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CONSUMER PROTECTION LAW

Ashok R. Patil[*]

I INTRODUCTION

IN A country like India, the exploitation of consumers has assumed numerous forms such as unfair trade practice, adulteration of food, high prices and poor quality of products, deficient services, misleading advertisements, defective products, black marketing and many more. In addition, with revolution of information technology and e-commerce sector many challenges come out in the field of consumer protection like cybercrimes, protection of personal data and privacy, error in payments, Deceptive information and marketing practices with respect to both goods and services and prices *etc*., violating several basic rights of the consumers such as right to be choose, right to be informed, right to safety and protection against unsafe goods and services which affect the consumer in even bigger way. 'Consumer is sovereign' and 'customer is the king' are nothing more than myths in the present scenario particularly in India. However, the primary responsibility to protect the consumers' interest and rights lies with the government. The protection of the consumers' is a socio-economic programme to be pursued by the government.

The Indian Parliament, on August 6, 2019, passed the landmark Consumer Protection Bill, 2019 with an object to provide for protection of the interest of the consumer and for the said purpose, to establish authorities for timely and effective administration and settlement of consumer disputes. The Consumer Protection Act, 2019 (new Act) received the assent of the President of India and was published in the official gazette on August 9, 2019. The new Act will come into force on such date as the Central Government may so notify. It seeks to replace the more than three decades old Consumer Protection Act, 1986 (CPA, 1986). The new Act has widened the scope and provides more protection to the consumer as compared to CPA, 1986, which can be seen from the definition of the term 'Consumer' and 'Unfair Trade Practice'. The new Act has introduced the new concept of unfair contracts which includes those contracts whose terms and conditions are in favour of the manufacturer or service provider and are against the interest of the consumer. This concept would help to

* Professor of Law, Chair on Consumer Law and Practice; Director, Online Consumer Mediation Centre; Member, Central Consumer Protection Council [Ministry of Consumer Affairs, Govt. of India], National Law School of India University, Bangalore.

keep check on the business including banks and e-commerce sites that take advantage of their dominance in the market. The other significant addition that has taken place in 2019 is establishment of Central Consumer Protection Authority (CCPA) to regulate, protect and enforce the interest of the consumer and matters related to unfair trade practice. The another major introduction in new act is concept of 'Product Liability' which covers within its ambit the product manufacturer, product service provider and product seller, for any claim for compensation. The consumer disputes redressal commissions (consumer *fora*) will be set up at the district, state and national levels. The consumer court can hear the complaints related to defect in goods/deficiency in services; unfair trade practice; excessive pricing; product liability *etc*., such complaints can filed electronically and from where the compliant resides and works. Another significant addition that has taken place under new Act is addition of chapter on mediation. It provides for establishment of mediation cells attached to the district, state and National Commissions. The commissions may refer a matter for mediation if the parties consent to settle their dispute in this manner. Conclusively, the new act provides for the better protection of consumer right taking into consideration of technological advancement. The Ministry of Consumer Affairs, Government of India is working on finalising the rules and regulations under CPA, 2019. The list of draft rules and regulations are as follows:

i. The Consumer Protection (Administrative Control over the State Commission and the District Commission) Regulations, 2019.
ii. The Central Consumer Protection Authority (Allocation and Transaction of Business) Regulations, 2019
iii. The Consumer Protection (Central Consumer Protection Council) Rules, 2019.
iv. The Central Consumer Protection Authority (Selection and Term of Office of Chief Commissioner and other Commissioners) Rules, 2019.
v. The Consumer Protection (Consumer Disputes Redressal Commissions) Rules, 2019.
vi. The Consumer Protection (Direct Selling) Rules, 2019.
vii. The Consumer Protection (e-Commerce) Rules, 2019.
viii. The Consumer Protection (Mediation) Rules, 2019.
ix. The Consumer Protection (Salary, allowances and conditions of service of President and Members of the State Commission and District Commission) Model Rules, 2019.
x. The Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission and District Commission) Rules, 2019.

In the meanwhile the consumer commission and Supreme Court have also played a vital role in protection of consumer right. The cases that come up were mostly related to the issues relating to deficiency in services, defect in goods and unfair trade

practice in telecom, insurance, banking, education, real-estate and medical profession *etc*.

II POWERS OF CONSUMER FORA /COMMISSION

Reasoned judgement shall be given

In Emaar MGF Land Ltd., v. *Balvinder Singh*[1] the Supreme Court criticized the National Consumers Disputes Redressal Commission (NCDRC) for its long delay in assigning reasons for dismissing an appeal. The Commission, in its order dismissing an appeal stated that a reasoned judgment will follow. But the court found that no such reasoned judgment followed even after a year lapsed. In the meanwhile, it also dismissed an application for review of the order on the ground that since the main appeal has been dismissed and reasons are yet to be given the review application is not maintainable. The apex court in this case said that it cannot appreciate this system of adjudicating appeals whereby an appeal is dismissed without giving reasons and reasons are not given for such a long period of time. The court said this is not the way the Commissions are required to function. These Commissions have been set up with a view to give quick relief to the parties and if reasons are not given for years on end then the whole purpose of setting up such Commissions is thwarted.

Consumer forum has jurisdiction to adjudicate the legitimacy of statutory dues

In *Punjab Urban Planning and Development Authority* v. *Vidya Chetal***,**[2] The reference filed in respect of correctness of the judgment rendered in the case of *HUDA* v. *Sunita*,[3] wherein it was held that the NCDRC had no jurisdiction to adjudicate the legality behind the demand of composition fee and extension fee made by HUDA, as same being statutory obligation, does not qualify as deficiency in service. The Supreme Court observed that it was a clearly established principle that certain statutory dues, such as fees, can arise out of a specific relation. Such statutory dues might be charged as a quid pro quo for a privilege conferred or for a service rendered by the authority. There were exactions which were for the common burden, like taxes, there were dues for a specific purpose, like cess, and there were dues in lieu of a specific service rendered. Therefore, it was clear from the above discussion that not all statutory dues/ exactions were amenable to the jurisdiction of the consumer forum, rather only those exactions which were exacted for a service rendered would be amenable to the jurisdiction of the consumer forum. The determination of the dispute concerning the validity of the imposition of a statutory due arising out of a deficiency in service, could be undertaken by the consumer fora as per the provisions of the Act. The decision of this court in the case of Sunita, wherein it was held that NCDRC had no jurisdiction to adjudicate the legitimacy of the statutory dues, was rendered without considering any of the previous judgments of this court and the objects of the Act. Consequently, the law laid down in the said case did not hold good before the eyes of law, and was thereby overruled.

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1 SLP Civil No. 24533-24534 of 2019, SC (date of disposal Oct.14, 2019).

2 AIR 2019 SC 4357; IV (2019) CPJ 7(SC).

3 IV (2014) CPJ 8 (SC).

'Trust' is a person

In *Administrator Tara Bai Desai Charitable Opthalmic Trust Hospital* v. *Supreme Elevators India Pvt. Ltd.,*[4] case Tarabai Desai Charitable Ophthalmic Trust Hospital filed a consumer complaint before the District Consumer Dispute Redressal Forum Jodhpur alleging the deficiency in respect of lift installed in the premises of the Trust Hospital against Supreme Elevators India Pvt. Ltd (opposite Party). The district forum allowed the complaint and ordered to pay total amount of Rs. 5,90,000 along with interest @ 9% from the date of filling of complaint. The opposite party preferred the appeal against the order of district forum before the state commission. The state commission *vide* its order has allowed the appeal and dismissed the complaint on the ground that the complainant is a trust and a trust is not a 'consumer' within the definition of consumer given in the CPA, 1986. The view taken by the state consumer was upheld by the National Consumer Dispute Redressal Commission, which order is presently challenged. The Supreme Court observed expressions "complainant", "consumer", and "person" in the CPA, 1986 opined that "trust" may also come within the purview of the definition of "person" under the Act. It noted that the definition of "person" in terms of section 2(1)(m) of the Act is also an inclusive definition as it includes "every other association of persons whether registered under the Societies Registration Act, 1860 or not". Moreover, the legislative intent appears to have a wider coverage and therefore the concerned provision includes number of categories under the definition of "person" so much so that even an unregistered firm which otherwise has certain disabilities in law, is also entitled to maintain an action.

Grant of incentives by government under EXIM policy is not a 'service'

In *Secretary, Ministry of Commerce* v. *Vinod and Company*[5] the respondent carried out exports from 1988 to 1993. They applied for the grant of an REP licence in the free on board (FOB) value of Rs. 6,16,116 for which it was entitled to a premium of 20 per cent on the amount of exports under the scheme. Since the scheme for the issuance of REP licence was discontinued, the premium of Rs. 1,23,223 was not paid. The respondent received an intimation that the additional chief controller of imports and exports had passed an order on September 3, 1991 holding in abeyance the grant of premium from February 1988 to August 1992 which was further extended to March 31, 1993. The respondent filed an appeal before the appellate committee of the Ministry of Commerce. The respondent made unsuccessful attempts for the release of the premium and was informed that the scheme had been closed as a result of which the claim could not be entertained. This led to the institution of proceedings before the District Consumer Disputes Redressal Forum at Delhi. The district forum allowed the claim by directing that an amount of Rs. 1,23,223 be paid over to the respondent together with compensation for mental agony and towards legal expenses. Appellants were set down *ex-parte* before the district forum. Their appeal before the state consumer disputes redressal commission was rejected. This was confirmed in revision by the NCDRC on April 4, 2012.

4 II (2019) CPJ 440 (NC).

5 AIR2019SC3454; IV (2019) CPJ 29 (SC).

The Supreme Court analysing the definition of expression, consumer disputes, defect, deficiency, consumer, and services allowed the appeal and held that the objects of the policy are essentially to stimulate industrial growth by providing easy access to imported capital goods, raw materials and components, to substitute imports and promote self-reliance and to provide an impetus to exports by improving the quality of incentives. The Exim policy is an incident of the fiscal policy of the state and of its overall control over foreign trade. As an incident of its policy, the state may provide a regime of incentives. The provision of those incentives does not render the state a service provider or the person who avails of the incentives as a potential user of any service. The state, in exercise of its authority to utilise and collect revenue, puts in place diverse regulatory regimes under the law. The regime may provide for modalities for compliance, penalties for breach and incentives to achieve the purpose of the policy. The grant of these incentives does not constitute the State as a service provider. Accordingly the judgement of NCDRC is set aside.

III REAL ESTATE

Force Majeure not ground for builder to seek condonation of delays in giving possession of flats

In DLF Homes Panchkula Pvt. Ltd. v. *D.S. Dhanda*,[6] the complainant book a built up flat for purchase in pursuance of a brochure of DLF Valley in sector 3, Kalka-Pinjore Urban Complex, Panchkula, Haryana. The buyer's agreement was executed and the possession of the unit was contemplated to be delivered within 24 months from the date of execution of the agreement and further it was agreed that failing of the delivery of the possession the appellant was liable to pay Rs. 10/- per sq. ft. per month for the period of delay. There was a delay in delivering of the flats. The complainant was fled before the state consumer dispute resolution commission (SCDRC). The SCDRC directed to handover the physical possession of the unit allotted in favour of the complainant and to execute the registered sale deed within a month and also directed to pay 12% interest (p.a.) on the amount deposited as compensation and Rs. 35,000/- towards cost of litigation. The appellants then approached the NCDRC, whereby a bench of SM Kantikar and Dinesh Sharma only partially modified the order passed by SCDRC and directed DLF Homes Panchkula Private Limited to pay compensation of Rs 1 lakh to the buyers besides Rs 1 lakh as cost of litigation and Rs 25,000 to be deposited in the consumer legal aid account of the state commission, within four weeks on account of unfair trade practice in each of the 16 cases before the Commission. The commission further said that it did not find anything wrong with the order of the state commission in awarding compensation in two parts aggrieved by the same appellants approached the Supreme Court.

The Supreme Court held that, "the grant of interest at the rate of 15% by SCDRC is highly excessive. Since in other two set of appeals decided earlier, this court has awarded interest at the rate of 9% per annum on the amount of refund, therefore, the order of SCDRC stand modified so as to pay interest at the rate of 9% per annum

6 II (2019) CPJ 117 (SC).

from the date of deposit till the date of refund. However, in case any transfer of the fat, such interest will be payable from the date of expiry of three years from the date of agreement or from the date of transfer whichever is later." Thus, the costs of Rs. 35,000/- imposed by the SCDRC was maintained and the amount of refund was to be paid to the complainants within two months along with the costs.

Not giving parking spaces to flat owners is deficiency in service

In Marvel Omega Builders Pvt. Ltd. v. *Shrihari Gokhale*,[7] the respondent had booked a residential villa in a project named Marvel Selva Ridge Estate to be developed by the appellants. The total considerations for the villa with three covered car parking spaces and open terrace and entered into an agreement incorporating mutual obligations. The respondent had deposited Rs. 8.14 crores with the appellant and the appellant had agreed to deliver the possession on or before December 31, 2014. But neither the villa was complete by the due date nor was any refund made by the appellants. The appellants contended that April, 2014 the respondents had suggested extra work amounting to Rs. 2,67,000/- and that stop work notices were December 2, 2019 issued by the Pune Municipal Corporation on July 23, 2014 and November 15, 2014. Since the possession of the villa was not delivered, the respondents filed complaint before the National Commission. The Commission observed that the additional work requested by the respondents was of such nature that at best three months additional period could be granted for executing such extra work. It was observed that even till the filing of the complaint, the possession of the villa was not offered to the respondents and that if there were stop work notices issued by the Pune Municipal Corporation, the respondents could not in any way be held responsible for the same and allowed the complaint directing the appellant refund the entire principle amount and Rs. 25,000/- as cost of litigation.

The Supreme Court observed the facts on record which clearly indicates appellant have failed to discharge the obligation. There was total failure on part of the appellants and they were deficient in rendering service in terms of the obligations that they had undertaken and dismissed the appeal.

Remedies available under Consumer Protection Act and RERA are concurrent

In *M3M India Pvt. Ltd.* v. *Dinesh Sharma*[8] In this petition the question was whether proceedings under the CPA could be commenced by home buyers against developers, after the commencement of RERA. The high court had decided to hear the matter filed against the order of NCDRC, earlier this year. The NCDRC had decided that "remedies provided under CPA and RERA are concurrent, and the jurisdiction of the forums/commissions constituted under CPA is not ousted by RERA, particularly Section 79 thereof". Section 79 of RERA provides that no civil court shall have jurisdiction over matters empowered to be decided by RERA under the Act and no court shall grant injunction in pursuance of any power conferred by or under this Act.

7 2019(5) ALLMR 908; 2019(5) ALT 152; III (2019) CPJ 236 (SC); 2019(10) SCALE 325.

8 CM (M) 1244/ 2019 Delhi HC.

The court was of the view that judgment *Pioneer Urban Land* v. *Union of India*[9] was binding on the high court with regard to the issue in question in as much as, While it was correctly pointed out by the respondent that the litigation before the Supreme Court principally raised the question of remedies under IBC and RERA, the issues arising out of CPA proceedings were also brought to the attention of the court. In fact, it had recorded that, "Remedies that are given to allottees of flats/apartments are therefore concurrent remedies and connected matters such allottees of flats/ apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code." While examining the operation of remedies under RERA and IBC, the Supreme Court had drawn on section 71(1) as another illustration that the remedies under RERA were not intended to be exclusive, but to run parallel with other remedies. The citing of an example could not lead to the conclusion that the court intended to reach a conclusion only with regard to pending CPA complaints, and not ones instituted in the future. Thereby the court concluded that "remedies available to the respondents herein under CPA and RERA are concurrent, and there is no ground for interference with the view taken by the National Commission in these matters."

In *Lilavati Kirtilal Mehta Medical Trust* v. *Unique Shanti Developers,*[10] the Unique Shanti Developers had developed two buildings Madhuvan with thirty two 1BHK flats in colony, out of which the Lilavati Medical trust took the possession of 29 flats for provision of hostel facilities to nurses employed by trust. Agreement to sell was executed in respect of each flat and the entire consideration amount was paid for the same. The architect issued the completion certificate and flats were used for the purpose of hostel facilities. However, within 2-3- years of completion of the project, because of poor building quality the structure became dilapidated and vacated the flats. The Lilavati trust filled a complaint before the national commission. The National Commission dismissed the complaint, on the ground that, the appellant trust was not a 'consumer' within the meaning of section 2(1)(d) of the Consumer Protection Act, 1986 as the aforesaid section excludes a person who obtains goods and services for a 'commercial purpose'. Since providing hostel facility to the nurses is directly connected to the commercial purpose of running the hospital and is consideration for the work done by them in the hospital, the appellant would not be a 'consumer' under the 1986 Act. Hence, present appeal. Supreme Court allowing the appeal held that the straight jacket formula cannot be adopted in every case, the following broad principles can be culled out for determining whether an activity or transaction is for a commercial purpose (i) 'commercial purpose' is understood to include manufacturing/industrial activity or business-to-business transactions between commercial entities (ii) The purchase of the good or service should have a close and direct nexus with a profit-generating activity (iii) The identity of the person making the purchase or the value of the transaction is not conclusive to the question of whether it is for a commercial purpose (iv) If it is found that the dominant purpose behind purchasing the good or

9 2019 SCC OnLine SC 1005.

10 IV (2019) CPJ 65 (SC).

service was for the personal use and consumption of the purchaser and/or their beneficiary, or is otherwise not linked to any commercial activity, the question of whether such a purchase was for the purpose of 'generating livelihood by means of self-employment' need not be looked into.

Purchaser of goods for commercial purpose is a consumer if he uses it himself for earning his livelihood

In *Sunil Kohli* v. *Purearth Infrastructure Ltd*.,[11] The complainants were non-resident of India but were intended to shift to India. Thus with the intention to earn their livelihood they booked shop number P-3-115 having super area 1095 sq. ft. @ 9900 per sq. ft. Total consideration payable for the shop was Rs.1,08,40,500/-. As per the terms and conditions of the agreement the opposite party had assured to give possession of the shop to the complainants within two years from the date of commencement of construction. The complainants had paid the consideration amount as per the agreed instalments but the opposite party failed to deliver the possession even years after the expiry of the stipulated date. Claiming this to be unfair trade practice and deficiency in service on the part of opposite party the complainants have raised the consumer disputes before National Commission. The National Commission observed that as the complainants had booked the commercial premises, it can be safely concluded that they had hired/availed of the services of the opposite party for commercial purpose, as such they are not the consumers as envisaged under section 2 (1) (d) of the Act.

The Supreme Court observed that it cannot be ruled that the case of the complainants would not come within the definition of "consumer" as defined under the provisions of the Act. Referring to section 2(1) (d)(i) of the Act and also the judgments in *Laxmi Engineering Works* v. *P.S.G. Industrial Institute*,[12] and, *Cheema Engineering Services* v. *Rajan Singh*,[13] the bench observed "in certain situations, purchase of goods for "commercial purpose" would not yet take the purchaser out of the definition of expression 'consumer'. If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment, such purchaser of goods is yet a 'consumer'".

In *Country Colonisers* v. *Harmit Singh Arora*,[14] the NCDRC was hearing complaints filed against the builders Country Colonizers Pvt. Ltd. under section 17 of the Consumer Protection Act, 1986. The builders had invited applications for residential project 'Wave Garden' in Mohall in which investments Rs. 10 crore had been made by around 20 last home buyers. Although the builders had promised completion of the project within three years, they had failed to complete it within the last seven years. The complainants had pleaded for obtaining a fair amount from the builder consisting of the refund of the deposited amount, with 'just and equitable interest' lump sum compensation and cost of litigation. The bench comprising of S.M

11 IV (2019) CPJ 22 (SC); 2020 (1) ALD 48.

12 (1995) 3 SCC 583.

13 (1997) 1 SCC 131.

14 III (2019) CPJ 296 (NC); MANU/CF/0417/2019.

Kantikar and Dinesh Singh, finding deficiency in service under section 2(1)(g) and (o) and unfair trade practices under section 2 (1)(r) on the part of the builders, held that they would have to pay compensation and litigation costs to home buyers seeking a refund. Observing that there cannot be two opinions about refunding the amount, the Commission held that that in respect of the interest on the amount deposited, it is always desirable and preferable, to the extent feasible and appropriate in the facts and specificities of a case, that some objective logical criteria be identified and adopted to determine an apt rate of interest. The rate of interest cannot be arbitrary or whimsical, some reasonable and acceptable rationale has to be evident, and subjectivity has to be minimized. The court, bearing in mind that the subject unit in question is a residential dwelling unit, in a residential housing project, the rate of interest for house building loan for the corresponding period in a scheduled nationalized bank (for instance, State Bank of India) would be appropriate and logical, and, if 'floating' / varying / different rates of interest were / are prescribed, the higher rate of interest should be taken for this instant computation. Lump sum compensation and a cost of litigation of 1 lakh each was awarded to the buyers. The court further held that the first charge on such amount would be to the banks, in view of the loans to facilitate transaction between the buyer and the builder, reasoning, that they function as per their rules and should not be unnecessarily and unjustifiably put to trouble in a consumer dispute substantively between the buyer and the builder. It was further observed that once the amount awarded for deficiency in service was adjudicated, the onus on the builder would be prompt and dutiful in making necessary payments within the stipulated time. It was held that creating further harassment, difficulty and helplessness for the ordinary consumers by delaying payments was unacceptable and delay would be penalized. The builder *i.e.,* the juristic person along with the directors has been concerned functionaries are liable individually, jointly and severally as per the observation of the court in reference to section 25(3) and penalties under section 27(1) of the Act.

IV BANKING SECTOR

No liability on bank in the absence of any evidence showing deposition of educational certificates for taking a loan

In *Allahabad Bank* v. *Subhash Kumar Mittal*,[15] the respondent herein had taken a loan from the petitioner bank under Pradhan Mantri Rozgar Yojana (PMRY) Scheme in 1984. He stated that he had deposited his educational certificates with the bank on the assurance that after repayment of the loan, the said documents would be returned to him. After repayment of the loan, respondent approached the bank for return of his original documents; but the same were not returned to him. Being aggrieved, he approached district forum by way of a consumer complaint. District forum allowed the complaint, and the bank's appeal against the said order was dismissed. Thus, the bank approached filed the instant revision petition. The Commission observed that no documentary proof of the alleged deposit had been filed by the respondent. Petitioner, being a nationalized bank and respondent being an educated person, it was

15 II (2019)CPJ18(NC); MANU/CF/0139/2019; 2019 SCC OnLine NCDRC 25.

difficult to accept that he deposited such important documents with the bank, without even taking an acknowledgment from it. Moreover, no evidence had been led by the respondent to prove that the submission of such documents was necessary under rules of the bank or PMRY Scheme. The Commission held that the view taken by the fora below is perverse in the sense that no prudent person acting on the material produced by the parties could have come to the conclusion, which the fora below had reached in this case. The impugned orders therefore, cannot be sustained and are therefore set aside holding a national bank liable for returning educational certificates of the complainant.

V MEDICAL NEGLIGENCE

Supreme Court awards rupees 10 lakh compensation in a medical negligence case to 'send message' to medical practitioners

In *Shoda Devi* v. *DDU/Ripon Hospital Shimla*,[16] the appellant, who had been suffering with abdomen pain and menstrual problems, approached Deen Dayal Upadhyay Hospital (respondent no.1) - a government hospital at Shimla ('DDU Hospital') where she was examined and was diagnosed with having fibroid and endometrial hyperplasia. The appellant was advised to undergo a minor operation *viz.*, Fractional Curettage (D and C). For the purpose of the operation aforesaid a para-medico, administered intravenous injection of Phenergan and Fortwin directly by a syringe in the right arm of the appellant. She continuously suffered excruciating pain during the entire surgical procedure and despite bringing the fact to the knowledge of doctors of DDU Hospital and a para medico during and after the procedure, no measures were taken to redress and reduce the discomfort suffered by her. Due to the complication the arm of the appellant, which could not be handled by the team of doctors at DDU Hospital, she was shifted to Indira Gandhi Medical College and Hospital, Shimla ('IGMCH') in a taxi arranged by her husband. In IGMCH, she was administered Brachial Plexus Block treatment immediately and, on being examined, she was diagnosed with "acute arterial occlusion with ischemia of limb, caused by intra-arterial injection", which ultimately resulted in amputating her right arm above the elbow. Having thus suffered the loss of limb, the appellant filed a consumer complaint seeking compensation before state commission. The state commission examined the matter on merits; and, with reference to the evidence of the doctors as also that of the appellant, held that no case of medical negligence was proved and further directed the DDU Hospital to make ex gratia payment to the tune of Rs. 2,93,526/-. Aggrieved by the decision of the state commission the appellant preferred an appeal before the National Commission. The National Commission allowed the appeal and enhance the compensation only to the tune of Rs. 2,00,000/-. The appellant has approached the Supreme Court to special leave against the judgement and order of NCDRC seeking enhancement of the amount of compensation with reference to the disablement and loss suffered by her due to the negligence of the respondents, which led to the amputation of her right arm above the elbow.

16 II(2019)CPJ12(SC); MANU/SC/0344/2019; 2019 SCC OnLine SC 334.

Supreme Court awarded further amount of Rs.10,00,000/- towards compensation over and above the amount awarded by state and National Comission and directed the respondent to pay within three months failing of which the enhanced amount of compensation shall carry interest of 6% p.a. and further held that such granting of reasonability higher amount of compensation was necessary to serve dual purposes is to provide some succour and support to the appellant against the hardship and disadvantage due to amputation of right arm; and to send the message to the professionals that their responsiveness and diligence has to be equi-balanced for all their consumers and all the human beings deserve to be treated with equal respect and sensitivity.

In *Arun Kumar Mangli* v. *Chirayu Health and Medicare Private Ltd*.,[17] the spouse of the appellant, Madhu Manglik, she was diagnosed with dengue fever when she was about 56 years of age. The patient was admitted to Intensive care unit to Chirayu Health and Medicare hospital at Bhopal. Though she was a febrile, she reported accompanying signs of dengue fever including headache, body ache and a general sense of restlessness. The patient had a prior medical history which included catheter ablation and paroxysmal supra ventricular tachycardia suggestive of cardiac complications. Since the patient was complaining of abdominal discomfort, an ultra sonography of the abdomen was carried out. On the date of admission the patient was sinking, her blood pressure was non-recordable, extremities were cold and the pulse was non-palpable. In the meantime, the patient was placed on a regime of administering intravenous fluids. Since the blood pressure of the patient did not improve, she was administered inotropes (dopamine and non adrenaline). Her cardiac levels were monitored and examined and later the patient had a cardiac arrest and was declared dead. The appellant instituted a complaint before the SCDRC seeking an award of compensation in the amount of Rs. 48 lakhs on the ground that his spouse suffered an untimely death due to the medical negligence of the treating doctors at the hospital. SCDRC came to the conclusion that a case of medical negligence was established and an amount of Rs. 6 lakhs was awarded to the appellant by way of compensation, together with interest at the rate of 9 per cent per annum. In appeal, these findings were reversed by the NCDRC and in consequence, the claim stood dismissed. Matter then went to Supreme Court.

The Supreme Court relying on its landmark judgement in *Kusum Sharma* v. *Batra Hospital and Medical Research Centre*, according to which the 'duty of care which is required of a doctor is one involving a reasonable degree of skill and knowledge and held that the doctors had failed to provide medical treatment in accordance with medical guidelines, and thus failed to satisfy the standard of reasonable care as laid down in the *Bolam* case and adopted by Indian courts. The bench, however, absolved the director of the Hospital from liability. It said, "There is no basis for recording a finding of medical negligence against the Director of the hospital. The Director of the hospital was not the treating doctor or the referring doctor". As regards compensation, the bench said that contribution made by a non-working spouse to the

17 III (2019) CPJ1(SC); MANU/SC/0202/2019.

welfare of the family has an economic equivalent. Thus, in computing compensation payable on the death of a home-maker spouse who is not employed, the court must bear in mind that the contribution is significant and capable of being measured in monetary terms and held that claimant will be entitled to receive an amount of Rs. 15 lakhs by way of compensation.

Doctor is vicariously liable for the acts of his team which assists him in every sphere in rendering treatment to the patient

In *Mohan Dai Oswal Cancer Treatment and Research Foundation* v. *Prashant Sareen*[18] the case was regarding the death of a three year old child named Arshiyai in 2004, while she was undergoing treatment for cancer at Mohan Dai Owal Cancer Treatment and Research Foundation Hospital, Ludhiana, under the supervision of one Raman Arora. A medicine used for treatment called 'Vincristine' had to be administered intravenously. However, this medicine was given intrathecally (through back bone injection) by doctor Harjith Singh Kohli, with assistance of doctor Vandana Bhambri, who was assisting Arora. After the injection, the situation of the patient worsened. Within two weeks, Arshiya breathed her last. Her parents Prashant Sareen and Anjail Sareen filed complaint before the Chandigarh State Consumer Commission in 2005, claiming compensations for medical negligence. The Commission found that the death of Arshiya was due to the wrong method of administering the drug, and awarded a compensation of Rs. 16,80,749\- to her parents. Challenging this award, appeal was filed in the NCDRC by the doctors and the hospital contending that the child was suffering at advanced stage of cancer and would have died anyway. Therefore, they denied any role of alleged lapses in the treatment in causing her death. The National Commission relying on the decision rendered by Supreme Court in *Achutrao Haribhau Khodwa* v. *State of Maharashtra,*[19] that a doctor is vicariously liable for the negligence committed by members of his team which was assisting in the treatment and dismissed the appeal. It further said that "Having regard to what the Supreme Court has laid down about ' Duty of Care' to be followed by medical professional, viewed from any angle it cannot be construed that ' Duty of Care' of the treating doctor/ head of the department, who is in this case has written the 'Protocol', 'Ends' with giving the prescription. At the cost of repetition, we are of the considered view that the doctor is vicariously liable for the acts of his team which assists him in every sphere in rendering treatment to the patient.

Duty of care not ends with the surgery

Pankaj Toprani v. *Bombay Hospital and Research*[20] Ranjit Toprani was operated by PB Desai. The patient died during the pendency of the complaint. He was admitted and operated for Carcinoma of the Sigmoid Colon. After the surgery, the attendants and the patient were informed by Desai that the operation was successful and that the patient would be transferred to the ward. To their shock, the patient was shifted to the post-operative ICU, which is situated on the third floor of the hospital building. While

18 MANU/CF/0352/2019; II (2019) CPJ 548 (NC).

19 1996 (2) SCC 634.

20 MANU/SCOR/44158/2019.

the patient's attendant, waited outside the ICU, unaware of the patient's condition, suddenly there was a commotion inside the ICU and they saw the patient having convulsions and was being helped to breathe with the help of an Ambubag. The attending doctor, who is Desai's assistant, informed the attendants that the patient had suffered a Bradycardia Attack and had to be resuscitated. The Ambubag was replaced with the ventilator, the only one available in the ICU. Moreover, Wagle was not available during this time and only after 2 ½ hours instructions were given for the patient to be shifted to the ICU on the 12th floor. The patient was put on ventilator and never regained consciousness, he remained in the hospital for eight months till February 14, 2005 and thereafter he was taken home where he was on support of oxygen concentrator but in a coma. In the discharge summary given on the same day it was stated- 'Patient is unconscious in a vegetative state'. This appeal was filed by the deceased Ranjit Toprani's family challenging state consumer disputes redressal commission's order rejecting allegations of negligence against the hospital and the doctors.

The Commission referred to the Supreme Court's judgement in *Savita Garg* v. *Director, National Heart Institute,*[21] wherein a principle was laid down that the onus shifts on the hospital to explain the exact line of treatment rendered and as to why a particular condition had occurred. Then, the Commission highlighted the observations of the apex court in the case of *Laxman Balakrishna Joshi* v. *Trimbak Babu Godbole*[22] wherein duties of a medical practitioner were defined, (i) he owes a duty of care in deciding whether to undertake the case, (ii) he owes a duty of care in deciding what treatment to give and, (iii) he owes a duty of care in the administration of that treatment. A breach of any of these duties gives a right of action for negligence to the patient, the judgement said. In the instant case NCDRC said that there is negligence in the treatment rendered to the patient with respect to the time and manner in which the patient was shifted from the three floor ICU to the 12 floor ICU, the unexplained cause for Bradycardia, which is not in recorded, the absence of medical record specifying the treatment rendered to the patient between 9 am to 10.30 am in the ICU. Thus, the state commission's order was set aside and the Commission noted ruled that the bills filed towards medical expenses amounting to 16,93,010.00 (excluding the medi-claim amount of 3,75,000/) and the expenses incurred post-discharge, when the patient was in a coma, and also the mental agony suffered by the patient's family, that awarding an amount of 30,00,000 to be paid by the hospital would meet the ends of justice. NCDRC also asked the doctors to pay costs of 1,00,000 jointly and severally as they believe that that 'duty of care does not end with the surgery.

VI TOURISM SECTOR

Hotel which provides swimming pool owes its guests a duty of care

In *Managing Director, Kerala Tourism Development Corporation Ltd.* v. *Deepti Singh*[23] Deepti Sharma, (complainant) had booked accommodation at Hotel Samudra

21 (2004) 8 SCC 56.

22 AIR 1969 SC 128.

23 2019 2AWC 1953SC; MANU/SC/0418/2019.

at Kovalam for a family holiday. The spouse of complainant entered swimming pool of hotel with his brother and few other guests of hotel were present in the pool at that time. All of a sudden, Satyendra Pratap Singh became unconscious and sank into pool. It was alleged by complainant that, on witnessing incident, a foreigner who was in vicinity in the pool lifted him out of water. However, according to KTDC, lifeguard on duty also jumped into the swimming pool. Victim was pulled out of water and was taken to hospital. He died on same day. A complaint was filed before the NCDRC. NCDRC had held that, there was a deficiency of service on part of management of hotel, primarily for reason that, lifeguard on duty had also been assigned task of being a Bartender. NCDRC placed reliance on safety guidelines for water sports issued by National Institute of Water Sports, Ministry of Tourism Government of India. NCDRC held that assigning a lifeguard with an additional duty of attending to bar was liable to distract his attention, since he might not be able to keep a close watch on guests swimming in the pool. Moreover, while attending to his duties as a Bartender, employee would necessarily have to leave the pool, even for a short period of time, to attend to guests outside pool.

Supreme Court agreed with NCDRC findings and observed "The duty of care arises from the fact that unless the pool is properly maintained and supervised by trained personnel, it is likely to become a potential source of hazard and danger. Every guest who enters the pool may not have the same level of proficiency as a swimmer. The management of the hotel can reasonably foresee the consequence which may arise if the pool and its facilities are not properly maintained. The observance of safety requires good physical facilities but in addition, human supervision over those who use the pool." The court also observed that allowing or designating a life guard to perform the duties of a Bartender is a clear deviation from the duty of care. "Mixing drinks does not augur well in preserving the safety of swimmers. The appellant could have reasonably foreseen that there could be potential harm caused by the absence of a dedicated lifeguard. The imposition of such a duty upon the appellant can be considered to be just, fair and reasonable. The failure to satisfy this duty of care would amount to a deficiency of service on the part of the hotel management." Thus, the appeal was dismissed.

Changing tour package at last minute is deficiency in service

Make-My-Trip Pvt. Ltd. v. *Manabendra Saha Roy*,[24] Manabendra Roy had booked a tour for four persons to Dubai. The tour package worth Rs. 2,06,959 was booked by him based on the itinerary sent to him by the petitioner, Make My Trip, on September 19, 2015, *via* email. The itinerary, though tentative, encapsulated sight-seeing at various tourist spots in Dubai. However, it was the case of the respondent that the said itinerary was changed by the petitioner without giving him any due notice. It was only three days before the tour when the respondent visited the office of the petitioner to collect his air tickets did he find that the itinerary had changed and was quite different from the earlier itinerary. The new final itinerary did not have any sight-seeing and he had in essence been charged for air tickets and hotel reservations only, he submitted. It

24 MANU/CF/0439/2019.

was alleged that as per the petitioner's cancellation policy, cancellation was permissible ten days prior to the scheduled date of departure and any cancellations made after that shall result in forfeiture of the deposited amount. Since the respondent had discovered the change in itinerary only three days prior to the scheduled date of departure, he could not cancel the package and had to reluctantly accept the tour package. Such actions of the petitioner, he submitted, amounted to restrictive and unfair trade practices and also deceptive trade practices. The petitioner on the other hand contended that the respondent was not entitled to any relief since he undertook the tour despite the knowledge of the final itinerary. Further, it was submitted that the itinerary initially provided to the respondent clearly stated that it was 'tentative'; nothing in the itinerary was fixed and the package was subject to changes.

NCDRC stated that since the so-called final itinerary was given to the respondent only three days prior to the scheduled date of departure, he was forced to undertake the tour to his utter dissatisfaction. Further, the word 'tentative' could not be misused to say that there was no fixed programme for any sight-seeing. The word 'tentative' only meant that in certain uncontrolled situation the itinerary may be changed by the petitioner. Finally, the Commission held that the practice on part of the petitioner, to induce its customer by sending an itinerary which they allege is a provisional one and later on completely changing the said itinerary and supplying a totally different itinerary after receiving the entire tour amount and leaving no option with the consumers for cancellation of the tour, threatening the customer with forfeiture of their entire amount, amounts to deceptive, restrictive and unfair trade practices. Accordingly, the order of the state commission was upheld and the petitioner was directed to pay an amount of Rs. 1,10,000 to the Respondent as compensation for mental pain and agony.

VII AGRICULTURAL SECTOR

Additional compensation to farmers on crop failure

In Vinod Kumar S/O Ram Singh v. *Indian Farmers Fertilizers Co-Operative Society Ltd. (IFFCO)*[25] The complainants/respondents purchased 180 Kgs of Gwar seeds from the petitioner. The seeds were sown by them in their respective agricultural land but the crop was not upto mark. The said seeds had been manufactured by respondent no. 2 and according to the complainants; they were assured by the petitioner that the seeds would give proper yield of 8 to10 quintals per acre. They had followed proper instructions and procedure and had taken due care and precautions required for the said crop and had prepared the fields, ploughing three times in order to get better yield as per the requisite. On complaints made by the complainants to the agriculture department, an inspection was carried out by their team and they found the plants to be of different variety. About 60-70% of the plants had high growth without any fruits. Being aggrieved from the financial loss suffered by them on account of insufficient yield, the complainants approached the concerned district forum where it dismissed the complaint. The district forum having dismissed the complaints, the complainants approached the concerned state commission by way of appeal. The state

25 MANU/CF/0355/2019.

commission allowed the appeal and directed the petitioner to pay Rs.30,000 as compensation along with Rs.11,000 for mental harassment and the cost of litigation quantified at Rs.5,500. Being aggrieved from the aforesaid order, the petitioner approached NCDRC by way of revision petitions as they were not satisfied with the quantum of the compensation awarded to them by the state commission with an application of condonation of delay of 257 days.

The NCDRC considering the fact that the petitioners are poor farmers and also considering that the state commission did not award even the minimum price of the crop to them while assessing the compensation for the loss of the crop, the delay in filing the revision petitions is condoned and further considering that even if the compensation for the loss of the crop is calculated @ Rs.17,000 per quintal, the compensation for the loss of crop itself would come to Rs.3,40,000 and accordingly modified the order to that extent in addition to compensation for mental harassment and cost of litigation awarded by the state commission. The balance payment to the complainants, it directed, shall be made within eight weeks from the date of the order, failing which it shall carry interest @ 9% p.a. from the date of institution of the complaint.

VIII AUTOMOBILE SECTOR

Compensation for defects in vehicle

Mercedes Benz India Private Limited v. *Prince Bansal*,[26] Prince Bansal, purchased a Mercedes Benz car from Joshi Auto Zone Pvt. Ltd, dealer of Mercedes Benz India Private Limited for a consideration of Rs.37 lakhs. Within a few days of its purchase, the car started creating noise when it had run only 1424 kms. It was inspected by the dealer and thereafter shockers were replaced. Then it was again taken to the workshop on noticing sounds coming from its doors, and some adjustments were done. The sunroof of the car was also adjusted when noise from the cabin was noticed. There was also a cut found on the front tyre which was replaced, when the car had run 4140 kms. Again, there was noise from the cabin of the vehicle and the sunroof had to be adjusted again. The vehicle again gave problem when it had run 7961 kms and seal frames of the doors, as well as the sunroof, were replaced. Thereafter, the doors and bidding had to be adjusted, when the vehicle had run 7971 kms. Faced with persistent problems with the car, the complainant got the same inspected from Grace Auto motives who gave an inspection report opining that there seemed to be an "inherent manufacturing defect" in the vehicle which the manufacturer was unable to locate and rectify. Being aggrieved, the complainant approached the concerned district forum by way of a consumer complaint seeking replacement of the car or in the alternative, refund of the amount he had paid for the purchase of the car along with compensation. The state commission, had directed the company to pay a sum of Rs.2 lakhs as compensation to the complainant along with cost of litigation quantified at Rs.22, 000. It had relied on the expert committee report comprising of Sushant Samir, Gopal Dass and Ankit Yadav of Punjab Engineering College, which had detected a

26 MANU/CF/0409/2019.

creaking noise of small intensity emanating from the rear door of the vehicle in question during its test drive. On being aggrieved by decision of State Commission respondent have approached NCDRC.

The NCDRC held that, the state commission was fully justified in relying upon the expert report given by Professors of Punjab Engineering College (deemed University). They submitted a report that the problem in the vehicle still persisted and had not been removed. On relying of the said report NCDRC directed Mercedes Benz to pay Rs. 2 lakh to its customer as compensation for defects in the Mercedes vehicle.

IX UNFAIR TRADE PRACTICES

Unfair to charge for paper carry bags

In *Dinesh Parshad Raturi* v. *Bata India Limited***,**[27] the Raturi had bought a pair of shoes from a Bata store in sector 22 D on February 5. He added that the actual price of a pair of shoes that he purchased was Rs 399, but he paid Rs 402. When he saw the bill, he found that he was charged Rs 3 for the paper bag. Cashier at the Bata store handed over the pair of shoes and put in a paper bag bearing the advertisement name of the shop 'BATA'. However, Raturi had no intention to purchase the carry bag. Raturi stated that it was the duty of the store to provide the carry bag, but he was forced to pay price for the paper bag, which was being used as advertisement by Bata. He added that "Bata Surprisingly Stylish", "Barcelona Milan Singapore New Delhi Rome" was printed on the paper bag. Raturi alleged that at the cost of the consumer, he was being used as the advertisement agent of the Bata India Limited. However, Bata India in reply just submitted that for the purpose of environmental safety, the complainant was given carry bag at the cost of Rs 3.

The SCDRC held that "there is unfair trade practice on the part of Bata India in compelling the complainant to purchase the carry bag worth Rs 3 and if Bata India is an environmental activist, it should have given the same to the complainant free of cost" and "it was for gain of the company" By employing unfair trade practice, opposite party [Bata] is minting lot of money from all customer and further consumer forum directed Bata India to provide free carry bags to all its customers forthwith who purchase articles from its shop and also directed Bata India to refund Rs 3 wrongly charged for the paper carry bag from Chandigarh resident Dinesh Parshad Raturi, pay him Rs 3,000 as compensation and Rs 1,000 as litigation expenses. It also directed Bata India to deposit Rs 5,000 in the "Consumer Legal Aid Account".

Malls reasonable charges for parking

In *Ruchi Malls Pvt. Ltd.* v. *State of Gujarat*,[28] The traffic police inspector issued a notice informing mall owners that the collection of parking charges was violative of the GDCR and the Building Use (BU) Permission granted to them. Following this, the mall authorities filed a writ petition before High Court of Gujarat. The single bench judge accepted the contention of the mall owners that GCDR did not mandate giving of 'free' parking space and quashed the orders of traffic police. It observed

27 MANU/SF/0005/2019.

28 MANU/GJ/1292/2019.

that parking fee cannot be exorbitant and proceeded to issue a direction for framing a guideline to regulate parking fee. Against this direction, the mall owners approached the division bench.

The Division Bench of High Court of Gujarat held that the single judge was in error in holding that mall owners could collect parking fee. It did not agree the contention that collecting parking fee was part of their fundamental right to trade and business under Article 19(1)(g) of the Constitution of India and noted that it is the statutory duty of the owners under the building regulations such as GDCR framed under the provisions of Gujarat Town Planning and Urban Development Act, 1976, and the Gujarat Nagarpalika Act, 1963 to provide parking space. Consequently the appeals were disposed of with the observation that the traffic police authorities were entitled to enforce their orders against the mall owners regarding parking fee.

X EDUCATION SECTOR

Non issuance of transfer certificate on time amounts to deficiency in service

In Davinder Brar v. *Ravleen Kaur,*[29] the complainant, Ravleen Kaur, was a former student of class IX of Doon Valley International Public School. It was alleged that the complainant sought a transfer certificate from Doon Valley International School, but it was not issued to her in time, which resulted in loss of her one academic year. She filed a complaint before the district forum and prayed for compensation for the alleged loss and injury due to the act of the opposite party school. The district forum dismissed the complaint. The complainant filed first appeal before the state commission. The state commission allowed the appeal. School authorities cannot act in an arbitrary or casual manner in issuing a normal and factually correct school leaving transfer certificate. Such certificate concerns the career of a student, and should be issued on request with the due responsibility, and at the earliest. The NCDRC concurred with the findings of the state commission that the school was not only "deficient" in its service by not issuing the transfer certificate on time, but it's actions of withholding the certificate also constituted "unfair trade practice". It also agreed that the respondent student must have come to the court only after she had approached the authorities for school leaving transfer certificate and it was not issued to her. Even when the consumer complaint was filed, the petitioner school could have acted with the due requisite responsibility and most immediately issued the transfer certificate requested for. The contention of the petitioner school, that she was academically a "poor" student, has no concern or relationship with issuing a normal and factually correct school leaving transfer certificate on request. It is nobody's case that she had to be (erroneously) shown as a "good" student in the transfer certificate. Noting that the school had "unnecessarily and unwarrantedly acted in an intransigent manner" the Commission upheld the decision of the state commission granting compensation worth Rs 50,000/- to the respondent along with litigation costs.

29 IV(2019)CPJ 353 (NC).

XI INSURANCE SECTOR

Unfair and deceptive act and amounts to unfair trade practice

In *ICICI Prudential Life Insurance Co. Ltd.* v. *Dattatrey Bhivsan Gujar*,[30] The complained filed against the order dated September 8, 2017 in appeal no. 949/2016 of the State Commission Maharashtra. In this case Gujar has taken an insurance policy named ICICI-Pru Hospital Care in 2008. He had no illness from 2008 to August 2012. On September 18, 2012, he was admitted in Bombay Hospital due to abdominal pain and was diagnosed with renal (kidney) ailments. He underwent dialysis, and subsequently a kidney transplant. He approached the insurance company for reimbursement of hospitalisation expenses. The insurance company repudiated on the ground of "non-disclosure of pre-existing medical condition relying principally on a certificate issued by one Rajendra G Chandorkar which stated that Gujar was a known patient of diabetes and hypertension for the last 10 years. Gujar filed a consumer complaint before the district forum for compensation. District forum passed an order in his favour. The insurance company's petition challenging the lower fora's order was rejected by Maharashtra State Commission, after which ICICI Prudential moved the NCDRC for review of the order. The NCDRC held that ICICI Prudential had obtained and used a "suspicious medical certificate" for denying the claim. "It is an unfair and deceptive act and amounts to unfair trade practice", the commission said and directed the company to pay Dattatrey Bhivsan Gujar 75 per cent of his claimed amount, that is Rs 4,15,030, along with Rs 1 lakh for mental, financial and physical hardship and the amount be paid within four weeks from June 14.

Insurance company cannot repudiate the claim of the complainant on one pretext or the other by appointment of one surveyor after another.

In New India Assurance Co. Ltd. v. *Luxra Enterprises Pvt. Ltd.*,[31] The complainant is an industrial unit engaged in manufacture of garments. The complainant obtained a policy of insurance for the risk of fire for the relevant period with the assured sum of Rs. 85,00,000. It was on July 12, 2000, the factory of the complainant was engulfed in fire. It is thereafter, the complainant lodged a claim for loss due to fire incident in its factory. The grievance of the complainant is that, the insurance company has appointed one surveyor after another. The first surveyor Sunil J. Vora and Associates has accepted the damage preferred by the complainant to the extent of Rs. 54,93,865 whereas, the second surveyor ABM Engineers and Consultants reduced the amount to Rs. 24,76,585 and the third surveyor-R.G. Verma repudiated the total claim under clause 8 of the insurance policy on the ground that there were enough valid circumstantial reasons on the part of the Insured to manipulate the fire. The insurance company on the basis of the report submitted R.G. Verma repudiated the total claim of the complainant. Aggrieved by the same the complainant approached National Commission. National Commission wherein, a sum of Rs. 54,93,865 has been awarded as compensation for loss suffered on account of damage by fire to the

30 MANU/CF/0386/2019; III (2019) CPJ 1(NC).

31 MANU/SC/0644/2019; II (2019) CPJ 86 (SC); 2019 SCC OnLine SC 634.

complainant, subject to the condition that the said amount will be paid within 45 days by the insurance company. The complainant preferred for appeal challenging that the Commission has not granted interest on the amount found due and payable to the complainant.

The Supreme Court upheld the right of the insurance company to appoint surveyor but such right can be exercised for valid reasons or if the report is found to be arbitrary and that insurance company must give cogent reasons without which it is not free to appoint the second surveyor. In fact the Supreme Court in this case observed that the appointment of the surveyors was to repudiate the claim of the complainant on one pretext or the other and it did not find any illegality in the order passed by the Commission and modified the order that complainant shall be entitled to the interest on the amount of Rs. 54,93,865/- at the rate of 6% per annum from the date of filing of petition till the payment of the amount.

Motor vehicle claim: Assured must have caused the bodily injury by external/ outward, violent and visible means and should have direct or proximate cause.

Alka Shukla v. *Life Insurance Corporation of India*,[32] the spouse of the appellant obtained three insurance policies from the respondent. The spouse of the appellant, while riding his motorcycle, experienced pain in the chest and shoulder, suffered a heart attack and fell from the motorcycle. Spouse of appellant had died by time that he had been admitted to hospital. The insurance claim was settled in respect of the basic cover of insurance. However, the insurer repudiated the claim under the accident benefit component of the insurance policy on the ground that the death of the insured had occurred due to a heart attack and not due to an accident. The appellant filed a consumer complaint before the district forum. The district forum allowed the complaint and directed the respondent to pay the accident benefit under the three policies together with interest. The state commissioner affirmed order of district forum. In a revision by the insurer, the National Commissioner reversed the judgment of the district forum, and set aside award of compensation in terms of the accident benefit. Hence this present appeal.

The Supreme Court while dismissing the appeal held that in order for the complainant to prove her claim, she must show direct and positive proof that the accident of the assured falling from his motorcycle caused bodily injury by external/ outward, violent and visible means. The complainant would have to prove that the accident and the injuries sustained as a result were a direct or proximate cause of her husband's death and that assured died as a result of a heart attack which was not attributable to the accident.

Assessment must start with amount described as "sum insured" on the day, when contract was entered into. It was not open to surveyor or to insurance company to disregard figure stipulated as 'sum insured'

Sumit Kumar Saha v. *Reliance General Insurance Company Ltd*.,[33] On March 27, 2007 Appellant purchased one Volvo Hydraulic Excavator for a sum of Rs.

32 II (2019) CPJ 67 (SC).

33 I (2019) CPJ 105 (SC).

49,75,000 with VAT amounting to Rs. 1,99,000, total purchase value thus being Rs. 51,74,000/-. Immediately after purchase, said Hydraulic Excavator was insured with Respondent vide "Contractor, Plants and Machinery Insurance Policy". Insurance policy thereafter stood renewed. For period July 22, 2009 to July 21, 2010, sum insured was Rs. 46,56,600 on payment of premium of Rs. 33,700. Said Hydraulic Excavator was hired and was to be used at a different location. Appellant duly intimated change of location. On June 30, 2010 hydraulic excavator was badly damaged in a fire while it was at such changed location. An FIR was lodged with local police and respondent was also immediately intimated about damage and was requested to survey damage and settle claim. On July 7, 2010 a surveyor came to be appointed by respondent to survey and assess loss and damage. Though survey was undertaken, claim of appellant was not getting settled and as such reminders were sent by appellant. Thereafter, on April 13, 2011, appellant was intimated that, loss was assessed by surveyor at Rs. 25,24,273. Appellant being aggrieved filed case before state commission. Appellant submitted that, excavator was a total loss and that, he was entitled to insured amount of Rs. 46,56,600 along with interest @ 12% p.a. and compensation as claimed in complaint. During pendency of the matter, appellant placed on record report of a surveyor appointed by him. Said surveyor had assessed loss on two counts, namely "loss assessed on repairing basis" at Rs. 94,64,357.70 and on "total loss basis" at Rs. 41,90,940.00. State commission allowed complaint observing that, salvage wreck was property of insurance company and it could not be forced upon owner of damaged machine. State commission directed respondent to pay a sum of Rs. 41,90,940 with interest @ Rs. 8% p.a. from date of filing of claim. Respondent, being aggrieved filed First Appeal which was partly allowed by National Commission vide its judgment. National Commission held that, insurance company was responsible to indemnify loss on basis of replacement of damaged machine in same condition at which it was at day of accident. In present case, though IDV of Rs. 46,56,000 was mentioned in policy and was agreed between parties, however, if new machine was available for Rs. 51,00,000 then on that basis, same machine of 3.25 years age could be available on approximate price being arrived at by deducting depreciation for 3.25 years from current price of new machine. Surveyor had calculated depreciated price of new machine fit for replacement as Rs. 34,42,500 after applying depreciation of 10% p.a. since purchase of machine on current price of new machine till date of accident. National Commission further observed that, salvage value to tune of Rs. 6,50,000, which was realized by respondent could not have been deducted from aforesaid sum of Rs. 34,42,500. National Commission, thus directed respondent to pay a sum of Rs. 34,17,500 for settlement of insurance claim of appellant. It was found that, since respondent was willing to settle matter for Rs. 25,42,273, respondent would be liable to pay interest on differential amount of Rs. 8,93,227 @ 8% p.a., Hence this present appeal.

The Supreme Court while allowing the appeal held that As a result of fire, Excavator was a "total loss" and insured would be entitled to replacement cost of excavator and the policy in question indicates that the "year of make" of the excavator was "2007" while the policy was for the period July 22, 2009 to July 21, 2010. The

parties were aware that the excavator was purchased in the year 2007 for Rs. 51.74 lakhs. If the contract mentioned the sum insured to be Rs. 46,56,600 the parties must be deemed to be aware about the significance of that sum and the fact that it represented the value of the excavator as on the date when the coverage was obtained. It also observed that where agreement on part of insurance company was brought about by fraud, coercion or misrepresentation or cases where principle of *uberrima fide* was attracted, parties were bound by stipulation of a particular figure as sum insured. Therefore, surveyor and insurance company were not justified in any way in questioning and disregarding amount of "sum insured". Further depreciation, if any, could always be computed keeping figure of "sum insured" in mind. Starting figure, therefore, in this case had to be figure which was stipulated as "sum insured". Since Excavator, after policy was taken out was used for eleven months, there must be some reasonable depreciation which ought to be deducted from "sum insured". Surveyor appointed by insured was right in deducting 10% and in arriving at figure of Rs. 41,90,940. Assessment made by state commission was correct and that made by National Commission was completely incorrect.

Balwant Singh and Sons v. *National Insurance Company Ltd.,*[34] the appellant purchased the vehicle at an auction conducted by the bank to whom the vehicle was hypothecated in pursuance of a hire- purchase agreement. Appellant paid full consideration for the sale which was conducted in an auction to the bank. A certificate of possession was furnished to the appellant by the bank. The bank intimated the insurer that it ceased to have a lien on the vehicle consequent to the auction sale. Proposal for insurance was submitted by the appellant to the insurer. Premium in respect of the insurance cover was paid by the appellant and policy of insurance was issued by the insurer in the name of the third Respondent but clearly reflecting the name of the appellant as well. The vehicle was stolen. The appellant lodged a FIR. Police issued a certificate to the effect that the vehicle was untraced. On October 19, 2006, the appellant lodged a claim for the loss of the vehicle with the first respondent and enclosed the registration certificate, FIR and the certificate of the police stating that the vehicle was untraced. First respondent rejected the claim on the ground that the ownership of the vehicle and the insurance policy stood in the name of the third Respondent and on the ground that the bank had a financial interest. The first respondent stated that the vehicle must have been insured by the bank as well. The claim was also rejected on the ground that the appellant did not have an insurable interest. The appellant addressed a letter to the first respondent. However, the claim was repudiated by the insurer on the ground that, the appellant had no insurable interest since the registration certificate was not transferred to it. The rejection of the claim led to the filing of a consumer complaint before the District Forum at Jalandhar. The claim was dismissed. The order of the district forum was upheld by the state commission in appeal and, in revision, by the NCDRC. According to the appellant, insurance premium was collected by the insurer from it but since the registration

34 (2019)6MLJ301; 2019(4) RC R(Civil)81, 2019(12) SCALE 156.

certificate was still to be transferred, the insurance policy continued to reflect the name of the third respondent as the insured.

The Supreme Court while allowing the appeal held that, *firstly*, section 50 provides that where the ownership of any motor vehicle registered under chapter IV is transferred; certain formalities have to be fulfilled. The formalities require the transferor to report the transfer to the registering authority within whose jurisdiction the transfer has to be affected and to send a copy of the report to the transferee. The transferee also has to report the transfer to the registering authority within whose jurisdiction he resides or maintains a place of business where the vehicle is normally kept. The transferee has to forward the certificate of registration to the registering authority together with the prescribed fee and a copy of the report received from the transferor so that particulars of the transfer of ownership may be entered in the certificate of registration. *Secondly* chapter XI provides for the insurance of motor vehicles against third party risks. Section 146 prohibits the use of a motor vehicle in a public place unless there is in force in relation to its use, a policy of insurance complying with the requirements of the chapter. Section 147 specifies the requirements of such a policy and the limits of liability. Section 149 imposes a duty on the insurer to satisfy judgments and awards against persons insured against third party risks. *Thirdly* as a result of the above provision, where a person in whose favour the certificate of insurance has been issued in terms of the provisions of Chapter XI transfers the ownership of the vehicle to another person, the certificate of insurance and the policy described in the certificate are deemed to have been transferred in favour of the new owner to whom the motor vehicle is transferred, with effect from the date of its transfer. *Fourthly* the principle that emerges from the precedents of this court is that, even though in law there would be a transfer of ownership of the vehicle, that by itself would not absolve the person in whose name the vehicle stands in the registration certificate, from liability to a third party. So long as the name of the registered owner continues in the certificate of registration in the records of the RTO, that person as an owner would continue to be liable to a third party under chapter XI of the Motor Vehicles Act, 1986. *Fifthly* in the present case, not only was there an acceptance of premium but the issuance of a policy document. The insurer had knowledge of the transfer when the bank informed it of the lifting of the lien. *Sixthly* in the present case, the court is dealing with a situation where following the transfer of the vehicle; the insurer was specifically informed by the bank which held a lien on the insurance policy, of the lifting of its lien following the termination of the agreement of hypothecation. Following this, a policy of insurance was issued by the insurer. Admittedly the payment of premium was made by the appellant. The third respondent did not set up any claim in respect of the loss of the vehicle since the vehicle had already been repossessed and sold by the bank on account of its default in the payment of dues. The insurer cannot repudiate the claim of the appellant holding that its liability is to the third respondent who has no subsisting interest in the ownership in the vehicle. The appellant has undertaken to furnish an indemnity to the insurer against any claim at the behest of the third respondent. *Seventhly* the transfer of the vehicle is not in dispute. *Eighthly* the insurer adopted a basis which was unsustainable to repudiate

the insurance claim. The loss of the vehicle took place in close proximity to the date of auction purchase. Present court allowed claim in the amount of Rs. 2,42,000/- on which the appellant shall be entitled to interest at the rate of 9% per annum from the date on which the claim was lodged until payment.

Kanwaljit Singh v. *National Insurance Company Ltd.*,[35] the appellant lodged a claim for against National Insurance Company Ltd. ("Insurance Company"), which repudiated the claim amount without assigning any reason. However, later considering that the said Master Jasnoor Singh had an individual medical claim policy in the year 2009-2010 for Rs. 55,000, the respondent-insurance company deposited a sum of Rs. 27,550 in the account of the appellant towards final payment of the claim. Since the remaining claim was not paid, the appellant filed a complaint before the District Consumer Disputes Redressal Forum (District Forum) claiming an amount of Rs. 5,00,000, which was the sum insured under the Family Mediclaim Policy for the relevant year 2014-2015. Before the district forum, the respondent-Insurance Company raised various preliminary objections but had mainly claimed that since the said Master Jasnoor Singh was having pre-existing disease, hence the claim was not payable under the terms of the policy. The district forum, however, held that since the sum insured under the individual Mediclaim Policy of Master Jasnoor Singh for the year 2010-2011 (four years prior to his hospitalisation) was Rs. 1,07,500, the amount payable would be 50% of such sum insured for the year 2010-2011, which comes to Rs. 53,750 and not 50% of the sum insured in the year 2009-2010, according to which insurance company had paid Rs. 27,550/-. Thus, district forum directed that the balance amount of Rs. 26,200/- would be payable to the appellant, along with Rs. 5000/- towards harassment and mental agony, plus Rs. 2000/- on account of litigation expenses, along with interest @ 9% p.a. challenging the said order, the appellant herein filed an appeal before the state consumer disputes redressal commission ("state commission"), which allowed the appeal of the claimant *in toto*. Respondent-insurance company filed a revision petition before the NCDRC. By its order, the National Commission upheld the order of the district forum. The Supreme Court while allowing the appeal held that as no pre-existing disease at the time policy was taken out, and there was regular renewal of policy thereafter the plea of pre-existing disease impermissible. Even otherwise, insurance company itself had allowed reduced claim amount after repudiation of claim. Thus, it impliedly made plea of pre-existing disease immaterial for insurance company. Repudiation and later reduction of claim amount being contrary to terms of policy, on facts held, unsustainable and claim amount enhanced as per terms of policy.

Insurance company cannot raise delay as a ground for repudiation for the first time before consumer forum

Saurashtra Chemicals Ltd. v. *National Insurance Co. Ltd* [36] the appellant purchased a standard fire and special perils policy from the respondent National

35 2019 (6) ABR 89; AIR 2019 SC 3868; 2019 (6)ALD 81; III(2019) CPJ 233(SC); (2019) 6 MLJ 579; 2019(4)RC R(Civil)180; 2019(10)SC ALE 756; (2019) 8 SCC 22.

36 AIR 2020 SC 548.

Insurance Company Ltd., thereby insuring the risk of loss/damage to the stock of coal and lignite stored in its factory compound. An additional premium of Rs. 59,200/- was paid by the appellant company so as to cover the risk of loss of the aforesaid stock on account of spontaneous combustion. The appellant was declared a sick unit and was accordingly registered under SICA. The factory remained closed from February 17, 2006 to August 9, 2006 and was re-opened on August 10, 2006. After re-opening it was noticed between the periods from August 11, 2006 to August 20, 2006 that some amount of stock of coal and lignite has been diminished/destroyed on account of spontaneous combustion, causing loss and damage. Intimation in this regard was sent to the respondent-insurer on August 12, 2006. Pursuant to the claim made, a surveyor was appointed who visited the premises of the appellant on September 18, 2006 and sought certain details, which were provided on September 28, 2006. After carrying out the requisite survey, the surveyor submitted his report on April 11, 2007 assessing total loss to the tune of Rs. 63,43,679/-. The claim lodged by the appellant was however repudiated by the respondent-insurer vide communication dated July 27, 2007 on the ground that since spontaneous combustion did not result into fire thus, loss had not been spontaneous combustion of the insurance policy. The appellant was further informed through the letter that unless spontaneous combustion results into fire, there is no liability under the policy. On denial of the claim the appellant approached the NCDRC. The NCDRC rejected the claim holding that since the complainant had contravened clause 6(i) of the General Conditions of Policy, no claim is payable.

The Supreme Court has observed that an insurance company cannot raise delay as a ground for repudiation for the first time before the consumer forum, if it has not taken delay in intimation as a specific ground in letter of repudiation. Relying on *Galada Power and Telecommunication Ltd.* v. *United India Insurance Company Ltd*,[37] it was contended that since the letter of repudiation does not even remotely refer to delayed intimation or delayed claim, as postulated in clause 6(i), the said ground cannot be taken as a defence to the claim. Hence we are of the considered opinion that the law as laid down in 'Galada' still holds the field. It is a settled position that an insurance company cannot travel beyond the grounds mentioned in the letter of repudiation. If the insurer has not taken delay in intimation as a specific ground in letter of repudiation, they cannot do so at the stage of hearing of the consumer complaint before NCDRC".

XII HOUSING SECTOR

Mere registration of flat does not confer a right for allotment

U.P. Housing and Development Board v. *Ramesh Chandra Agarwal*,[38] in 1982, the appellant floated a scheme for economically weaker sections. The respondent deposited an amount of Rs. 500, initially in 1982, for registration. Later, in 1985, an additional amount of Rs.500 was deposited when the registration fee was enhanced

37 AIR 2016 SC 4021.

38 II (2019) CPJ 104 (SC); MANU/SC/0691/2019.

to Rs. 1000. The appellant is governed by the Rules, 1979. The first advertisement was published by the appellant in 1992. In terms of the above rules, registered applicants were required to furnish their written consent for being included in the draw of lots. None was provided by the respondent. Respondent filed a consumer complaint nearly 11 years after the date of registration. In the meantime, a second advertisement was published by the appellant on January 15, 1995. By an order, the District Forum, Ghaziabad disposed of the complaint by directing that, the respondent, at the highest, may secure an allotment, if he so desires at the current value fixed by the appellant. Against this order of the district forum, the respondent filed a first appeal before the state commission. On September 25, 1995, the appellant published an allotment notice indicating the proposed allotment of vacant properties. On August 28, 1996, the appellant enhanced the registration amount and all existing registered applicants were required to pay the difference in order to keep their registration alive for future schemes. On November 1, 2002, the appellant issued an office order providing that those applicants who failed to get an allotment in the draw of lots could be entitled to refund of the registration monies. Thereafter, appeal was dismissed by the SCDRC in the absence of any representation by the respondent. The respondent then filed a revision before the National Commission. A direction has been issued to the appellant to allot a flat on the ground floor in the Mandola Vihar Yojana, Ghaziabad to the respondent subject to his paying a sum of Rs. 2,50,000 towards consideration for the flat within a period of six weeks from the date of the passing of the order. Aggrieved by the direction of the NCDRC appellant filed the revision petition before the court. Supreme Court set aside the order of NCDRC and held that the appellant is governed by the terms and conditions advertised in its registration booklet and by the Rules of 1979 such as (i) mere registration does not confer a right for allotment, (ii) the board is not bound to allot a house or plot to every registered holder, (iii) that after the board advertises the availability of a scheme in the newspaper, every registered applicant is at liberty to submit a consent letter for participation in the draw of lots and the applicant must show readiness and willingness to participate in a draw of lots in respect of a specified scheme.

XIII ELECTRICITY SECTOR

Delay in granting the electricity services amounts to deficiency in services

In *Tukaram* v. *The Executive Engineer, Maharashtra State Electricity Distribution Company Limited*.[39] The appellant applied for electricity connection on his land to respondent and deposited charges. The respondent raised a bill for consumption charges. The appellant claimed that no electricity connection had been installed. Appellant filed a consumer complaint before the consumer forum. The district forum allowed the complaint and grated compensation. In appeal, the state commission reversed the order of the district forum. When the appellant carried the matter to the National Commission, the revision was initially dismissed. However, the appellant

39 MANU/SC/0601/2019; 2019 (136) ALR 774.

filed a review petition. The review petition was allowed and compensation was awarded to the appellant. Appellant preferred a present appeal for enhancement of compensation.

Supreme Court while allowing the appeal held that the grant of compensation by the National Commission would not be adequate to meet the requirement of just and fair compensation to a consumer who had suffered as a consequence of the default of the respondent and enhance the compensation to an amount of Rs. 5,00,000 which shall be paid over within a period of four weeks from today. In default, the compensation shall carry interest at the rate of 9 per cent per annum. Observing that the appellant had suffered hardship and inconvenience as a result of an unexplained delay of one decade on the part of the respondent(s) in granting an electricity connection.

XIV CONCLUSION

The year 2019 is a memorable year in Indian Consumer Protection by enacting Consumer Protection Act, 2019. It will replace CPA, 1986, once Central Government notify in the official gazette. New Act has brought more teeth to the enforcement machinery and strengthened protection of consumer rights. The new legislation has introduced three new chapters regulatory authority, mediation and product liability. Strong provisions are introduced like execution power, review power, administrative power, territorial jurisdiction, establishment of benches of NCDRC and state commissions. Now the only need is that an effective implementation of the Consumer Protection Act, 2019 which would fosters the needs of the consumer and their interest.

Even the Supreme Court and National Commission through their judgement have clarified the grey areas which have helped the state commission and district consumer *fora* in speedy disposal of pending cases. But the object to fulfil consumers' aspiration and dreams can only be achieved only when there is active participation of the peoples and government officials.