed her train also for travel from Delhi to Jodhpur and she had to take another ticket for the said journey. Considering the overall circumstances of the case, the compensation awarded to her by the district forum, duly confirmed by the state commission is quite appropriate and no change was called for in the same. It is held, therefore, that the impugned order passed by the state commission and the order passed by the district forum do not suffer from any illegality, irregularity or jurisdictional error on any account and the same was upheld. The revision petition was ordered to be dismissed, with no order as to costs.

VII BANKING SECTOR

Deficiency in service by the bank

In *CITI Bank N. A., Home Loan Department* v. *Ramesh Kalyan Durg*,[20] Ramesh Kalyan Durg and his wife, Syamala Vellala took loan from the Citibank, the OPs in this case. They had given a security of their sale deed and link documents of the house. The said sale deed along with link documents were misplaced. The bank made frantic efforts to search the said documents but to no avail. It clearly goes to show that the bank was terribly remiss in the discharge of its duty. The state commission also held that the complaint was allowed and directed the opposite parties to pay compensation of Rs.10,000/- for the negligence and deficiency in service in not returning the original documents and also to execute an indemnity bond for the value of the property of Rs.10 lakhs to indemnify the loss in case the original documents are misused by any person by depositing the same to secure loan from any creditor or financier. The opposite parties are also directed to pay litigation costs of Rs.5,000/- compliance to be made within four weeks from the date of receipt of the order. The issue involved here was whether there was deficiency of service by the CITI bank in not returning and misplacing the other original documents of the customer.

The complainant was given compensation in the sum of Rs.1,00,000/- by demand draft in the name of Ramesh Kalyan Durg by the bank. Secondly, a public notice was also published by the bank in "Times of India" and "Eenadu" (state edition). The amount of publication was paid by the bank. That was done within 15 days. Otherwise it would carry penalty of Rs.100/- per day till the needful is done. Thirdly, the bank would get a certified copy of the sale deed and link documents with the help of the complainants and all the expenses were borne by the bank. The complainants would approach them within a period of 15 days and the needful would be done within 60

20 I (2017) CPJ 95 (NC).

days otherwise penalty of Rs.100/- per day shall be imposed upon the bank. Fourthly, if in future the complainants suffer the loss due to loss of the said documents the bank will be liable to compensate the complainant. The bank will lodge an FIR with the police station immediately. The appeal was disposed of.

In *Mumbai Metropolitan Region Development Authority* v. *Dena Bank*,[21] the complainant is a statutory authority set up under the provisions of Mumbai Metropolitan Region Development Authority Act, 1974. The said complainant invited quotations from Banks for investment of the surplus funds to the extent of Rs. 800 crores for a period of one year. In response to the said notice, the opposite party namely Dena Bank ('Bank') offered interest @ 9.99% per annum for a fixed deposit of Rs. 350 crores for a period of 366 days. Thereupon, the complainant transferred a sum of Rs. 350 crores to the bank through RTGS on March 19, 2014. *Vide* letter dated March 19, 2014 alleged to have been sent by Fax, the bank was requested to issue term deposit received for Rs. 350 crores. On March 21, 2014 an additional sum of Rs. 1.50 crores was transferred by the complainant to the bank through RTGS and the bank was requested to issue the fixed deposit receipt in the name of the complainant. The said letter dated March 21, 2014 is also alleged to have been sent by Fax. The bank issued 45 fixed deposit receipts. The complainant received a letter dated July 5, 2014 from the Senior Inspector of Police, EOW, Unit-I, CB,CID, Mumbai informing it that a fraud had been committed in respect of its fixed deposits with the bank and an amount of Rs. 45 crores had been siphoned off. When the complainant contacted the bank to ascertain the status of the said fixed deposit receipts, it was informed that the said Fixed Deposit Receipts were not original. Vide letter dated July 10, 2014, the bank informed the complainant that they had found that an overdraft account had been opened in its name and in the said overdraft account there was an outstanding of Rs. 45.23 crores against the fixed deposits. It was further stated in the said letter dated July 10, 2014, that the original fixed deposit receipts duly discharged by the complainant were held by the branch and the matter of creation of overdraft had been referred to the CBI for investigation. Vide letter dated July 15, 2014, the bank forwarded the copies of the documents relating to the opening of the overdraft account and grant of the loan against the fixed deposit receipts to the complainant. The complainant reiterated to the bank that it had not applied for grant of any overdraft facility nor had it collected the cheque book from the bank. The bank was also asked to authenticate the fixed deposit receipts which were in the possession of the complainant. The complainant handed over all the 45 fixed deposit receipts of Rs. 351.50 crores to the bank, *vide* letter dated November 28, 2014. On January 2, 2015 the bank informed the complainant that the signature on the said fixed deposit receipts did not match with the signature of the bank officer. On maturity of the fixed deposit receipts, the bank has refused to pay the proceeds to the complainant on the ground that the fixed

21 2016 Indlaw NCDRC 771.

deposit receipts in the custody of the complainant were forged documents, whereas the bank required genuine fixed deposit receipts issued by it, before it could pay the maturity amount of the fixed deposits to the complainant. The bank also sought to adjust from the proceeds of the fixed deposits, the amount outstanding in the overdraft account opened in the name of the complainant Mumbai Metropolitan Region Development Authority. Being aggrieved, the complainant is before National Commission, seeking relief. The issue involved whether there was deficiency of service by the DENA bank

It was held that there was deficiency in service by the bank. The opposite party, Dena Bank was directed to pay the entire principal amount of Rs. 351.50 crores to the complainant along with the interest applicable to the said fixed deposit receipts from time to time; It was also directed to pay the principal amount of Rs. 1,25,82,82,737/- to the complainant along with the interest applicable to the said fixed deposit receipts from time to time; the payment in terms of this order shall be made within six weeks from today; the fixed deposits made by the complainants with the opposite party shall stand discharged and paid, on payment in terms of this order; the forged fixed deposit receipts available with the complainants shall be delivered to the opposite party, at the time of payment in terms of this order; the parties shall bear their respective costs of the complaint.

Deficiency in service by the bank for loss of title deeds

In *Bank of India* v. *Mustafa Ibrahim Nadiadwala,*[22] the respondent/complainant, Mustafa Ibrahim Nadiadwala filed the consumer complaint saying that he was the co-owner of certain properties situated at village Nanegaon, Tehsil Pen, District Raigad and that he availed term loan facility of Rs.10,48,000/- and for that purpose, the three co-owners including the complainant, credited equitable mortgage in respect of the said properties in favour of the appellant/opposite party by depositing two conveyance deeds with the said bank. However, even after the said loan had been fully repaid to the bank, the bank did not return the original documents. The complainant filed the consumer complaint, seeking directions to the bank to return the original title deeds as well as pay a compensation of Rs.99 lakhs towards mental agony harassment etc. and a further sum of Rs.50,000/- as litigation cost. The complaint was partly allowed by the state commission with cost which was quantified to Rs.10,000/- to be paid to the complainant. The Opponent bank was directed to return the original title deeds of the complainant within a period of two months from the date of the order, failing which the opponent was directed to pay Rs.500/- per day to the complainant till return of original title deeds. Also a sum of Rs.9 lakhs was awarded to the complainant as compensation on account of mental suffering. Being aggrieved against the said order of the state commission, the bank has filed the present first appeal before the National Commission. The issue involved, whether there was deficiency in service by the bank.

22 I (2017) CPJ 180 (NC).

In the memo of appeal the bank has admitted that the said title deeds had been misplaced and hence, they were not in a position to return the same to the complainant. The National Commission held that there has been deficiency in service on the part of the bank towards the complainant, as the title deeds had been lost from their custody only. The bank is, therefore, liable to compensate the complainant. This first appeal is, therefore, partly allowed and the order passed by the state commission is ordered to be modified to the extent that the complainants shall be entitled to a sum of Rs.5 lakhs as compensation from the bank for the loss of title deeds, alongwith a sum of Rs.10,000/- as cost of litigation, as already awarded. The said amount shall be payable within a period of four weeks of passing this order, failing which the bank shall be liable to pay interest @ 12% p.a. for the period of delay in making the said payment.

VIII UNFAIR TRADE PRACTICES

Unfair trade practice: Supplied inferior and defective tiles

In *Lourdes Society Snehanjali Girls Hostel* v. *H and R Johnson (India) Ltd.,*[23] on February 2, 2000 the complainant Lourdes Society Snehanjali Girls Hostel purchased vitrified glazed floor tiles from the local agent of the H and R Johnson (India) Ltd. for a sum of Rs. 4,69,579/-. The said tiles, after its fixation in the premises of the complainant, gradually developed black and white spots. The complainant wrote several letters to the sales executive of the company, informing about the inferior and defective quality of the tiles. Thereafter, the local agent visited the spot but failed to solve the issue. An architect J.M. Vimawala was appointed by the complainant to assess the damage caused due to defective tiles. The architect assessed the loss to the tune of Rs. 4,27,712.37 which included price of the tiles, labour charges, octroi and transportation charges. Thereafter, the complainant served a legal notice dated August 12, 2002 to the company making a demand of the said amount but no response was shown by the company. The said inaction on the part of the company made the complainant to file a consumer complaint against the company before the District Consumer Disputes Redressal Forum at Surat for claim of the said amount. The district forum allowed the complaint and held that the tiles supplied by the company had manufacturing defect. The district forum by holding the company, local agent and sales executive jointly and severally liable, directed them to pay to the complainant a sum of Rs. 2,00,000/- along with interest @9% p.a. from the date of complaint till its recovery within a period of 30 days from the date of order of the district forum. Aggrieved by the decision, the opposite party appealed to the Gujarat State Consumer Dispute Redressal Commission, Ahmedabad. The state commission dismissed the appeal of the opposite party and confirmed the order passed by the district forum. Thereafter, the respondents filed a revision petition before the NCDRC questioning

23 AIR 2016 SC 3572: III (2016) CPJ 27 (SC): (2016) 8 SCC 286.

the validity and correctness of the order passed by the district forum and the state commission. On March 12, 2012, the complainant also made an application in revision petition to the National Commission for invoking the powers under sections 14(d) and 14(hb) of the COPRA and for awarding sufficient amount of compensation in addition to amount already awarded by the district forum. On appeal, the National Commission reversed the findings of the district forum and the state commission holding that the complainant is a commercial entity and hence not a consumer within the meaning of section 2(d) of the COPRA. The issue involved whether a society registered under the Societies Registration Act, 1860 a charitable institution or a commercial entity

The Supreme Court observed that the National Commission has exceeded its jurisdiction in exercising its revisional power under section 21(b) of the COPRA by setting aside the concurrent finding of fact recorded by the state commission in first appeal wherein the finding of fact recorded by the district forum was affirmed. The facts of the instant case clearly reveal that the National Commission has erred in observing that the appellant-society is a commercial establishment by completely ignoring the Memorandum of Association and byelaws of the appellant-society. Both the district forum as well as the state commission has rightly held that the appellant society is a charitable institution and not a commercial entity. The impugned order of the National Commission was hereby set aside and the order of the district forum which was affirmed by the state commission was restored.

Deficiency of Service: Loss of goods in transit

In *Virender Khullar* v. *American Consolidation Services Ltd*.,[24] the complainants entrusted consignments containing men's wearing apparels in December 1994 to opposite party American Consolidation Services Ltd., who also issued the cargo receipts. As per the cargo receipts so issued, the consignments were to the order of Central Fidelity Bank. The opposite party on its part handed over the consignments to M/s. Hoeg Lines, Lief Hoegh and Company, A/S Oslo, Norway/M/s. American President Lines Limited, for delivery of the consignments at the port of destination. It is alleged that in the bill of lading issued by the shipping carriers, name of consignee was changed from Central Fidelity Bank to Coronet Group Inc. besides there being several other changes in the name and description of the shipper as Cavalier Shipping Company. When payment was not received till March, 1995, the complainants made enquiry about the consignments. After servicing legal notice, Virender Khullar filed a complaint for an amount of Rs. 35,31,601.15 and Girish Chander filed a complaint for an amount of Rs. 29,17,844.76 before NCDRC, New Delhi. Initially the complaints were filed only as against American Consolidation Services Ltd. (ACS). The opposite party contested the complaints and pleaded that they received the complainants' goods

24 AIR 2016 SC 3798: III (2016) CPJ 22 (SC).

on behalf of the buyer/consignee, *i.e.,* Zip Code Inc. which was part of Coronet Group Inc. as its agent. It is further pleaded that there was no payment made by the complainants for the service provided by the opposite party, neither there was any contract between the complainants and opposite party for shipment of the goods. The receipt, custody and forwarding of the goods of the complainants were governed by the provisions of bailment agreement as mentioned in the cargo receipts. The bailment agreement provided that from and after the delivery by opposite party to a carrier in accordance with the instructions of the consignee or other cargo owner, the sole responsibility and liability for the care, custody, carriage and delivery of goods was that of the concerned carrier. The opposite party was under no liability whatsoever in respect of any failure on the part of the consignee or any other party. According to the opposite party, the complainants' claim, if any, can lie only as against the principal, *i.e.,* buyer/consignee who appears to have not made payment to the complainants for the value of the cargo. The National Commission accepting both the claims of the complainant directed the opposite party to pay the amount of Rs 20, 82908.40 and Rs. 15,27,461.76 with interest to Virender Khullar and Girish Chander respectively. The above order was challenged by the opposite party before the Supreme Court. The court set aside the above judgement and the matter was remanded to the National Commission with liberty to the claimants to implead the consignee as well as the carrier in their claim petitions. The case was decided afresh by the National Commission. It has been held by National Commission that it is only zip code, the intermediary consignee of the cartons in question mentioned in cargo slips, who received the delivery of the consignments without making payment to the bank or the complainants, is liable to pay the compensation to the complainants, and accordingly directed them to make the payment of Rs. 20,82,902.40 in favour of Virender Khullar and Rs. 15,25,461.76 in favour of Girish Chander, with interest at the rate of 12% per annum with effect from April 1, 1995. The order was not challenged by the opposite party, rather by the complainants as the other opposite party were held not liable. The issue involved here was whether the agent of the consignee is liable to make the loss for the non-payment of goods?

In appeal, the Supreme Court found that there was no infirmity in the impugned order. The appeal was dismissed. Zip code which is subsidiary to group incorporation, the consignee named in the cargo slips, is the only party which can be held liable for taking delivery without depositing the price of the goods with the bank.

IX RAILWAY SECTOR

Railways: Failure to display warnings/alert sign-boards at the site of renovation work, liable to pay compensation

In *Western Railway* v. *Vinod Sharma,*[25] the complainant, Vinod Sharma, aged 34 years, was employed with S.K.I.L. Infrastructure Ltd. as Administrative Manager

25 I (2017) CPJ 279 (NC).

and he used to commute from Virar Station to Churchgate Station in Mumbai, every day by local train. He was holder of a first-class season ticket/pass effective from May 7, 2010 to June 6, 2010. On May 13, 2010, when the complainant got down from the local train at Churchgate Railway Station at about 10.45 am, and was going towards his office, a heavy wooden plank/sleeper, approximately 10 ft long and 2 ft wide, fell on his head, from a height of more than 50 feet, causing grievous brain injury and multiple skull fracture with spontaneous unconsciousness. At that time, renovation work was at progress, but there were no warnings/alert sign-boards or fencing etc. to that effect on the spot. The complainant was diagnosed as suffering from right hemiparasis grade III upper limbs, grade IV lower limbs and had significant global dysphasia. A part of his skull was removed that would be required to be fixed at a later stage. A consumer complaint was filed in the state commission against the opposite party.

The OPs resisted the complaint by filing a written statement before the state commission, in which they stated that the commission had no jurisdiction to entertain the complaint in view of sections 13 and 15 of the Railway Claims Tribunal (RCT) Act, 1987. Moreover, the OPs had already paid more than Rs. 25 lakhs to the Bombay Hospital for medical treatment of the complainant. The OPs also stated that under section 124 and 124A of the Railways Act, the railway claims tribunal had the exclusive jurisdiction to entertain the complaint in question. Further, the validity of the season ticket was also questioned. Here the issue involved was whether railways should compensate for negligence

The state commission, after taking into account the averments of the parties, allowed the said consumer complaint and directed the Opposite Party to pay compensation of Rs. 62,87,040/- to the complainant and an interest thereon @ 9% p.a. from the date of filing complaint till realization. The said amount should be paid to the complainant within three months from the date of this order in default the amount will carry interest @ 12% p.a. The OP is directed to bear the entire medical expenses present and future of the complainant in respect of the said incident, arising out of the said disability as undertaken by the OP. The OP is directed to pay an amount of Rs. 5,00,000/- on account of pain, suffering, mental agony and loss of amenities. The OP is directed to pay an amount of Rs. 15,000/- on account of cost of this complaint. The decision was upheld by the National Commission.

X VICARIOUS LIABILITY

Vicarious Liability: Gross negligence on teachers for failure to take care of a student after repeated complains of ill-health

In *B.N.M Educational Institution* v. *Kum Akshatha*,[26] the respondent/complainant, a child aged 14 years at the relevant time, was a 9th standard student of B.N.M. Primary

26 IV (2016) CPJ 600 (NC).

and High School, being run by B.N.M. Education Institutions at Bangalore. In December 2006, a group of students, including the respondent /complainant, accompanied by some teachers of the school, came to Delhi for an educational tour to several places in North India. The group reached Delhi on December 24, 2006. The complainant allegedly developed fever on December 24, 2006 and her illness was intimated, by her classmates, to the teachers accompanying the students. The case of the complainant/respondent is that no medical aid was provided to her, which resulted in deterioration of her health. On December 26, 2006 when the group was on a visit to Ranathambore National Wildlife Park, the complainant had severe shivering and seizure. Twice, she became unconscious, firstly at 5 A.M. and then at 9.30 A.M. and she also vomited, due to high fever. According to the complainant, no medical help was provided to her even at that time. When the group was returning to Delhi by road, undertaking a journey of about 14-15 hours, the complainant, allegedly not being in her senses, attempted to jump from the bus but only a Crocin tablet was provided to her, without taking to her any doctor or hospital, which resulted in further deterioration of her health. She allegedly bite her tongue twice, which resulted in bleeding and she lost senses. Though her condition continued to worsen, she was made to participate in a camp fire till the midnight of December 30, 2006 and made to travel to Delhi with the rest of the group. By the time they reached Delhi, she was allegedly totally drowsy and behaving indifferently. She was taken to the airport on December 31, 2006 without first taking her to a doctor or a hospital. But on account of her sickness, she was not allowed to take the flight. On return to the hotel, she allegedly vomited and fell unconscious in the bathroom. The door had to be broken upon, in order to rescue her from the bathroom. She was then taken to Jessa Ram Fortis hospital, where she was admitted. It was at that stage, that the teachers intimated the parents of the complainant about her ill-health. It was diagnosed by the doctors that she had suffered a viral fever, namely, Meningo Encephalitis. The doctors opined that had she been given timely medical aid and attention, she could easily have been cured. She is stated to have become vegetable like for all practical purposes and needs to be bedridden all the 24 hours. Alleging gross negligence on the part of the teachers who were accompanying her and the school management in taking care of the child at the time she was in their care, control and supervision, the complainant approached the concerned state commission by way of a consumer complaint, seeking a sum of Rs.35 lakhs towards medical expenditure incurred upon the treatment of the complainant along with Rs.25 lakhs for her further treatment and Rs.40 lakhs as damages. The state commission vide its order dated March 9, 2016 directed the appellant to pay a total sum of Rs.88,73,798/- to the complainant along with interest @ 9% p.a. from the date of filing of the complaint. An appeal was made to the National Commission.

The issue involved was whether the school management is vicariously liable to the student for the negligence of the teachers?

The National Commission held that the appellant should pay a consolidated amount of Rs.50,00,000/- as an all-inclusive one time compensation to the complainant, along with interest @ 8% per annum from the date of filing of the complaint. The appellants are granted six weeks to deposit the said amount with the concerned state

commission. On such deposit, a sum of Rs.40,00,000/- shall be deposited in a Nationalised Bank, in an FDR in the joint name of the parents of the complainant, initially for a period of ten years. The interest which accrues on the said deposit shall be utilised by the parents of the complainant solely for her treatment and wellbeing. The balance amount shall be paid to the parent of the complainants. If the interest which is paid on the fixed deposit is not sufficient for the treatment of the complainant, the parents of the complainant will be entitled to withdraw part of the said deposit with the prior permission of the concerned state commission. Thus, the appeal was disposed of.

XI WRIT OF MANDAMUS AGAINST STATE

Adulterated milk: Writ of mandamus directing Union of India and state governments to take immediate and effective steps

In *Swami Achyutanand Tirth* v. *Union of India*,[27] a writ petition was filed in public interest by the petitioners highlighting the menace of growing sales of adulterated and synthetic milk in different parts of the country. The petitioners are residents of the State of Uttarakhand, Uttar Pradesh, Rajasthan, Haryana and NCT of Delhi and have accordingly shown concern towards the sale of adulterated milk in their states. However, the issue of food safety being that of national importance, Union of India has also been made a party-respondent. The petitioners allege that the concerned state governments and Union of India have failed to take effective measures for combating the adulteration of milk with hazardous substance like urea, detergent, refined oil, caustic soda, *etc*. which adversely affects the consumers' health and seek appropriate direction. The petitioners have relied on a report dated January 2, 2011 titled "Executive Summary on National Survey on Milk Adulteration, 2011" released by Foods Safety and Standards Authority of India (FSSAI) which concluded that on a national level, 68.4 per cent of milk being sold is adulterated. The petitioners pleaded inaction and apathy on the part of the respondents to take appropriate measure to rule out sale and circulation of synthetic milk and milk products across the country which according to the petitioners has resulted in violation of fundamental rights of the petitioners and public at large guaranteed under article 21 of the Constitution of India. The petitioners, therefore, seek for a writ of mandamus directing Union of India and the concerned state governments to take immediate effective and serious steps to rule out the sale and circulation of synthetic/adulterated milk and the milk products like ghee, mawa, cheese, *etc*. The issue involved here was whether milk is being adulterated with chemicals and there was inaction by state governments.

The writ petition is disposed of with the following directions and observations:

(i) Union of India and the state governments shall take appropriate steps to implement Food Safety and Standards Act, 2006 in a more effective manner.

27 AIR 2016 SC 3626: (2016) 9 SCC 699.

(ii) States shall take appropriate steps to inform owners of dairy, dairy operators and retailers working in the state that if chemical adulterants like pesticides, caustic soda and other chemicals are found in the milk, then stringent action will be taken on the state dairy operators or retailers or all the persons involved in the same.

(iii) State Food Safety Authority should also identify high risk areas (where there is greater presence of petty food manufacturer/business operator etc.) and times (near festivals *etc*.) when there is risk of ingesting adulterated milk or milk products due to environmental and other factors and greater number of food samples should be taken from those areas.

(iv) State Food Safety Authorities should also ensure that there is adequate lab testing infrastructure and ensure that all labs have/obtain NABL accreditation to facilitate precise testing. State government to ensure that state food testing laboratories/district food laboratories are well-equipped with the technical persons and testing facilities.

(v) Special measures should be undertaken by the State Food Safety Authorities (SFSA) and district authorities for sampling of milk and milk products, including spot testing through Mobile Food Testing Vans equipped with primary testing kits for conducting qualitative test of adulteration in food.

(vi) Since the snap short survey conducted in 2011 revealed adulteration of milk by hazardous substances including chemicals, such snap short surveys to be conducted periodically both in the state as well as at the national level by FSSAI.

(vii) For curbing milk adulteration, an appropriate state level committee headed by the chief secretary or the secretary of dairy department and district level committee headed by the concerned district collector shall be constituted as is done in the State of Maharashtra to take the review of the work done to curb the milk adulteration in the district and in the State by the authorities.

(viii) To prevent adulteration of milk, the concerned state department shall set up a website thereby specifying the functioning and responsibilities of food safety authorities and also creating awareness about complaint mechanisms. In the website, the contact details of the joint commissioners including the food safety commissioners shall be made available for registering the complaints on the said website. All states should also have and maintain toll free telephonic and online complaint mechanism.

(ix) In order to increase consumer awareness about ill effects of milk adulteration as stipulated in section 18(1)(f) the states/food authority/ commissioner of food safety shall inform the general public of the nature of risk to health and create awareness of food safety and standards. They should also educate school children by conducting

workshops and teaching them easy methods for detection of common adulterants in food, keeping in mind indigenous technological innovations (such as milk adulteration detection strips etc.)

(x) Union of India/state governments to evolve a complaint mechanism for checking corruption and other unethical practices of the food authorities and their officers.

XII CONCLUSION

In the year 2016 the Supreme Court full bench has taken very seriously on implementation of COPRA along with consumer issues, appointment of members, salary and administration of consumer forum/commission throughout India. The NCDRC has 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. In order to help. E-Consumers to settle their disputes including Pre-litigation against the E-Commerce Companies through online mediation NCDRC launched Online Consumer Mediation Centre (OCMC) with tag 'anytime Anywhere Dispute Resolutions at National Law School of India University, Bengaluru.

The Consumer Protection Bill, 2015 will be presented before the Parliament with some changes on the line of standing committee report. Once the new Act comes into force then consumer redressal system will get more teeth and become strong enough to protect the consumers in a better way.