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CS. DEV SHARMA

CONSUMER PROTECTION ACT, 1986**OBJECTIVE OF THE ACT/ WHY COPRA...??**

The act is to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

BASIC RIGHT OF CONSUMERS [SECTION 6]

The basic rights of consumers that are sought to be promoted and protected are:

- a) The right to protected against marketing of goods and services which are hazardous to life and property
- b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods, or service so as to protect the consumer against unfair trade practices
- c) The right to be assured, wherever possible, access to variety of goods and services at competitive prices;;
- d) The right to be heard and to be assured that consumers' interest will receive due consideration at appropriate forums;
- e) The right to seek redressed against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
- f) The right to consumer education.

CONSUMER PROTECTION COUNCILS**Introduction**

The interests of consumers are sought to be promoted and protected under the act inter-alia by establishment of Consumer Protection Councils at the Central, State and District levels.

Central Consumer Protection Council

Section 4 provides that the Central Government shall, by notification, establish to be known as Central Consumer Protection Council, which shall consist of the following members

- (i) The Minister-in-charge of Consumer affairs in the Central Government, who shall be its Chairman; and
- (ii) Such number of other official or non-official members representing such interests as may be prescribed.

The Central Council shall of 150 members and the term of the Council shall be 3 years.

The Central Council shall meet as and when necessary, but at least one meeting shall be held every year.

State Consumer Protection Council

Section 7 provides that the state Government shall, by notification, establish a Council to be known as Consumer Protection Council for (name of state, which shall consist of the following members;

- (i) The minister-in-charge of consumer affairs in the state Government, who shall be its Chairman;
- (ii) Such number of other official or non-official members representing such interests as may be prescribed by the state Government and
- (iii) Such number of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.

The state Council shall meet as and when necessary but not less than two meetings shall be held every year. The procedure to be observed in regard to the transaction of its business at such meetings shall be prescribed by the state Government.

District Consumer Protection Council

Section 8A provides that the state Govt. shall establish for every district, by notification, a council to be known as the District Consumer Protection Council, which shall consist of the following members

- (i) The Collector of the district (by whatever name called), who shall be its Chairman; and
- (ii) Such number of other official and non-official members representing such interests as may be prescribed by the state Govt.

The District Council shall meet as and when necessary but not less than two meetings shall be held every year.

REDRESSAL MACHINERY UNDER THE ACT

Introduction

The Consumer Protection Act, 1986 provides for three-tier quasi-judicial redressed machinery at the District, state and National levels for redressed of consumer disputes and grievances. They are known as Consumer Disputes Redressed Agencies.

District Consumer Disputes Redressed forum

The Act provides for the establishment of a district forum by the state Government in each district of the state by notification. The state Government may establish more than one District Forum in a district if it thinks for to do so.

Eligibility of members

Section 10 provides that each District Forum shall consist of

- (i) A person who is, or who has been, or is qualified to be, a District Judge, who shall be its President and
- (ii) Two other members, one of whom shall be a woman.

The members of District Forum should be person of ability, integrity and standing; and should have experience relating to economics, law, commerce, accountancy, industry, public affairs or administration. They must be graduates and over 35 years of age.

Every member of the District Forum shall hold office for a term of 5 years or up the age of 65 years, whichever is earlier, and shall be eligible for re-appointment.

Jurisdiction [sec. 11]; section 11 provides for the jurisdiction of the District forum under the following two criteria;

1. Pecuniary limits: The District forum can entertain complaints where the value of goods or services and the compensation, if any, claimed is up to Rs. 20 lakhs.
2. Territorial limits: The District Forum can entertain complaints if any of the opposite party ordinarily resides or carries on business or personally works for gain or has a branch office; or the cause of action arises within the local limits of its jurisdiction.

State Consumer Disputes Redressed Commission

The Act provides for the establishment of the state Consumer Disputes Redressed Commission by the state Government in the state by notification.

Eligibility of members

Section 16 provides that each state commission shall consist of:

- (i) A person who is, or has been a justice of a High court appointed by the state Government (in consultation with the Chief Justice of the High Court), who shall be its President.
- (ii) Not less than two, and not more than such number of members, as may be prescribed, and one of whom shall be a woman.

The members of state commission should be person of ability, integrity and standing; and should have experience relating to economics, law, commerce, accountancy, industry, public affairs or administration. They must be graduates and over 35 years of age.

Every member of the State Commission shall hold office for a term of 5 years or up to the age of 67 years whichever is earlier, and shall be eligible for re-appointment.

Jurisdiction [sec.17]: The jurisdiction of the State Commission is as follows:

1. **Original jurisdiction:** The state Commission can entertain complaints where the value of the goods or services and the compensation, if any, claimed exceeds Rs.20 lakhs but does not exceed Rs.1 crore [Pecuniary Limits]
2. The state Commission can entertain complaints if any of the opposite party ordinarily resides or carries on business or personally works for gain or has a branch office; or the cause of action arises within the local limits of its jurisdiction. [Territorial Limits]
3. **Appellate jurisdiction:** The state Commission also has the jurisdiction to entertain appeals against the orders of any District Forum within the state.
4. **Reversionary jurisdiction;** the state commission also has the power to call for the records and pass appropriate order in any consumer dispute which is pending before or has been decided by any District Forum of the same state.

National Consumer Disputes Redressed Commission

The Act provides for the establishment of the National Consumer Disputes Redressed Commission by the Central Government by notification in the Official Gazette.

Eligibility of members

Section 20 provides that the National Commission shall consist of:

- (i) A person who is or has been a judge of the Supreme Court, to be appointed by the Central Govt. (in consultation with the Chief Justice of India) , who shall be its President; and
- (ii) Not less than four, and more than such number of members, as may be prescribed, and one of whom shall be a woman.

The members of National Commission should be person of ability, integrity and standing; and should have experience relating to economics, law, commerce, accountancy, industry, public affairs or administration. They must be graduates and over 35 years of age.

Every member of the National Commission shall hold office for a term of 5 year or up to the age of 70 years, whichever is earlier and shall be eligible for re-appointment.

Jurisdiction [Sec. 21]

The jurisdiction of the National Commission is as following:

1. Original Jurisdiction the National Commission can entertain complaints where the value of the goods or services and the compensation, if any, claimed exceeds Rs.1 Crore.
2. Appellate Jurisdiction: The National Commission also has the jurisdiction to entertain appeals against the original orders of any state Commission.
3. Reversionary Jurisdiction: The National Commission also has the power to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any state Commission.

It may be noted that appeal against order of National Commission lies with Supreme Court only in matters, where it exercises original jurisdiction i.e., when matter is over Rs.1 Crore.

Time limit for filing the Complaint

A complaint must be filed within two years from the date on which the cause of action arose. However, Commission may entertain complaint even after the expiry of two years, if it is satisfied that there was sufficient cause for not filing the complaint within prescribed period of two years.

Time limit for the Appeal

An appeal to the:

- (i) State Commission against the orders of District Forum;
- (ii) National Commission against the original orders of state Commission;
- (iii) Supreme Court against the original orders of National Commission,

Must be filed within 30 days from the date of receiving the order of District Forum/ state Commission/ National Commission. However the state Commission, National Commission, Supreme Court may entertain an appeal even after the expiry of said 30 days if it is satisfied that there was sufficient cause of not filing the appeal within the prescribed period of 30 days.

Further, appellant shall also be required to deposit 50% of the amount required to be paid as per the order of the District Forum/ state Commission/ National Commission or Rs. 25,000/35,000/50,000, respectively, whichever is less.

DEFINITIONS [SECTION 2]

Complainant [Sec. 2(1)(b)]

Complainant means----

- (a) A consumer;

- (b) Any voluntary consumer association registered under any law;
- (c) The Central or any state Government
- (d) One or more consumers, where there are numerous consumers having the same interest; or
- (e) In case of death of a consumer, his legal heir or representative who or which makes a complaint.

An association of person to have locus standi as consumer, it is necessary that all the individuals forming the association must be the consumer having purchased the same goods or hired the same services from the same party.

In case the affected consumer is unable to file the complaint due to ignorance, illiteracy or poverty, any recognized consumer association may file the complaint as per the above clause (b) thus, rule of 'privity of contract' or 'locus standi', which permits only the aggrieved party to take action, has very rightly been set aside in the spirit of public interest.

Complaint [Sec. 2(1) (c)]

Complaint means any allegation in writing made by a complainant that-----

- (i) An unfair trade practice or a restrictive trade practice has been adopted by any trader;
- (ii) The goods bought by him or agreed to be bought by him suffer from one more defects;
- (iii) The services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
- (iv) The trader has charged a price in excess of the price: (a) fixed under any law; (b) displayed on the goods or any package containing such goods; (c) Displayed on the price list exhibited by him; or (d) Agreed between the parties;
- (v) Goods which will be hazardous to life and property when used are being offered for sale to the public;
- (vi) Services which will be hazardous to life and safety of the public when used are being offered by the service provider, With a view to obtain any relief provided by law under this Act.

Consumer [Sec. 2 (1)(d)]

Consumer means-----

- (i) In respect of goods, any person who purchases goods for a consideration but does not include a person who has purchased goods for re-sale or commercial

purpose. Such consideration may be paid or promised or partly paid and partly promised or under the system of deferred payment;

- (ii) Any person who is using the goods, with the permission of the buyer of such goods as specified in clause (i);
- (iii) In respect of service, any person who hires or avails service for a consideration but does not include a person who has availed service for commercial purpose. Such consideration may be paid or promised or partly paid and partly promised or under the system of deferred payment;
- (iv) Any person who is beneficiary under the service with the permission of the hirer of such services as specified in clause (iii);
- (v) A person who purchases goods or avails services exclusively for the purpose of earning his livelihood by means of self employment.

Commercial Purpose: A person who buys goods for re-sale or commercial purposes or avails services for commercial purpose is specifically excluded from the definition of 'consumer'. For example, a person buying one truck or tempo or sewing machine or a computer for the purpose of earning his livelihood by self-employment will be eligible to qualify as consumer. However, if a person buys two typewriters, out of which one is used by a person employed by him, he will not be eligible to file a complaint as a consumer because a person buying goods for re-sale or commercial purpose is not a consumer.

For instance, a lawyer purchased a computer and a printer for his office. The printer started giving trouble from the day one. The lawyer lodges a complaint under the Consumer Protection Act. In this case, the printer has not been purchased by the advocate for any commercial purpose or for resale but for use in his office to improve efficiency of his office. Therefore he will be treated as consumer and will succeed in his complaint.

[Sanjay Krishna Kant v. M/s Groovy Communications & Others]

Who is a consumer: Following are some of the important decided cases in this regard:

1. Railway passengers travelling on payment of fare is consumer. [GM, South Eastern Railways v. Anand Prasad Sinha]
2. Parents who bring the child to hospital and the child both are consumers. [Spring Meadows Hospital v. Harjot Ahluwalia]
3. Allottees of house by Housing Board are consumers [UP Avas Gram Vikas Parishad v. Garima Shukla]
4. A person obtaining water from a government agency and paying water bills for the water supplied is a consumer. However only if the water tax is levied, the

person availing service will not be a consumer. [Nagrik Parshad v. Garhwal Jal Sansthan]

Who is not a Consumer: Following are some of the important decided cases in this regard:

1. A charitable trust is not a consumer if it has purchased machinery for its diagnostic center, when only 10% patients are provided free services and charges are levied on remaining patients. Thus, the use is for 'commercial purpose' and hence it is not a 'consumer'. [Kalpavruksha Charitable Trust v. Toshinwal Brothers]
2. Person buying goods for manufacture of another product is not consumer as the goods were intended for commercial purpose. [Rajeev Metal Works v. MMTC]
3. A hospital will not be liable, if the hospital happens to be a government hospital where no fee is charged for consultation and treatment, but only a token registration fee is charged. [Indian Medical Assoc. v. V.P. Shanta & Others]

Goods [Sec. 2(1) (i)]

Goods mean goods as defined in the sale of Goods Act, 1930.

As per sale of Goods Act, goods means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass or things attached to or forming part of the land which are agreed to be severed before sale under the contract of sale.

Therefore, most common products would come within the purview of this definition.

Shares have been specifically included in 'goods'. However, shares before allotment are not goods, as they do not exist before the allotment is made. To constitute a consumer, there must be transaction of goods. Hence, a prospective investor cannot be regarded as a consumer within the meaning of this Act. [Morgan Stanley Mutual Fund v. Kartik Das]

Services [Sec. 2 (o)]

Service means service of any description which is made available to potential users and includes, but not limited to the provision of facilities in connection with banking financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract for personal service.

'Potential Users' mean those who are capable of using the service. [Lucknow Development Authority v. M.K. Gupta]

Contract of Personal Service and Contract for Personal Service:

In contract of personal service, the can over or require what is to be done and how it is to be done. This is out of the purview of COPRA as the master can always dispense with the service of the servant. However, in contract for personal service, the person cannot order what is to be done how it is to be done. Services rendered in professional category could be treated as contract for personal service and hence covered under CPRA.

Consumer Forums cannot decide disputes arising out of contract of appointment of personal service. For instance, Civil Servants and Professors in Universities are appointed under contract of personal service and hence are not covered under COPRA. [Centre for Research & Industrial Development v. Madan Lal Sahni]

Professional Services like Doctors, Engineers, Chartered Accountants, Company Secretaries, Advocates, etc. are covered under COPRA. [Ram Lalsh Pal v. Smt. Ranjana]

What is Service: Following are some of the important decided cases in this regard:

1. Passengers travelling by trains on payment of the stipulated fare charged for the ticket are 'consumers' and the facility of transportation by rail provided by the railway administration is a 'service' rendered for consideration as defined in the Act. [GM, South Eastern Railway v. Anand Prasad Sinha]
2. Similarly telephone services availed for consideration is a service. [District Manager, Telephone Patna v. Lalit Kr. Baijla]
3. Service rendered to a patient by a medical practitioner (except where the doctor renders service free of charge to every patient) by way of consultation, diagnosis and treatment, both medical and surgical, would fall within the ambit of 'service'. -Indian Medical Association v. V.P. Shanta & Others]
4. Accepting deposits from public agreeing to pay interest is service. If interest and principal is not paid on due dates, it is deficiency of service and consumer forums can issue orders for payment of outstanding dues. [Kalawati v. United Vaish]
5. Education is an activity which comes within the ambit of 'service' because 'service' means service of any description which is made available to potential users under this Act. [The CBSE v. Consumer Disputes Redressed Forum]

What is not Service: Following are some of the important decided cases in this regard:

1. Conducting examination is not service as a candidate for examination could not be regarded as a person who has hired or availed the service of the University or Board for consideration. Thus, the University or Board in conducting examination is not performing any service. [Chairman, Board of Examination v. Mohideen Abdul Kader]

2. Registration of documents by government is not a service. A person presenting a document for registration is not a consumer. There is no commercialization involved. Officers who are doing the work of registration are doing the statutory duty. [S.P. v. Collector of Stamps]
3. Payment of taxes is not hiring is not hiring of services. No complaint can be lodged against Municipal Corporation for failure to carry out its statutory duty of proper maintenance of drains, as payment of taxes is not hiring of services. [Signet Corporation, MCD, New Delhi]
4. Promotional activities of state and its agencies are not services and complainants are not consumer, as facilities are provided by state and its agencies without any specific consideration. [T.N. Sethuraman v. Goa, Daman and Diu Industrial Development Corporation]
5. Even if a litigant pays court fees, he is not hiring services of Court. The court is exercising sovereign function of dispensation of justice. Thus, complaint against court for delay in judgment is not maintainable under Consumer Forums.
6. Free Services are not covered under COPRA. The employer (Govt. In this case) deducted insurance premium from salary of employee, but failed to make payment to LIC. When the employee died, LIC refused to pay as premium was not paid. It was held that the employer was giving free service and hence he is not liable. [State of Orissa v. LIC]
7. However, if the employer is agent of LIC for the purpose of collecting premium, then general principles of agency as contained in Contract Act shall apply. Employee has to make payment of compensation if employer has deducted premium from salary of employee. [Delhi Electric Supply v. Basanti Devi]

Consumer Dispute [Sec. 2(1) (e)]

Consumer dispute means dispute where the person against whom a complaint has been made, denies or disputes the allegation contained in the complaint.

The allegations referred to may relate to any unfair trade practice adopted by a trader, or against any defect in goods or against any deficiency in services or against charging an exorbitant price.

Defect [Sec. 2(1) (f)]

Defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard of any goods which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods.

In the case of Abhaya Kumar Panda v. Bajaj Auto Ltd., where the motor vehicle sold to the petitioner was found to have major manufacturing defects which could not be

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removed despite several repairs, it was held to be 'defective' and the vehicle was ordered to be replaced.

Deficiency [Sec. 2(1) (g)]

Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality nature and manner of performance of any service which is required to be maintained by under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or other or otherwise in relation to any service.

In order to get any loss compensated for deficiency in service, mere loss or injury is not enough. Loss or injury must be coupled with negligence. The term 'negligence' means absence of reasonable care which a prudent person is expected to observe in a given set of circumstances. Thus, no compensation can be claimed even in case of loss or damage, if it was not caused due to negligence of the person. [Consumer Unity and Trust Society v. Bank of Baroda]

For instance, the driver of a bus suddenly, applied the brake to avoid a collision with bullock cart and with the result the bus met with an accident resulting in the death of a passenger. The legal heir's of the deceased lodged a complaint with Consumer Forum for compensation on the ground of 'deficiency in service'. In the present case, the accident that occurred had nothing to do with service provided to the deceased because the injury sustained had nothing to do with the service provided but due to the direct result of the accident. Further, there was an element of negligence on the part of driver, as he had applied the brakes to avoid a collision. Hence, the heirs of the deceased will not succeed in their complaint against the transport company.

[Chairman, Thiruvallavar Transport Corporation v. Consumer Protection Council]

It may be noted that COPRA does not have any jurisdiction in respect of any matter, if there is some special law dealing with that matter.

What is Deficiency in Service: Following are some of the important decided cases in this regard:

- 1) Negligence in settlement of Insurance claim. [Div. Manager, LIC of India v. Bhavanam Srinivas Reddy]
- 2) Ornaments kept in the locker were found lost though the certificate recorded by the custodian of the bank stated all lockers operated during the day had been checked and found properly locked. [Punjab National Bank v. K.B. Shetty]
- 3) Issuing drafts on foreign banks where the bank had no account causing inconvenience to the customer. [Tarun Kumar Soni v. Punjab National Bank]
- 4) Honouring forged cheques [Corporation bank v. Himalaya (P) Ltd.]
- 5) Debiting cheques to wrong accounts [Corporation Bank v. Himalaya (P) Ltd.]

- 6) Failure to give possession of the house after receiving the price and registering the flat in favour of the allotted. [Lucknow development Authority v. Roop Kishore Tandon]
- 7) Failure of the railways to check unauthorized person from entering and occupying first Class compartments. [N. Prabhakaran v. General Manager, Southern Railway, Madras]
- 8) Non delivery of letter by a courier company. [Skypack Couriers Pvt. Ltd. V. Anupama Bagla]
- 9) Theft of car from parking of a hotel constitutes the deficiency in service. [Atul Virmani v. Asian Hotels Limited]
- 10) Delay in issue of units by UTI of about 18 months is deficiency in service. In this case, 15% interest was awarded as compensation. [UTI. V. Smt. Bandana Roy]
- 11) To run a boat club without having necessary equipment and personnel trained for meeting an emergency constitutes gross negligence and serious deficiency in service. [Sandhu v. Union of India]
- 12) Parking vehicle in parking lot on payment of parking charges is bailment. Persons responsible for management of parking area is liable to make good the loss due theft. [Mahesh Enterprises v. Arun Kumar Gumber]
- 13) The transportation of goods through carriers cannot be considered as for commercial purposes and the transporter is liable for any deficiency in Service. [Express Goods Service v. Standard Textile Mills]

What is not Deficiency in Service: Following are some of the important decided cases in this regard:

- 1) Refusal to give credit to customers on grounds that the unit belonged to a sick industry or was not economically viable on any other grounds would not fall under 'deficiency' of service as a bank is the judge of the credit worthiness of any party. [Asha Sharma v. Union of India]
- 2) Failure to deliver goods carried by the railways is not covered clause 'deficiency in service rendered' of Consumer Protection Act. But it is covered under Railway Claims Tribunal Act, 1987 and thus required to be compensated in that Act. [Union of India v. M. Adaikalan]
- 3) Disconnection of electric supply for non-payment of charge by consumer is not deficiency in service. Electricity Board has power to discontinue supply. It was also held that electricity board can make supplementary bill for escaped bill. [Swastic Industries. v. Maharashtra State Electricity Board]
- 4) Disconnecting power supply for tampering with electric meter is not deficiency in service. [CESC Limited v. Sumitra Pal]
- 5) In Airline service, delays due to bad weather and poor visibility are unforeseen circumstances and hence there is no deficiency in service. Compensation can be

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awarded only if there is negligence and loss is suffered by complainant on account of negligence. [Indian Airlines Limited v. Dr. V. P. J. Philip]

IMPORTANT DECIDED CASES

Abhilash Jewellery v. New India Assurance Co. Ltd.

The complainant took a Jeweler's Block Policy worth Rs. 1.15 cr. During the currency of the policy, the complainant lodged a claim for the loss of gold ornaments, which was being carried by one of its employees. The claim was repudiated by the respondent holding that the loss of gold occasioned as it was in the custody of an apprentice, he not being an employee, it was not covered under the policy, and as such, the claim was repudiated

The National Commission held that the apprentice is also very well covered the said policy and the denial of a valid claim is a deficiency in service and hence the petitioner was entitled to the value of the gold and the interest.

Super Teakwood Industries v. Oriental Insurance Co.

If the insurance company has not given a well-reasoned reply as to why the claim of the insured was not acceptable to it, it would be a clear case of non-application of mind and lack of good faith on the part of the insurance company. In such cases, the insurance company would be liable for the deficiency in service in setting the claim.

LIC v. Mumtaji Begum

Where the date of birth of the insured was in dispute and not accepted by the insurance company, the Forum under the COPRA had no jurisdiction to entertain any complaint against the insurance company. This is for the reason that there is no concluded contract in such cases and hence no question of payment of insurance amount arises.

Mohd. Zuber v. SBI

In this case, the complainant claimed a huge amount of compensation of Rs. 1,11,25,00,000/- for the irresponsible behavior of the bank. However, the National Commission rejected the claim considering the large scale on which the complainant carried on his business and hence not a consumer under COPRA.

C.P. Belliapa v. Indo American Hybrid Seeds

In this case, the complainant was engaged in cultivating cardamom and purchased tissue culture plants from the opposite party. The plants, however, failed to yield the output. The complainant filed a complaint for the deficiency in service. It was held that the purchase of cardamom plants was for better cultivation and better profits and hence

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the complainant had bought these for commercial purpose and he cannot be considered a consumer under the Act.

Kerala State Electricity board v. Reveendran

The National Commission considered a complaint regard fall in electricity voltage damaging the machine in a plastic factory and affecting production. The National Commission award compensation to the complainant.

J.K. Puri Engineers v. Mohan Breweries And Distilleries Ltd.

The company maintained a guesthouse for the use of its managing director and other executives. It entered into a contract with the appellants for the installation of central air conditioning system. The allegation was that the system installed did not function, developed snags and there was leakage of water from dusting system. The appellant failed to make good the defect and took the plea that the air conditioning system was purchased for the commercial purpose. However, the Supreme Court held that the guesthouse was intended for the residence of the managing director and other executives of the company during their visits to the city. The system was installed only to provide comfort to these persons. It was not used for any commercial purpose and hence awarded compensation.

ShashiKant Krishnaji Dole v. Shishtan Prasarak Mandli

In this case, a school onward a swimming pool offered swimming facility on the payment of a fee and has engaged a coach for this purpose. The complainant had enrolled their son for learning swimming under the guidance of the coach. It was alleged that due to the negligence of the coach the boy was drowned and met with his death. The school denied that it had engaged the services of the coach and denied any responsibility on its part. However, the National Commission held that both the school as well as the coach was responsible for the death of the boy. It was found that the coach was negligent and he did not provide the necessary life saving mechanism to save the lives of trainee students in case of accidents. Accordingly, a compensation of the Rs. 1.5 lakh was granted.

Regional Provident Fund Commissioner, Faridabad v. Shiv Kumar Joshi

Failure to settle P.F. claim in time is a deficiency in service. It was held that settling the P.F. claim is a kind of service on payment of administrative charges.

Indian Airlines v. Jiteshwar Ahir

When the complainant passenger occupied his seat in an aircraft, an announcement was made that his luggage was lying on the ground and so he should collect it. When the complainant was stepping out on to the staircase, the ladder was suddenly removed as a result of which he fell down on the ground and sustained bodily injuries. It was held that there was a dangerous deficiency in service and having regard to the expert opinion and other medical reports a compensation of Rs. 4 lakh and Rs. 1 lakh for mental agony and distress plus cost was ordered.

Poonam Verma v. Ashwin Patel

A doctor qualified to practice homeopathic system of medicines treated a patient with allopathic medicines and the patient died. It was held the doctor was guilty of negligence.

Union of India v. Nathmal Hansaria

Fall from a running train while passing through the vestibule passing is a case of deficiency in service.

Jeetendra Kumar v. Oriental Insurance Co. Ltd.

The Supreme Court held that where fire had occurred due to mechanical failure and due to any act or omission of the driver the insurance company cannot repudiate the claim because of lack of valid driving license.

National Insurance Co. Ltd. V. Seema Malhotra

A cheque was issued under a contract of insurance of motorcar, which was dishonored. Meanwhile the car met with an accident and was badly damaged also killing the insured. The claim for the insured amount was repudiated by the insurance company. The Supreme Court held that the insurer need not to perform his part of the promise when the other party fails to perform and thus not liable to pay the insured amount.

Superintendent of Post Offices v. Upbhogta Suraksha Parishad

The respondent in this claim alleged that as a result of delayed delivery of a postal article the consumer could not get admission to an educational institution.

It was contented on behalf of the postal department that it enjoyed immunity from any action whatsoever for any loss, non-delivery, or damage to any postal article in the course of transmission by post as per the provisions of Sec. 6 of the Post Offices Act. The National Commission held that in this case, there was a willful delay on the part of the postal authorities and hence it will not be covered under Post Offices Act but it is a case of deficiency in services under the CPRA.

Sreedharan Nair v. Registrar, University of Kerala

Refusal to provide LLB Degree Certificate on completion of course on the ground that the qualifying examination on the basis of which the student was admitted has not been recognized by the Kerala Law College amounts to deficiency in service.

Isabella Thoburn College v. Ms. Fatima Effendi

It was held that non-refund of admission fee is not a deficiency of service on part of the university because admission fee is consideration for admission and respondent herself voluntarily withdrawing admission from one university to join another institute cannot claim refund of admission fee.

National Insurance Co. Ltd. V. Shygems

Parcels of precious stones sent by insured to London lost in transit. Insured claiming settlement of amount in pounds. Insurer claimed payment could only be made in Indian rupees.

It was held that claim to be settled only in Indian Rupees as title of goods was not passed to consignee in London and respondent continued to be owner having insurable in goods.

Synoo Industries v. State Bank of Bikaner Jaipur

Appellants alleged that respondent is guilty of deficiency in service as they without any good reason frozen the sanctioned working facilities without prior intimation and sought direction to respondent together with compensation for loss suffered by it. National Commission didn't find it a fit case under Consumer Protection Act and dismissed original petition.

The complainant had prayed damages of Rs. 15 crores and other expenses of 60 lakhs. It is obvious that detailed evidence would be required to prove the claim.

The Supreme Court, in appeal held that National Commission was right in referring the matter to Civil Court.

Dr. J.J. Merchant v. Shrinath Chaturvedi

Young son of complainant died due to negligence of doctors. Appellants urged that case involves question of law and fact which could best be judged by Civil Court and hence complaint must be dismissed. Further proceedings should be stayed till criminal proceedings filed are pending.

National Commission rejected the prayer holding that there is no universal rule that during pendency of criminal proceedings, civil proceedings must invariably be stayed.

But in this case there was delay of 9 years between of filling of complaint and its disposal by National Commission.

First question considered by Supreme Court was whether delay in disposal of case by consumer forum would be a ground for directing complaint to civil court.

Apart from fact that it would be unjust to suggest complainants that was inordinate delay of 9 years in disposal of complaint by consumer forum, whole object of enacting Consumer Protection Act would stand frustrated mainly for the reason that one of main object of the Act is to provide speedy and inexpensive redressed to consumer.er.

Merely because these forums are required to dispose complaints by summary trial would hardly be a ground for directing complaints to go to civil court for redressed of grievances as these forums are headed by retired judicial officers of long experience, competent enough to decide complicated question of fact and law.

General Manager, Southern Railway v. Mrs. A. Shamim

Unauthorized passenger boarded reserved compartment and was not removed by TTE despite the complaint of passengers. Personal belongings of passenger were robbed during the night and alarm chain didn't work. Held, deficiency in service and negligence on part of railway authorities.

CCI Chambers Corp. Hsg. Society Ltd v. Development Credit Bank Ltd.

National Commission returned the complaint find by complainant on ground that their exist complicated questions of facts and law and directed complainant to civil court.

It was held that existence of complicated questions of facts and law is not a justifiable ground for rejecting complaint.

Kerala State Co-operative Employees Pension Board v. Consumer Forum & Anr

Petitioner Board delayed grant of pension to respondent. Respondent filed complaint before District Forum. Whether board renders service? Whether recipient of service is consumer?

It was held that Board is providing service and recipient can be termed as consumer. As the pension scheme empowers Board to recover amounts f arrears from societies towards fund with interest, as arrears of public revenue. Clause 34 of pension scheme provides that all expenses of administration of pension fund shall be met from that fund, thus, the board is collecting charges from member societies, the petitioner's being beneficiaries would, therefore, come within admit of section 2(1)(b)

United India Insurance Co. Ltd v. Pushpalaya Printers

Respondent had insured its building and machinery against damage caused by impact of rail/road vehicle or animal. Insured property was damaged due to vibration from operation of bull dozer driven very close to building. Insurer repudiated claim on ground that damage so caused was not an incident of impact by any vehicle.

Clause 5 contained in insurance policy was also subject to exclusions contained in the policy. A damage caused by vehicle on road close to building was not excluded, if respondent company wanted to exclude any damage or destruction caused on account of driving a vehicle on road close to building, it could have expressly excluded.

Further 'impact' by road vehicle also includes damage caused by driving of vehicle close to the road.

It is also settled position that when there is ambiguity in any term or such term is capable of different interpretations it can be construed against the parties who prepared the document. The above rule applied to contracts of insurance and clause 5 of insurance policy. After reading entire policy in instant case, it should be construed against insurer and hence insurer held liable.

Sumati Devi M. Dhanwatay v. Union of India

Appellant was traveling in a first class AC Compartment. On the course of journey, thousands of persons forcibly entered the compartment and looted the passengers. Railway Authorities took an action even after complaint was made to them. Appellant filed a compensation application before state Commission, which held railways liable for deficiency in service. National commission reversed judgment of state Commission. Appeal was preferred to Supreme Court.

The only contention of railway was that it was not responsible for loss of luggage and injuries caused to appellant. The Supreme Court held railway Administration cannot escape liability under facts and circumstance of the case and they are liable for deficiency in service.

Pustak Mahal v. Rattan Lal Premi

Respondent consumer purchased books from publisher on which sticker with enhanced price was affixed. Respondent filed a complaint before district forum and got an order in his favor for excess price charged. Unsatisfied with quantum of compensation, respondent approached state commission, which issued a direction to publisher that no affixation of sticker with enhanced price should be made in future. Publisher approached national commission against order of state commission with revision petition.

Revision was allowed as it was held that it is not an unfair trade practice as there is no question of misleading public concerning the price at which books are to be sold. There is no restriction on publisher to increase price of the books. Both the parties knew about

price being charged. There was no misrepresentation and since it was an agreed and voluntary contract, there is no question of unfair trade practice.

Oriental Insurance Co. Ltd. V. B. K. Sethi

Proposal was made for insurance of plant and machinery as well as residential premises. Policy that issued covered only plant and machinery. Residential property was damaged due to earthquake. Claim was made insurance company rejected the claim. Whether the action on the part of insurance company in not issuing policy covering residential premises could be considered deficiency in service?

It was held that is clear cut case deficiency in service as it was specifically mentioned in that insurance policy to extent of 15 lakhs was to be in respect of residential building.

Ghaziabad Development Authority v. Balbir Singh

Appellant floated a housing scheme where plots were monies collected. Later scheme was cancelled without assigning any valid reason. Appellant was directed to refund monies together with interest @ 18%. Appellant challenged levy of interest.

It was held that commission is entitled to award compensation not only for value of goods or service but also to compensate a consumer for injustice suffered by him. However, amount of compensation must vary from case to depending upon nature and circumstances of the case. In view of this commission is authorized to award interest in accordance with current rate of interest..

H.N. Shankara Shastry v. Asst. Director f Agriculture

Defective paddy seeds were sold to appellant because of which his land left uncultivated and fallow. District forum allowed complaint and ordered respondent to pay cost of seed and damages. The appeal was for not paying the damages as the claimant didn't take any alternate steps to mitigate loss.

It was decided that granting of relief doesn't depend upon the fact whether he has made any alternative arrangements to mitigate loss.

Acme Fluoro Polymers Ltd. V. Central Warehousing Corporation

Complainant imported machinery and stored it in an open warehouse. During warehousing due to fall of steel coil, extensive damage was caused to machinery. Warehousing authorities didn't inform complainant. Complainant lodged complaint with National Commission claiming damages and compensation on ground of deficiency in service on part of warehousing authorities. Warehousing authorities took plea of vis-major that is act of God and that it is not liable for damages.

Held deficiency in service as in the instant case damage caused was not due to act of god. It was apparent that there was negligence in storing articles in warehouse and it was duty of officers of warehouse to take appropriate precautions and acre for storage of goods so that such event does not occur. No precautions were taken by them.

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Ashok Leyland Ltd. Prabhulal Maru

Consumer purchased bus-chassis of wheel base 142" and engine and got vehicle registered. Later mechanical problems arose. Purchaser didn't bring vehicle to manufacturer for repairs, though alleged manufacturing defects and raised dispute as to size chassis.

Whether manufacturing defect was proved on basis of facts.

Certificate of registration was issued by registering authority only after vehicle was purchased and sent for inspection and all particulars including that of wheelbase were verified. Registration Certificate stated that wheelbase was 142" and hence there was no reason to disbelieve version of manufacturer since their records and certificate of registering authority showed wheelbase of vehicle was 142"

Manufacturer further stated that complainant didn't make any complaint manufacturing defect during subsistence of warranty and never brought vehicle to workshop for carrying out mandatory free services. Manufacturer further supported his claim by showing letters sent to complainant in which it was clearly stated that though warranty had already expired, still as matter of goodwill, they were prepared to look into alleged mechanical problems.

Manufacturer state that complaint has been filed only to get compensation for damaged vehicle after it met with an accident. This contention of manufacturer was no manufacturing defect or deficiency in service or unfair trade practice as alleged by complainant.

Smt. Savita garg v. The Director, National Heart Institute

Husband of appellant died due to negligence of doctors. National commission dismissed complaint on the ground that attending doctors and nurses were not made party to complaint. It was held that summary dismissal of original petition on question of non-joinder of necessary parties was not proper. In case complainant fails to substantiate the allegation, then complaint would fail but not on ground of non-joinder of parties.

N.K. Modi v. Fair Air Engineers Ltd.

Sec. 34 of the Arbitration and Conciliation Act, 1996 provides that if a contract contains an arbitration clause, the legal proceedings before a judicial authority are liable to be stayed.

In this context, the National Commission observed that the Forums under the Consumer Protection Act, 1986 are not to be construed as judicial authorities and the Forums have powers to adjudicate disputes, they do not have any trappings of a Court.

Thus, the National Commission held that Sec. 34 of the Arbitration and Conciliation Act, 1996 shall not be a bar on the jurisdiction of the Consumer Forum.

Secretary Thirumurugan Cooperative Agricultural Credit Society v. M Lalitha & ORS

Member of the society preferred claim against society before district forum. Appellant challenged stating that only the arbitrator under the T.N Cooperative Society Act can resolve the disputes and district forums doesn't have jurisdiction. District forum granted relief, state commission set aside order of district forum. Appeal was preferred to national commission.

National Commission held that as per section 3 of the Consumer Protection Act, this Act is in addition and not in derogation of any other Act. Further purpose of the act is to provide a redressed is made available to consumers. Forums are established under the Act to provide additional remedies. Therefore, it was held that state Act doesn't oust the jurisdiction of Consumer Protection Act.

Jangeer Singh v. Hospital And Research Center Pvt. Ltd.

Appellant was under treatment of a doctor for total period of 3 months. When he asked for a medical certificate, doctor gave him certificate for 1 month only. The explanation offered by doctor was that he was not authorized to issue certificate for more than one month. From the records it was gathered that a doctor could issue certificate for a period of more than 1 month after seeking permission from medical board to issue the certificate. That may be an administrative instruction but that doesn't deprive a patient of his right to get certificate from the doctor for the period during which he had been treated by him. It was for the doctor to have obtained permission of higher authorities for issuing a certificate to patient. It was held to be deficiency in service.

Assistant Provident Fund Commissioner v. Md. Umar

Payment of provident fund after a delay of 3 years was held to be deficiency in service.

Citicorp Maruti Finance Ltd v. Smt Vijaya Laxmi

Finance company financed car purchased by respondent. When respondent defaulted in paying the installment due, through its employees, forcefully took possession of the car and sold it at throw away price. Appellant raised demand of Rs. 60,000/- on borrower and threatened to foreclose the entire loan advanced if payment not made.

It was held that taking forcible possession of vehicle and then raising further demand of 60000 after selling the vehicle throw away price and not as per market value shows greed for money and propensity to become unjustly rich. Hire purchase agreement is a civil contract and dispute arising from it has to be settled by way of civil remedy and not through musclemen. People can't permit to settle their civil disputes through

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criminal force and in streets. Entire action of the appellant was held to be illegal, arbitrary and criminal in nature and requires to be visited with punitive damages, besides refunding market value of the vehicle with interest. Selling of seized car at throw away price was held to be UTP.

Life Insurance Corporation of India v. Mani Ram

Respondent filed a complaint alleging that his son had been insured on August 21, 1995 and premium amount was paid on same day. According to complainant, next installment of premium was due on August 21, 1996. Complainant in view of subsisting policy, requested insurance company to pay the claim but insurance company didn't pay the amount on the ground that premium wasn't paid on the policy and policy lapsed. Appellant company stated that policy was back dated at request insured with effect from 28.4.95 and that one year came to an end on 28.4.96 further, appellant contended that even after grace period of 1 month the premium wasn't paid by 28.5.96 and policy has lapsed. In instant case, condition expressly provided the period during which the payment was to be made. It also in no uncertain terms state that if premium was not paid before expiry of grace period would lapse. Hence, claim of respondent was rejected.

Joseph Mathew Thomas & Co. v. Maruti Udyog Ltd.

Defects in vehicle during warranty period were not by the company. Complaint was dismissed by district forum on the ground that vehicle was purchased for commercial purpose and hence provisions of consumer protection act are not applicable to it. Hence appeal was made.

State Commission, relying on the judgment of National Commission in the case of **Jay Kay Puri Engineers & Another v. Mohan Breweries And Distilleries Ltd.**, held that even if the vehicle is purchased for commercial purpose and if defect is developed during warranty period, then opposite parties (i.e., manufacturer and authorized dealer) are liable to rectify the defects.

Unit Trust of India v. Ravinder Kumar Shukla

Cherubs sent by UTI were lost en-route. Unit holder claimed compensation from consumer forums for non-receipt of amounts on ground of deficiency in service. Whether UTI is liable for compensation?

It was that the answer to the aforesaid question would depend on whether the post office was acting as an agent to the unit holder or the appellant. The law is that in absence of any contract/request from payee, mere posting wouldn't amount to payment. In case, where there is no contract or request, either or implied, the post office would continue to act as agent of drawer. There was proof from the appellants as to

(Company Secretary, Cyber Lawyer, M.com)

existence of any contract or request from payee for sending amount by post. Hence UTI was held liable.

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