About the University

The Tamil Nadu Dr.Ambedkar Law University is a premier institution for legal education, established in the year 1997 in pursuance of the Tamil Nadu Act No.43 of 1997. As a sui generis model, the University is the first of its kind in the country offering legal education both on its campus and through the affiliated law colleges in the State of Tamil Nadu. All the seven Government Law Colleges stand affiliated to the Tamil Nadu Dr.Ambedkar Law University. The University has established the School of Excellence in Law in the University campus.

About the Chair of Excellence on Consumer Law and Jurisprudence

The Chair of Excellence on Consumer Law and Jurisprudence named after late Shri.A.K.Venkata Subramaniam, a former Secretary, Government of India and a Consumer Activist has been functioning since 01-07-2014. The objectives of the Chair, among others are: (i) to provide for the advancement and dissemination of knowledge of law and their role in the development of better education; (ii) to promote legal education and well being of the community generally and (iii) to provide access to legal education of large segments of the population and in particular to the disadvantaged groups.

About the Book

This compendium gives a gist of the judgments delivered by the Hon'ble Supreme Court between January, 2011 and April, 2017. The judgments cover a wide range of issues relating to consumer protection like banking and insurance services, educational and health services, transport services, postal services, unfair trade practices etc. The cases have been presented category wise and give all the details to enable easy access to law journals.

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Chennai.

COMPENDIUM OF SUPREME COURT JUDGMENTS ON CONSUMER PROTECTION ACT, 1986 (CASES OF 2011 - 2017)

सत्यमेव जयते

COMPENDIUM OF SUPREME COURT JUDGMENTS ON CONSUMER PROTECTION ACT, 1986

[Cases of 2011 – 2017]

THE TAMIL NADU Dr.AMBEDKAR LAW UNIVERSITY

[State University, established by Act No.43 of 1997]

"Poompozhil", No.5, Dr. D.G.S. Dinakaran Salai, Chennai – 600 028

Telephone Nos. 24641212 & 24641919; Fax: 24617996

Thiru.R.Santhanam,

Honorary Director,

Chair of Excellence on Consumer Law and Jurisprudence.

Date:15-09-2017

Preface

The Consumer Protection Act, 1986 has been described as a highly progressive, comprehensive and unique piece of legislation. The Act seeks to provide speedy and inexpensive redressal of the grievances of the consumer and award compensation wherever appropriate. The Act also aims to promote and protect several important rights of the consumer, such as:

a) the right to be 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 services, as the case may be, to protect the consumer against unfair trade practices;
c) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
d) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate fora;
e) the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers and
f) the right to consumer education.

Though more than 30 years have passed since the enactment of this beneficial legislation, the sad truth is that many consumers are still not aware of the Act and the valuable rights that have been conferred upon them. A survey on Consumer Awareness in Tamil Nadu conducted a couple of years ago showed that only 51 % of those who were interviewed were aware of their rights as a consumer and that less than 50 % were aware of the existence of the consumer courts for redressal of grievances. A more recent survey on Food Safety showed that awareness about The Consumer Protection Act, 1986 was even less. There is therefore an urgent need to spread awareness among the people of the State, especially among the youth, whose awareness levels are surprisingly low.

One of the major objectives of the Chair of Excellence on Consumer Law and Jurisprudence of The Tamil Nadu Dr. Ambedkar Law University is to "to promote legal education and well being of the community generally". It is also our desire to provide access to legal education of large segments of the population and to reach out to the rural areas and millions of urban poor and middle class who are being exploited by unscrupulous elements. Towards this end, the Chair has taken up a study of all the recent judgments of the Hon'ble Supreme Court and the National Consumer Disputes Redressal Commission with a view to prepare a gist of these judgments and to make them available in simple language, both in English and Tamil. More than 1300 judgements of the National Consumer Redressal

Commission delivered in the year 2014 under various categories were summarized and a Compendium of these cases were brought out in three volumes in 2015 and 2016.

The present Compendium covers the judgments delivered by the Hon'ble Supreme Court on Consumer Protection Act, 1986 between January 2011 and April 2017. The judgments cover a wide range of issues pertaining to banking, insurance, housing, educational and health services. Some landmark judgments like those in *Balram Prasad v. Kunal Saha and others* (on medical negligence), *Dipak Kumar Mukherjee v. Kolkata Municipal Corporation & others* (on unauthorized construction), *Lakhmi Chand v. Reliance General Insurance* (on vehicle insurance) etc. which figure in this compendium will be of great interest and value to readers. About 100 cases have been covered subject wise giving details of the case number, the order from which the appeal arose, gist of the case, the issues discussed and decided, the sections of the Act concerned, the case laws referred to or relied upon etc. The citation is also given to enable easy access to law journals to those who want to see the original judgments. It is hoped that this publication will be useful to consumer courts, voluntary consumer organizations and groups, faculty and students of law colleges as well as the general public.

I thank the Ministry of Consumer Affairs, Food and Public Distribution, Government of India for establishing this Chair named after a distinguished former civil servant and consumer activist, late A.K.Venkata Subramaniam. I also express my sincere thanks to the former Vice Chancellor of the Tamil Nadu Dr. Ambedkar Law University, Prof.(Dr).P. Vanangamudi, for his encouragement and guidance in the preparation of this Compendium. I would also like to thank my colleagues, Prof.(Dr).V. Balaji, Project Director for his support and cooperation; Mr.R. Karuppasamy, Research Associate for his involvement and commendable work; and to Ms.A. Komathi for her valuable assistance in typing, formatting and designing this volume.

We welcome suggestions for improvement.

(R.SANTHANAM)

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ii) Parties:

Laxman @ Laxman Mourya - Appellant

versus

Divisional Manager,
Oriental Insurance Co. Ltd. & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.9676 of 2011 (Arising out of SLP(C) No.14560 of 2010).
Date of Judgment: 08.11.2011.

iv) Case in Brief:

The Appellant became a victim of a road accident which occurred on 08.09.2003 when he was hit from behind by a bus belonging to Respondent No.2. The Appellant sustained serious injuries on different parts of the body. He was immediately admitted in the hospital in Bangalore and was discharged on 22.09.2003. He filed a petition under Section 166 of the Motor Vehicles Act, 1988 before the Tribunal claiming a compensation of Rs.5,00,000/- with interest. The Tribunal held that the Appellant was entitled to a compensation of Rs.45,000/- with interest at the rate of 8% from the date of application till the date of deposit. The Appellant filed an appeal under Section 173 of the Act before the High Court which granted a meagre enhancement of Rs.31,000/- with interest at the rate of 6% on the enhanced compensation from the date of petition. Aggrieved by the said order the present appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Sections 14 of the Consumer Protection Act, 1986; Sections 166, 168, 173 and Sch. II of Motor Vehicles Act, 1988; Section 4 of Workmen's Compensation Act, 1923.

vi) Cases referred:

1. *Raj Kumar v. Ajay Kumar,* (2011) 1 SCC 343:
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7. *Ward v. James,* (1966) 1 QB 273:(1965) 2 WLR 455:(1965) 1 All ER (CA). [Para 10]

vii) Issues raised and decided:

a) The Court, referring to the ratio of several judgments cited above, observed that the question whether the compensation awarded to the Appellant is just or he is entitled to enhanced compensation has to be considered under the following heads.

   (i) Loss of earning and other gains due to the accident.

   (ii) Loss of future earning on account of the disability.

   (iii) Expenses for future treatment.

   (iv) Compensation for pain, suffering and trauma caused due to the accident.

   (v) Loss of amenities including loss of the prospects of marriage.

   (vi) Loss of expectation of life.

b) The Court observed that the Respondents have not controverted the Appellant's assertion that at the time of accident his age was 24 years; that he was earning Rs.5,000/- per month as a carpenter and that as a result of the accident he had to remain in hospitals for different durations. Therefore, under the first head i.e. loss of earning and other gains during the period of hospitalization (one month), the Appellant was entitled to a compensation of Rs.5,000/-.

c) The Court observed that it is not in dispute that the Appellant, as a result of the accident, suffered 26% disability of the lower limb, 25% disability due to urethral injury and 38% disability to the whole body. The Court noted that even though the disability suffered by the

Appellant is not 100%, his working capacity has been reduced to zero. However, keeping in view the degree of disability i.e. 38%, the Court held that he shall be entitled to compensation of Rs.3,32,640/- (38% of Rs.5,000.00=Rs.1540x12x18) for loss of future earnings.

d) The Court observed that it may not be possible to estimate the expenses needed for future treatment especially when the claimant belongs to a financially weaker stratum of society. But the amount of compensation can be fixed by making some guesswork. Keeping the view the nature of injuries suffered by the Appellant and the fact that he will have to take treatment throughout his life, the Court held that the ends of justice will be met by awarding him a sum of Rs.1,50,000/- under that head.

e) For pain, suffering and trauma caused due to the accident, it was held that a sum of Rs.1,50,000/- deserves to be awarded to the patient.

f) For the loss of amenities including the loss of prospects of marriage which has become an illusion for the Appellant, it was held just and proper to award a sum of Rs.2,00,000/-.

g) Though in the petition filed by the Applicant under Section 166 of the Act, the Appellant had claimed compensation of Rs.5,00,000/- only, it was held, as in *Nagappa v. Gurudayal Singh* (supra), that in the absence of any bar in the Act, the Tribunal or any competent Court is entitled to award higher compensation to the victim of an accident.

h) In the result, the appeal was allowed. The impugned judgment was set aside and it was declared that the Appellant shall be entitled to total compensation of Rs.8,37,640/- with interest at the rate of 8% from the date of filing petition till the date of realization.

viii) Citation:

(2011) 10 SCC 756.

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2. Santosh Devi v. National Insurance Co. Ltd. & Ors.

i) Order appealed against:

From the judgment and order of the Punjab and Haryana High Court.

ii) Parties:

Santosh Devi - Appellant

versus

National Insurance Co. Ltd. & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.3723 of 2012 (Arising out of SLP (C) No.24489 of 2010).
Date of Judgment: 23.04.2012.

iv) Case in Brief:

The Appellant's husband, Shri Swaran Singh, died in a road accident when the Maruti car in which he was travelling with Varinder Singh (husband of Respondent No.2 and the father of Respondents Nos.3 and 4) went out of control. Varinder Singh, who was at the wheels, also died in the accident. The Appellant filed a petition under Section 166 of the Motor Vehicles Act, 1988 for award of compensation to the tune of Rs.4 lakhs. It was alleged that the accident was caused due to the rash and negligent driving by Varinder Singh which charge was denied by the legal representatives of Varinder Singh. Respondent No.1 pleaded that the claim was not maintainable because the deceased who was travelling in the car cannot be treated as a third party and that the person driving the vehicle did not have a valid driving licence. The Tribunal, after analyzing the evidence, came to the conclusion that the accident was caused due to rash and negligent driving by Varinder Singh. Tribunal assumed the income of the deceased as Rs.1,500/- per month and deducting Rs.500/- towards personal expenses of the deceased, held that the dependency of the Appellant and other family members would be Rs.1,000/- per month. The Tribunal also refused to treat the two sons of the Appellant as dependants because their age was 26 years and 23 years respectively. Applying the multiplier of 11, the Tribunal declared that the Claimants are entitled to a compensation of Rs.1,32,000/- with interest at the rate of 12% p.a. from the date of application. The High Court, relying upon the judgment of the Supreme Court in *Sarla Verma v. DTC*, applied the multiplier of 14 and held that the Claimants are entitled to total compensation of Rs.1,77,500/- with interest at the rate of 7% p.a. on the enhanced amount from the date of appeal till realization. Aggrieved by the said order, the present civil appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Sections 2(1) (g) and (o) of the Consumer Protection Act, 1986; Section 166 of the Motor Vehicles Act, 1988.

vi) Cases referred:

1. *R.K. Malik v. Kiran Pal,* (2009) 14 SCC 1. [Para 11]
2. *M.S. Grewal v. Deep Chand Sood,* (2001) 8 SCC 151. [Para 11]

3. *Lata Wadhwa v. State of Bihar,* (2001) 8 SCC 197. [Para 11]
4. *Kerala SRTC v. Susamma Thomas,* (1994) 2 SCC 176. [Para 11]
5. *Sarla Dixit v. Balwant Yadav,* (1996) 3 SCC 179. [Para 11]
6. *U.P. SRTC v. Trilok Chandra,* (1996) 4 SCC 362. [Para 13]
7. *Nance v. British Columbia Electric Railway Co. Ltd.,* 1951 AC 601. [Para 13]
8. *Davies v. Powell Duffryn Associated Collieries Ltd.,* 1942 AC 601. [Para 13]

vii) Issues raised and decided:

a) It was contended before the Apex Court that the Tribunal and High Court had committed serious error by not giving the benefit of 30% increase in the income of deceased which he would have earned for the next 25 years. It was further contended that the deduction of Rs.500/- towards personal expenses of the deceased was highly disproportionate to his income of Rs.1,500/- per month, considering the size of the family. The Court held that it will be naive to say that the wages or total emoluments/income of a person who is self employed or who is employed on a fixed salary without provision for annual increment etc would remain the same throughout his life. The Court observed that those people put extra efforts to generate additional income necessary for sustaining their families. The Court disagreed with judgment in *Sarla Verma case* in this regard. It was held that it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes victim of an accident, then the same formula deserves to be applied for calculating the amount of compensation.

b) The Court did not agree with the view taken by the Tribunal and reiterated by the High Court that the deceased would have spent 1/3rd of his total earning towards personal expenses. It was held that a person having 5 members in the family would, at best, spend 1/10th of his income on himself or use that amount as personal expenses.

c) The Court also rejected the Tribunal's observation that the two sons of the Appellant cannot be treated as dependant on their father because they were not minor. Since the source of the sons' sustenance was not established, it was held that the Tribunal's finding in this regard was flawed.

d) In the result the appeal was allowed. The impugned judgment, as also the award of the Tribunal, was set aside. It was declared the that the Claimants shall be entitled to a compensation of Rs.2,94,840/- [Rs.1500+30% of Rs.1500=Rs.1950 less 1/10th towards personal expenses=Rs.1755x12x14 =294840]. It was held that the Claimants shall be entitled to Rs.5,000/- for transportation of the body, Rs.10,000/- for funeral expenses and Rs.10,000/- in lieu of loss of consortium. Thus, the total amount payable to the Claimants was arrived at Rs.3,19,840/-. It was held that the enhanced amount of compensation of Rs.1,42,340/- [Rs.319840-177500] would carry interest of 7% from the date of application till realization.

viii) Citation:

2014(1) CPR 293 (SC).

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3. New India Assurance Co. Ltd. v. Yogesh Devi & Ors.

i) Order appealed against:

From the judgment and order dated 30.01.2009 of the High Court of Rajasthan in S.B. Civil Misc. Appeal No.1222 of 2006.

ii) Parties:

New India Assurance Co. Ltd. - Appellant

versus

Yogesh Devi & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.1987 of 2012 (Arising out of SLP (Civil) No.17186 of 2009). Date of Judgment: 02.10.2012.

iv) Case in Brief:

One Vijender Singh along with two others, Bhagwan Das and Manish, was travelling by a motor cycle on 10.12.2002. The said vehicle was hit by a truck resulting in the death of both Vijender Singh and Bhagwan Das. Respondent No.1 is the wife, Respondents 2 to 5 are the children and Respondent No.6 is the mother of the deceased Vijender Singh. They filed an application against the Appellant, who had insured the abovementioned truck, for award of compensation of Rs.1,86,30,000/-. They claimed that Vijender Singh was earning more than Rs.35,000/- per month. The Tribunal awarded an amount of Rs.10 lakhs and provided for appropriate deductions for the amounts which

had already been paid. Both the parties carried the matter in appeal to the High Court. While the appeal preferred by the Appellant herein was dismissed, the appeal preferred by the Claimants was partially allowed by holding that the Claimants were entitled for a compensation of Rs.30,72,000/-. Aggrieved by the said order, the present appeal had been filed. Appeal disposed of by modifying the order of the High Court and awarding a compensation of Rs.26,68,800/-.

v) Acts and Sections referred:

Nil.

vi) Cases referred:

State of Haryana & Anr. v. Jasbir Kaur & Ors. (2003) 7 SCC 484. [Para 5]

vii) Issues raised and decided:

a) The Tribunal had observed that "keeping in view the fact of ownership of two buses and one bus given on contract and the agricultural land it can be said that the deceased was earning Rs.3,900/- per month in the capacity of the driver of a bus. Keeping in view the remaining buses and agriculture land it will be appropriate to hold the income of the deceased at Rs.7,380/- because in case he would have earned more than the said amount, he must have filed the income tax return. If the deceased would remain alive he must have spent 1/3 upon himself, therefore, it would be appropriate to hold the monthly dependency at Rs.5,000/-".

b) The Tribunal had held that the Claimants were entitled to receive Rs.10 lakhs as compensation on the following basis:

i) On a/c of loss of dependency from income (Rs.5000x12x16=Rs.9,60,000)	= Rs.9,60,000.00
ii) For loss of consortium to Petitioner No.1	= Rs. 10,000.00
iii) For loss of love and affection to Petitioners No.2 to 6	= Rs. 25,000.00
iv) For funeral expenses	= Rs. 5,000.00
Total	= Rs.10,00,000.00

c) The High Court had opined that if the figure of Rs.3,900/- was a reasonable assessment of the salary of the driver, obviously the owner of two buses would have earned more than Rs.3,900/- and that a

reasonable assessment would be that the owner of bus would be earning at least Rs.10,000/- each bus. Therefore, the High Court had held that Vijender Singh's income should be taken as Rs.23,900/- per month or Rs.24,000/- of which 1/3rd is treated to be an amount which the deceased would have spent on himself and the balance on the claimants. The High Court therefore concluded that the claimants were entitled for a compensation of Rs.30,72,000/-. The rest of the award was confirmed. The Court also awarded an interest @ 6% p.a. from the date of filing of the claim petition i.e. 24.03.2003 till the realization to the claimants.

d) The Supreme Court, while agreeing with the logic of the High Court, held that a quantum of income would depend upon various factors, such as whether it is a stage carriage or a contract carriage, the condition of the bus, its seating capacity, the route on which it is plying, the cost of maintenance, the taxes to be paid on such business etc. But the Court raised the question whether the income (either gross or net) derived by the owner of a bus could legally form the basis for determining the amount of compensation payable to his dependents, if he happens to die in a motor vehicle accident. The Court held that such an income cannot form the legal basis for determining the compensation. The Court noted that the High Court had rejected the claim insofar as it was based on income from the land on the ground that the income would still continue to accrue to the benefit of the family. The Court observed that the High Court had failed to see that the same logic would be applicable even to the income from the three buses. The asset (three mini buses) would still continue with the family and fetch income. The only difference would be that during his life time, the deceased was managing the buses, but now, the claimants may have to engage some competent person to manage the asset which, in turn, would require some payment to be made to such a manager. To the extent of such payment, there would be a depletion in the net income accruing to the claimants out of the asset. Therefore, the amount required for engaging the service of a manager and the salary payable to a driver – as it is asserted that the deceased himself used to drive one of the three buses – would be the loss to the claimants. In the absence of any evidence adduced by the claimants as to the quantum of depletion in the income, the Court held that it is reasonable to notionally fix the salary of the manager at Rs.10,000/- per month and the salary of the driver at Rs.3,900/- per month. Therefore, the total loss that

would be sustained by the family from the income arising out of the asset would be Rs.13,900/-. The compensation payable to the claimants would therefore be Rs.13,900x12x16 (as 16 was the multiplier used by both the courts below) = Rs.26,68,800/-.

e) The Court determined the compensation payable as above and accordingly modified the order of the High Court.

viii) Citation:

2014(1) CPR 282 (SC).

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4. Vadodara Municipal Corporation v. Purshottam V.Murjani & Ors.

i) Order appealed against:

From the order dated 02.11.2006 in F.A.Nos.464/2002 and 61-77/2004 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Vadodara Municipal Corporation - Appellant

versus

Purshottam V.Murjani & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal Nos.3594–3611 with 3630, 3647, 3631, 3632, 3633 etc., of 2010. Date of Judgment: 10.09.2014.

iv) Case in Brief:

Sursagar Lake at Vadodara is under the control and management of the Municipal Corporation which had been plying boats for joy rides. During the period in question, the contract for plying the boats was given to Ripple Aqua Sports vide licence agreement dated 26.09.1992 for managing the affairs of the Boating Club at the lake for purposes of entertainment. The contractor was required to take insurance policies to cover the risk of liability of all persons using the equipment of the club. The Corporation had the right to supervise the boating club. Accordingly the contractor took insurance policy dated 01.11.1992. On 11.08.1993, against the capacity of 20 persons, 38 passengers were allowed to ride in the boat which capsized resulting in the death of 22 passengers. The victims' families approached the State Consumer Redressal Commission claiming compensation and alleging deficiency of service on the part of the contractor and the Corporation. They claimed that the insurance

policy covered the claim to the extent of Rs.20 lakhs per passenger with maximum of Rs.80 lakhs in one year. The insurance company contested the case and submitted that as per the insurance policy given, the liability was limited to Rs.1 lakh per person. Both the Corporation and the Contractor contested the case blaming the other party for the mishap. The State Commission held the Aqua Sports and the Corporation to be jointly and severally liable and awarded total compensation of Rs.30,18,900/- with interest at 10% p.a. from the date of the incident till payment. The quantum of compensation, determined by the Commission, ranged from Rs.50,000/- to Rs.10,76,000/- in respect of claims for death of 22 passengers. The decision of the State Commission was broadly upheld by the NCDRC. But the NCDRC had held that Complainants were entitled to have compensation of Rs.1,00,000/- in some cases, Rs.1,25,000/- in some others and Rs.1,50,000/- in the remaining cases keeping in mind the principles for determining compensation under the Motor Vehicles Act, 1988. The NCDRC had confirmed the rest of the order of the State Commission. Aggrieved by the said order the present appeals had been filed by the Corporation, Contractor and the Insurance Company. Appeals dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986; Bombay Provincial Municipal Corporation Act, 1949; Indian Vessel Act, 1917; Public Liability Insurance Act, 1991; Insurance Regulatory and Development Authority Act, 1999 and 2002 Regulations framed thereunder.

vi) Cases referred:

1. *Rajasthan State Road Transport Corporation v. Kailash Nath Kothari,* (199) 7 SCC 481 : (AIR 1997 SC 3444). [Para 5]
2. *Motor Owner's Insurance Co. Ltd. v. Jadavji Keshavji Modi,* (1981) 4 SCC 660 : (AIR 1981 SC 2059). [Para 6]
3. *Ravneet Singh Bagga v. KLM Royal Dutch Airlines & Anr.,* (2000) 1 SCC 66 : (1999 AIR SCW 4223). [Para 6]
4. *Rajkot Municipal Corporation v. Manjuben Jayantilal Nakum,* (1997) 9 SCC 552. [Para 9]
5. *United India Insurance Co. Ltd. v. Pushpalaya Printers,* (2004) 3 SCC 694 : (AIR 2004 SC 1700). [Para 9]
6. *Life Insurance Corporation of India & Ors. v. Smt. Asha Goel & Anr.,* (2001) 2 SCC 160 : (AIR 2001 SC 549). [Para 9]

7. *Municipal Corporation of Delhi v. Uphaar Tragedy Victims Association and Ors.,* (2011) 14 SCC 481 : (AIR 2012 SC 100) [Para 18]

vii) Issues raised and decided:

a) The Court noted that the NCDRC had held the Ripple Aqua Sports and the Corporation to be jointly and severally liable to pay the compensation to the Complainants which ranged between Rs.1,00,000/- and Rs.1,50,000/-. The NCDRC had directed Vadodara Municipal Corporation to pay the balance of compensation and had held that it was open to the Corporation to recover the same from Ripple Aqua Sports. The NCDRC had further held that the insurance company was liable to pay Rs.20 lakhs for each accident, namely each death, but in aggregate the sum was limited Rs.80 lakhs. Hence the insurance company was directed to reimburse Rs.80 lakhs in all to the Municipal Corporation.

b) The Court noted that neither any life guards were deployed nor any life saving jackets were provided to the passengers and therefore the finding of negligence concurrently recorded by the State Commission and the NCDRC did not call for any interference. It was held that the victims were consumers and the contractor was the service provider and therefore the primary liability of the contractor stood established.

c) The Court held that the insurance company, having issued policy dated 01.11.1992 covering loss to the extent of Rs.20 lakhs per accident with Rs.80 lakhs as maximum in a year, could not avoid its responsibility as rightly held by the State Commission and NCDRC. It was held that the risk was required to be statutorily covered under the Public Liability Insurance Act, 1991 and the insurance company was bound by the Insurance Regulatory and Development Authority (Protection of Policyholders' Interest) Regulations, 2002 framed under IRDA Act, 1999 and the law laid down in several cases.

d) The Court did not find any ground to exonerate the Corporation. It was held that the activity in question was covered by the statutory duty of the Corporation under Sections 62, 63 and 66 of the Bombay Provincial Municipal Corporation Act, 1949. The Corporation had a duty of care, when the activity of plying boat is inherently dangerous and there is clear forseeability of such occurrence unless precautions are taken like providing life saving jackets.

e) The Court observed that were activity of a public body is hazardous, highest degree of care is expected and breach of such duty is actionable.

f) Accordingly the Court did not find any merit in the appeals and dismissed the same.

viii) Citation:

2014(4) CPR 1 (SC); AIR 2015 SC 321.

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II. APPOINTMENTS TO CONSUMER FORA

1. Prem Lata v. Government (NCT of Delhi) & Ors.

i) Order appealed against:

From the judgment and order dated 16.08.2011 of the High Court of Delhi in Letters Patent Application/Petition No.518/2011.

ii) Parties:

Prem Lata - Appellant

versus

Government (NCT of Delhi) & Ors. - Respondents

iii) Case No and Date of Judgment:

SLP (C) No.29967 of 2011.
Date of Judgment: 11.09.2012.

iv) Case in Brief:

The Petitioner who was a member of the District Forum applied for appointment as President of one of the five District Forums in Delhi pursuant to advertisements inviting applications for the same. After interviewing 63 candidates, the selection Committee prepared a panel in which the Petitioner was shown as the first candidate in respect of Shalimar Bagh District Forum with Mr.M.C.Mehra as the selected candidate. Three other candidates (Respondents 4 to 6) were shown as selected for three of the remaining Districts. The panel was to be valid for a period of one year and in case the candidates selected failed to join within 45 days of the offer of appointment, such offer would lapse and the second and third person, as the case may be, in order of preference would be offered the appointment. Mr.Mehra did join within 45 days of issuance of appointment letter and consequently the Petitioner's chance of being appointed as President for the said Forum came to an end. The Petitioner's case was that since Respondents 4 to 6 did not join within 45 days of issuance of letters of appointment in their favour and that they were allowed to join subsequently upon the conditions being relaxed, such relaxation was unlawful and that their joining as Presidents of their respective Forums was invalid and was liable to be set aside and she was entitled to be appointed as President of one of the District Forums in the resultant vacancies. She challenged the appointment before the High Court. The Single Judge dismissed the same on the ground that they had applied for extension of time to enable them to join which was recommended by the

respective High Courts and accepted by the Government of NCT Delhi. The Petitioner preferred Letters Patent Appeal No.518 of 2011 which was dismissed by the Division Bench of the High Court on 16.08.2011. Aggrieved by the said order the present Special Leave Petition had been filed. SLP dismissed.

v) Acts and Sections referred:

Sections 10(1-A) of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *Prem Lata v. Govt. (NCT of Delhi),* (2011) 180 DLT 191.
2. *Prem Lata v. Govt. (NCT of Delhi),* LPA No.518, decided on 16.08.2011 (Del).

vii) Issues raised and decided:

a) It was the Petitioner's contention that the appointment for the post in question is governed by Section 10(1-A) of the Consumer Protection Act, 1986 as per which recommendations for selection are made by a Committee of three members and that the authorities concerned are not entitled to go beyond the recommendations made by the Committee. Since the Respondents did not join within the time prescribed, they stood disqualified. The State Government, according to the Petitioner, had acted in excess of jurisdiction in condoning delay. The Petitioner also contended that upon disqualification of the Respondents 4 to 6, she was entitled to be appointed as the President of one of the three District Forums.

b) The Petitioner also challenged the manner in which the selection had been made to confine the candidates concerned to the respective Districts for which they had been considered. She urged that there was no logical reason for her to have been placed in Shalimar Bagh District beyond Shri M.C. Mehra whereas she could have been selected for appointment in any of the other Districts. Claiming that the entire selection was arbitrary she requested that the entire selection be cancelled and a direction be given to appoint her as President as one of the three Districts.

c) It was argued on behalf of the Government that the three Respondents whose appointments had been challenged were all serving in the District Judiciary and on receipt of their appointment letters they had written to their respective High Courts to be relieved so that they could join their new posts. A request was also made to the Lt. Governor of Delhi on behalf of the High Court to extend the time of joining to

enable the Respondents to join the respective District Forums. Therefore, the delay was not on account of any deliberate design on the part of the Respondents but was an account of the exigencies of the situation which had been considered by the High Court. It was also argued that the power to fix the time limit also includes the power to extend the said limit.

d) Having considered the arguments of both sides, the Court held that the selection was done in accordance with the provisions of the Consumer Protection Act and that the placement of candidates was done by the Committee in a completely fair manner on assessment of individual performance. It was also held that the first five selectees having opted to join their posts, those who were in the waiting list can have no claim for appointment in the said posts. The Court observed that since the time limit for joining had been extended by the Government in the circumstances stated above, the joining of Respondents 4 to 6 cannot be questioned.

e) The Court accordingly dismissed the Special Leave Petition as devoid of merits.

viii) Citation:

(2012) 9 SCC 490; IV (2012) CPJ 9 (SC); 2012(4) CPR 236 (SC).

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III. ARBITRATION

1. New India Assurance Co. Ltd. v. Genus Power Infrastructure Ltd.

i) Order appealed against:

From the order dated 30.05.2013 in Arbitration Petition No.212/2011 of the High Court of Delhi.

ii) Parties:

New India Assurance Co. Ltd. - Appellant

versus

Genus Power Infrastructure Ltd. - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.10784 of 2014 @ Special Leave Petition (Civil) No.24652 of 2013. Date of Judgment: 04.12.2014

iv) Case in Brief:

The Respondent has a manufacturing unit for which it had purchased a Standard Fire and Special Perils Policy from the Appellant on 17.04.2009 which policy was for a period of one year and the total sum assured was Rs.91 crores and ten lakhs. On 29.10.2009 there was a fire explosion in the adjoining Indian Oil Corporation terminal causing extensive damage to the manufacturing unit of the Respondent. On being notified the Appellant appointed a Licensed Surveyor and Loss Assessor in compliance of Section 64 UM of the Insurance Act, 1938 to assess the damage. In the assessment of the Respondent, the loss was to the extent of Rs.28.79 crores. But the Surveyor assessed the loss at Rs.6,09,77,406/-. On 11.03.2011 the Respondent signed a detailed letter of subrogation which was on a stamp paper accepting Rs.5,96,08,179/- in full and final settlement of the claim under the policy. Nearly three weeks later i.e. on 31.03.2011, the Respondent issued a notice to the Appellant stating that the discharge voucher was signed under extreme duress, coercion and undue influence exercised by the Appellant who took undue advantage of the extreme financial difficulties of the Respondent. The Respondent further sought to appoint its nominee arbitrator. The Appellant replied that there was no arbitrable dispute inasmuch as the Respondent had voluntarily signed the letter of subrogation and had accepted the payment in full and final settlement of the claim. In the meantime on 05.04.2011 the Respondent filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996 before the High Court of Delhi alleging that it had accepted the payment under coercion and duress. The High Court, after recording the Appellant's submissions, proceeded to appoint a sole arbitrator

by its impugned order dated 13.05.2013. The said order has been challenged in the present appeal. Appeal allowed.

v) Acts and Sections referred:

Sections 23 of the Consumer Protection Act, 1986; Section 64 UM of the Insurance Act, 1938; Section 11 of Arbitration and Conciliation Act, 1996.

vi) Cases referred:

1. *National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd.,* 2010 CTJ 121(Supreme Court) (CP). [Para 5]
2. *Union of India v. Master Construction Co.,* AIR 2004 SC 904. [Para 7]

vii) Issues raised and decided:

The question before the Court was whether the discharge in the present case upon acceptance of compensation and signing of subrogation letter was not voluntary and whether the claimant was subjected to compulsion or coercion. Relying on the judgments in *National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd.,* and *Union of India v. Master Construction Co.,* the Court held that a bald plea of coercion, duress or undue influence is not enough and the party who sets up a plea must, *prima facie*, establish the same by placing material before the Chief Justice/His designate. After going through the averments in the petition filed by the Respondent, the Court was of the considered view that the plea raised by the Respondent is bereft of any details and particulars and cannot be anything but a bald assertion. Given the fact that there was no protest or demur raised around the time or soon after the letter of subrogation was signed, that the notice dated 31.03.2011 itself was nearly after three weeks and that the financial condition of the Respondent was not so precarious that it was left with no alternative but accept the terms as suggested, the Court was of the firm view that the discharge in the present case and signing the letter of subrogation were not the cause of exercise of any undue influence. The discharge and signing of letter of subrogation were held to be voluntary and free from coercion or undue influence. The Court held that there was full and final settlement of the claim and therefore no arbitrable dispute existed so as to exercise power under Section 11 of the Act. The Court held that the High Court was not justified in exercising power under Section 11 of the Act and allowed the present appeal setting aside the order of the High Court.

viii) Citation:

2015(2) CPR 907 (SC).

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IV. CONDONATION OF DELAY

1. Anshul Aggarwal v. New Okhla Industrial Development Authority

i) Order appealed against:

From the judgment and order dated 23.08.2010 in R.P.No.1327 of 2010 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Anshul Aggarwal - Appellant

versus

New Okhla Industrial Development Authority - Respondent

iii) Case No and Date of Judgment:

Special Leave to Appeal (Civil)/2011, CC No.12439 of 2011.
Date of Judgment: 09.08.2011.

iv) Case in Brief:

The present Appeal had been filed against the order of the National Consumer Disputes Redressal Commission along with an application for condonation of 233 days delay. The Petitioner, in her explanation for delayed filing of a petition had stated that she was in Kuwait with her husband and school going children, that though she was informed about the National Commission's order dated 23.08.2010 within about a fortnight she instructed her counsel on 20.11.2010 to draft and prepare the case for filing before the Supreme Court, that there were certain details to be discussed with her counsel in person which she could do only on her second trip in July 2011 and hence there was delay in filing the petition and requested for condonation of delay. The Court rejected the application for condonation of delay and the Special Leave Petition was also dismissed as barred by time.

v) Acts and Sections referred:

Sections 23 and 24-A of the Consumer Protection Act, 1986; Section 5 of Limitation Act, 1963.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court observed that the cause shown by the Petitioner for not filing the Special Leave Petition within the prescribed period of limitation

was wholly unsatisfactory. The averments contained in the application showed that within a fortnight of passing of the impugned order the Petitioner had become aware of the same. She instructed the counsel to prepare a draft of the case to be filed in the Court but did not take necessary steps for filing the petition. She visited India in April 2011 but then too she did not bother to contact the counsel. The Petitioner's assertion that she could not do so because she was suffering from viral fever had not been substantiated by any documents. The Court therefore did not find any valid ground much less justification for exercise of power by the Court under Section 5 of the Limitation Act.

b) The Court observed that while deciding an application filed in such cases for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if the Court was to entertain highly belated petitions filed against the orders of the Consumer Forums.

c) The Court rejected the application for condonation of delay with above observations. The Special Leave Petition was also dismissed as barred by time.

viii) Citation:

IV (2011) CPJ 63 (SC); 2017(1) CPR 304 (SC).

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V. CONSUMER - DEFINITION AND SCOPE

1. Virender Jain v. Alaknanda Cooperative Group Housing Society Ltd. & Ors.

i) Order appealed against:

From the judgment and order dated 11.02.2009 of the National Consumer Disputes Redressal Commission in Revision Petition No.4209/2008.

ii) Parties:

Virender Jain - Appellant

versus

Alaknanda Cooperative Group Housing Society Ltd. & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeals No.64 of 2010 with Nos.65-68 of 2010.
Date of Judgment: 23.04.2013.

iv) Case in Brief:

The Appellants were enrolled as members of Respondent No.1 Society. They applied for "A" type flats which were being constructed by Respondent No.1. They had deposited different installments of price between 10.12.1995 and 15.12.2003. By letter dated 09.02.2004, the Respondent No.1 returned the amount deposited by the Appellants and indirectly terminated their membership on the ground that they had failed to deposit the installments of the cost of land allotted by HUDA. The Appellants challenged the action of the Respondent No.1 by filing complaint under Section 12 of the CP Act, 1986. Respondent No.1 contested the complaint and claimed that the Appellants do not fall within the definition of "consumer" and that the Appellant should seek remedy under the Haryana Cooperative Societies Act, 1984. The District Forum overruled the objections raised by Respondent No.1 and upheld the right of the Appellant to seek remedy under the CP Act. However, the Forum did not find merit in the grievance made by the Appellant and dismissed the complaint. The Appeals and Revisions filed by the Appellants under Section 17 and 21 of the Act were dismissed by the State Commission and the National Commission respectively solely on the ground that the Appellants cannot be termed as consumers within the meaning of Section 2(1)(d) of the Act. Aggrieved by the said order the present appeals had been filed. Appeals allowed.

v) Acts and Sections referred:

Sections 2(1) (d), (o), 3, 11 to 15, 17, 19, 21 and 23 of the Consumer Protection Act, 1986; Haryana Cooperative Societies Act, 1984 (22 of 1994); Section 9 of Civil Procedure Code.

vi) Cases referred:

1. *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy,* (2012) 2 SCC 506 : (2012) 1 SCC (Civ) 908. [Para 14]
2. *Trans Mediterranean Airways v. Universal Exports,* (2011) 10 SCC 316 : (2012) 1 SCC (Civ) 148. [Para 15]
3. *Chandigarh Housing Board v. Avtar Singh,* (2010) 10 SCC 194 : (2010) 4 SCC (Civ) 113. [Para 11]
4. *Virender Jain v. Alaknanda Cooperative Group Housing Society Ltd. & Ors.,* Revision Petition No.4209 of 2008, order dated 11.02.2009 (NC). (Reversed) [Para 6]
5. *Kishore Lal v. ESI Corpn.,* (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1. [Para 14]
6. *GDA v. Balbir Singh*, (2004) 5 SCC 65.
7. *Thirumurugan Coop. Agricultural Credit Society v. M. Lalitha,* (2004) 1 SCC 305. [Para 6, 14]
8. *B.K. Prabha v. Kendriya Upadyarasanga,* (2004) 1 CPJ 127 : (2004) 2 CLT 304 (NC). (Overruled) [Para 6]
9. *Skypak Couriers Ltd. v. Tata Chemicals Ltd.,* (2000) 5 SCC 294. [Para 15]
10. *Fair Air Engineers (P) Ltd. v. N.K. Modi,* (1996) 6 SCC 385. [Para 15]
11. *LDA v. M.K. Gupta,* (1994) 1 SCC 243. [Para 8]

vii) Issues raised and decided:

a) The Court observed that the definition of the term "consumer" had been analyzed in *LDA v. M.K. Gupta* as also in *Chandigarh Housing Board v. Avtar Singh*. It was held in the latter case that members of a cooperative house building society which had been allotted land by the Chandigarh administration are certainly covered by the definition of consumer under Section 2(1)(d)(ii) and they had every right to complain

against illegal, arbitrary and unjustified forfeiture of earnest money and non-refund of interest. On the same analogy it was held that the Appellants in the present case who had deposited the installments of price for the flats being constructed by Respondent No.1 are covered by the definition of consumer contained in Section 2(1)(d) of the Act and the contrary view expressed by the National Commission in *B.K. Prabha v. Kendriya Upadyarasanga* which had been reiterated in the impugned order is not correct.

b) The other question that came up for consideration was whether the District Forum should not have entertained the complaints filed by the Appellants and directed them to avail the suitable remedies under the Cooperative Societies Act. The Court observed that the Appellants had primarily challenged the action of Respondent No.1 in refunding the amounts deposited by them and thereby extinguishing their entitlement to get the flats. It was held that the mere fact that the action taken by Respondent No.1 was approved by the Assistant Registrar, Cooperative Societies and higher authorities cannot deprive the Appellants of their legitimate right to seek remedy under the Act. It was observed that law on this issue must be treated as settled by the Judgments of the Supreme Court in *Thirumurugan Coop. Agricultural Credit Society v. M.Lalitha, Kishore Lal v. ESI Corpn.* and *National Seeds Corporation Ltd. v. M.Madhusudhan Reddy.*

c) The Court also observed that in *National Seeds Corporation Ltd. v. M.Madhusudhan Reddy* (supra), citing earlier Judgments, it had been held that the remedy available under the Act is in addition to the remedies available under other statutes and the availability of alternative remedies is not a bar to the entertaining of a complaint filed under the Act.

d) In the result the appeals were allowed, the impugned order as also the order passed by the State Commission were set aside and the matters were remanded to the State Commission with the direction that it shall decide the appeals on merits after giving opportunities of hearing to the parties.

viii) Citation:

(2013) 9 SCC 383.

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2. Punjab University v. Unit Trust of India & Ors.

i) Order appealed against:

1. Civil Appeal No.400 of 2007 and Civil Appeal No.503 of 2008

   From the order dated 17.10.2006 in Original Petition No.97/2004 of the National Consumer Disputes Redressal Commission.

2. Civil Appeal No.4664 of 2009

   From the order dated 17.04.2009 in R.P.No.2509/2002 *Punjab Agriculture University vs. UTI of India* of the National Consumer Disputes Redressal Commission.

ii) Parties:

Punjab University - Appellant

versus

Unit Trust of India & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeals No.400 of 2007 with Nos.503 of 2008 and 4664 of 2009.
Date of Judgment: 09.07.2014.

iv) Case in Brief:

Punjab University has a Contributory Provident Fund Scheme for its employees and its fund is maintained and administered by the University. In the year 1993 the University invested an amount of Rs.9.6 crores in "the Institutional Investors Special Fund Unit Scheme-93" of UTI (IISFUS-93) which was an open-ended scheme. The amount was invested with the re-investment option of the dividend and the amount became Rs.19.78 crores on termination of the scheme by UTI on 31.03.1998. In the year 1998, UTI floated another scheme i.e. IISFUS-98. Punjab University invested an amount of Rs.19 crores with the specific understanding that the dividend receivable during the scheme period would be re-invested and it would be refunded with a minimum interest at the rate of 13.5% p.a. The University also made another investment of Rs.4.5 crores. In June 2003, UTI sent two cheques for the maturity amounts of Rs.30,45,23,910.23 and Rs.7,13,81,520.00. The University considered that the maturity proceeds should have been higher as per the "Terms of Offer" of IISFUS-98. A complaint was filed before the National Commission in Original Petition No.97 of 2004 alleging deficiency in service. The National Commission vide impugned order dismissed the complaint on merits. However, the Commission held that the complaint of the University is maintainable under

the Act for deficiency of services by the Respondent's Institution. Challenging the said order the University had filed Civil Appeal No.400 of 2007 and the Respondents had filed Civil Appeal No.503 of 2008 challenging the *locus standi* of the Appellant University. The Court upheld the order of the National Commission and dismissed Civil Appeal No.400 of 2007. Civil Appeals No.503 of 2008 and 4664 of 2009 were disposed of holding that the Appellant could not be said to be indulging in any commercial activity and that the investment was made for the benevolent interest of its employees and not for any commercial purpose.

v) Acts and Sections referred:

Sections 2(1) (d) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *Punjab University v. Unit Trust of India,* 2006 SCC OnLine NCDRC 68.
2. *Punjab Agriculture University v. UTI of India,* 2009 SCC OnLine NCDRC 57.
3. *Laxmi Engineering Works v. P.S.G Industrial Institute,* (1995) 3 SCC 583.
4. *Morgan Stanley Mutual Fund v. Kirtick Das,* (1994) 4 SCC 225.
5. *LDA v. M.K. Gupta,* (1994) 1 SCC 243.

vii) Issues raised and decided:

a) The two questions before the Court were (i) whether the Complainant Universities fall within the ambit of the definition of "consumer" as laid down in Section 2(1)(d) of the Act and (ii) whether the services hired by them are not for any commercial purpose?

b) The Court noted that in the Explanation under Section 2(1)(d) of the 1986 Act, the term "sub-clause (i)" was substituted with "clause" by means of amendment in 2003 (w.e.f. 15.03.2003) to further widen the scope of the applicability of the explanatory clause. It was observed that Clauses (i) and (ii) of Section 2(1)(d) of the 1986 Act must be interpreted harmoniously. The Court held that Explanation to Section 2(1)(d)(ii) of the Act being clarificatory in nature, the term "commercial purpose" must be interpreted considering the facts and circumstances of each case as held by the Court in *Laxmi Engineering Works*. In the instant case it was held that services of the Respondent have been availed by the Appellant University for the betterment of its employees and not to earn profit accruing out of the deposit as a business activity. It was further held that since the investment was not made any

commercial purpose, the Appellant fell within the definition of "consumer" and the complaint was maintainable before the Consumer Forum.

c) On merits, however, considering the case in terms of the offer as to see if there is any deficiency in service, it was held that the Complainants have no case. It had been clearly stipulated in the "terms of offer" that the maturity amount will depend on NAV and that the same was guaranteed not to be below the par value of Rs.10 per unit. All investments are subject to market risks and fluctuations and an investor has to exercise due caution while investing any amount in any scheme; just because the maturity amount is below their expectations, they cannot drag the service provider to Court for the same.

d) The Court held that the National Commission had correctly held that the University would come within the purview of consumer as defined in Section 2(1)(d) of the Act and correctly dismissed the claim of the Complainants on merits.

viii) Citation:

AIR 2014 SC 3670; (2015) 1 SCC 669; I (2015) CPJ 1 (SC).

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3. Sanjay Kumar Joshi v. Municipal Board Laxmangarh & Anr.

i) Order appealed against:

From the judgment and order dated 22.01.2013 in Revision Petition No.2855 of 2011 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Sanjay Kumar Joshi - Appellant

versus

Municipal Board Laxmangarh & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.9290 of 2014 @ SLP(C) No.14172 of 2013.
Date of Judgment: 26.09.2014.

iv) Case in Brief:

The Appellant was the highest bidder in a public auction for Plot No.7 conducted by the Respondent. He deposited 25% of the sale consideration amount, as required, on 22.01.2010. On 19.03.2010 the Respondents called

upon the Appellant to deposit the remaining 75% of the amount with lease money. The Appellant responded on 22.03.2010 requesting the Respondents to refund the amount already paid as he had come to know that a Civil Suit concerning the said Plot No.7 was pending before the Civil Court. Since there was no response from the Respondents, the Appellant filed a complaint before the District Forum. After hearing the parties, the Forum allowed the complaint and directed the Respondents to pay Rs.25,000/-, the security amount, to the Complainant and 25% of the amount of sale consideration amounting to Rs.3,69,500/-, in total Rs.3,94,500/- with interest @ 9% p.a. from 22.01.2010. The appeal filed by the Respondents was dismissed by the State Commission. However, the National Commission, relying on the decision of the Hon'ble Supreme Court in *U.T. Chandigarh Administration & Anr. v. Amarjeet Singh & Ors.,* held that the Appellant had purchased the commercial plot for a commercial purpose and the complaint filed by him would be unsustainable as per the definition of the term 'consumer' under Section 2(1)(d) of the Act and set aside the orders of the fora below. Aggrieved by the said order, the present appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), (d), 12, 21 and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *U.T. Chandigarh Administration & Anr. v. Amarjeet Singh & Ors.,* (2009) 4 SCC 660. [Para 6]
2. *Laxmi Engineering Works v. PSG Industrial Institute,* (1995) 3 SCC 583. [Para 7]
3. *Madan Kumar Singh v. District Magistrate & Ors.,* (2009) 9 SCC 179. [Para 8]
4. *National Seeds Corporation Ltd. v. M.Madhusudan Reddy,* (2012) 2 SCC 506. [Para 8]

vii) Issues raised and decided:

a) The Court, after getting confirmation of the fact that the plot in question was in dispute in a Civil Suit, held that the Respondent could not have concluded the contract and confirmed the sale and executed the sale deed in favour of the Appellant and that therefore, the forfeiture of the security deposit amount and 25% deposit towards the sale consideration of the plot in question was unsustainable in law. The Court further held that the impugned order setting aside the orders of the fora below

relying upon the definition of the term 'consumer' under Section 2(i)(d) of the Act and also placing reliance upon the decision of the Court in *U.T. Chandigarh Administration* supra is wholly inapplicable to the facts of the case in view of the plea taken by the Appellant that he had purchased the plot in question for earning his livelihood. The Court held that the exclusion of the sale of the plot for commercial purposes is not attracted in the current situation and that the Counsel for the Appellant had rightly placed reliance upon the decision of the Supreme Court in *Madan Kumar Singh v. District Magistrate & Ors.*, and *National Seeds Corporation Ltd. v. M.Madhusudan Reddy*.

b) Accordingly the Court allowed the appeal, set aside the order of the National Commission and restored the order passed by the District Forum which was confirmed by the State Commission. The Court directed the Respondents to refund the amount as per the orders of the District Forum within six weeks from the date of receipt of a copy of the order.

viii) Citation:

2014(4) CPR 563 (SC).

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4. Bunga Daniel Babu v. M/s. Sri Vasudeva Constructions & Ors.

i) Order appealed against:

From the order in Revision Petition No.258/2013 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Bunga Daniel Babu - Appellant

versus

M/s. Sri Vasudeva Constructions & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal Nos.944 of 2016 (@ SLP (Civil) No.1633 of 2015).
Date of Judgment: 22.07.2016.

iv) Case in Brief:

The Appellant, owner of a plot admeasuring 1347 sq. yards in Visakhapatnam, entered into a Memorandum of Understanding (MOU) with the Respondents on 18.07.2004 for development of his land by construction of a multistoried building. Under the MOU the apartments constructed were to be shared in the

proportion of 40% and 60% between the Appellant and the Respondent No.1. It was stipulated that the construction was to be completed within 19 months from the date of approval of plans by the Municipal Corporation and in case of non-completion within the specified time, a rent of Rs.2,000/- per month for each flat was to be paid to the Appellant. An addendum to the MOU was signed on 29.04.2005 which, among others, required the Appellant to register 14 out of 18 flats before the completion of the construction of the building in favour of the purchasers of the Respondents. The plans were approved on 18.05.2004 but the building was not completed by the scheduled date i.e. 18.12.2005. The occupancy certificates for the 12 flats were handed over to the occupants only on 30.03.2009 resulting in a delay of about three years and three months. In addition the Appellant had certain grievances pertaining to deviations from sanction plans and non-completion of various other works and other omissions for which he claimed a sum of Rs.19,33,193/-. The claims were repudiated by the Respondents. The District Forum before whom a complaint was filed opined that the Complainant came under the definition of consumer under Section 2(1)(d)(ii) of the Act. On the question of deficiency in service, the claim was partly allowed in favour of the Appellant/Complainant by awarding a sum of Rs.15,96,000/- towards rent for delayed construction besides other costs. The appeal filed by the Respondents was allowed by the State Commission which held that the Appellant did not come within the ambit of definition of consumer under the Act and accordingly dismissed his claims as not maintainable. The National Commission before whom an appeal was filed by the Appellant concurred with the view expressed by the State Commission. Aggrieved by the orders of the State and National Commissions the present appeal had been filed. Appeal allowed. The orders passed by the National Commission and State Commission were set aside and the matter remitted back to the State Commission to re-adjudicate the matter treating the Appellant as a consumer.

v) Acts and Sections referred:

Sections 2(1) (d) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd. and anr.,* (2008) 10 SCC 345. (Relied) [Para 1]
2. *Morgan Stanly Mutual Fund v. Kartick Das,* (1994) 4 SCC 225. (Referred) [Para 8]
3. *Lucknow Development Authority v. M.K. Gupta,* (1994) 1 SCC 243. (Referred) [Para 9]

4. *Laxmi Engineering Works v. P.S.G. Industrial Institute,* (1995) 3 SCC 583. (Relied) [Para 12]

5. *Kalpavruksha Charitable Trust v. Toshniwal Brothers (Bombay) Pvt. Ltd. and another,* (2000) 1 SCC 512. [Para 14]

6. *CIT v. Surat Art Silk Cloth Manufacturers' Association,* (1980) 2 SCC 31. [Para 14]

7. *CIT v. Federation of Indian Chambers of Commerce and Industries,* (1981) 3 SCC 156. [Para 14]

8. *Punjab University v. Unit Trust of India and others,* (2015) 2 SCC 669. [Para 19]

vii) Issues raised and decided:

a) The Court noted that the District Forum had relied on the decision of the Court in *Faqir Chand Gulati* in which the question whether the owner of a plot of land could maintain a complaint under the Act claiming that he was a consumer and the builder, a service provider, was discussed in detail. It was held therein that "in a true joint venture agreement between the landowner and another (whether a recognized builder or fund provider), the landowner is a true partner or co-adventurer in the venture where the landowner has a say or control in the construction and participates in the business and management of the joint venture, and has a share in the profit/loss of the venture. In such a case the landowner is not a consumer nor is the other co-adventurer in the joint venture, a service provider. The landowner himself is responsible for the construction as a co-adventurer in the venture. But such true joint ventures are comparatively rare. What is more prevalent are agreements of the nature found in this case which are hybrid agreements for construction for consideration and sale and are pseudo joint ventures".

b) The Court had further observed in *Faqir Chand Gulati* (supra) that "the important aspect is the availment of services of the builder by the landowner for a house construction (construction of the owner's share of the building) for a consideration. To that extent, the landowner is a consumer, the builder is a service provider and if there is deficiency in service in regard to construction, the dispute raised by the landowner will be a consumer dispute. We may mention that it makes no difference for this purpose whether the collaboration agreement is for construction and delivery of one apartment or one floor to the owner or whether it

is for construction and delivery of multiple apartments or more than one floor to the owner. The principle would be the same and the contract will be considered as one for house construction for consideration".

c) Applying the said principles to the present case, the Court held that the MOU that was entered into between the parties even remotely does not indicate that it is a joint venture. A studied scrutiny of the Clauses in the MOU revealed that the Appellant is neither a partner nor a co-adventurer. He had no say or control over the construction. He did not participate in the business. He was only entitled to as per the MOU, a certain constructed area. The extent of area, as had been held in *Faqir Chand Gulati* (supra), did not make a difference. Therefore the Court held that the Appellant is a "consumer" under the Act.

d) Since the District Forum had allowed the claim of the Appellant and the State Commission dismissed the appeal holding that the claim of the Appellant was not maintainable under the Act, he being not a consumer and the said order had been given the stamp of approval by the National Commission, the Court held that there has to be appropriate adjudication with regard to all aspects except the status of the Appellant as a consumer by the Appellate Authority. The appeal was accordingly allowed, the Judgments and orders passed by the National Commission and the State Commission were set aside and the matter remitted back to the State Commission to re-adjudicate the matter treating the Appellant as a consumer.

viii) Citation:

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

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5. Lourdes Society Snehanjali Girls Hostel & Anr. v. H&R Johnson (India) Ltd. & Ors.

i) Order appealed against:

From the judgment and order dated 23.09.2013 of the National Consumer Disputes Redressal Commission in R.P.No.4047/2006.

ii) Parties:

Lourdes Society Snehanjali Girls Hostel & Anr. - Appellants

versus

H&R Johnson (India) Ltd. & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.7223 of 2016.
Date of Judgment: 02.08.2016.

iv) Case in Brief:

The Appellant No.1, Lourdes Society Snehanjali Girls Hostel, is a charitable institution running a girls hostel at Surat for the benefit of Adivasi children. On 02.02.2000 the society purchased vitrified glazed floor tiles from Respondent-5 who was a local agent of Respondent No.1 company for a sum of Rs.4,69,579/-. The said tiles, after their fixation in the premises of the hotel, gradually developed black and white spots. Appellant wrote several letters to Respondent No.4 i.e. Sales Executive of Respondent No.1 Company informing about the inferior and defective quality of the tiles. But no action was taken. An architect J.M. Vimawala was appointed by the society to assess the damage caused due to defective tiles. The architect assessed the loss at Rs.4,27,712.37 which included the price of the tiles, labour charges, octroi and transportation charges. Legal notice was sent by the Appellant society but there was no response from the Respondents. A consumer complaint was filed before the District Forum. The Forum after appointing a Court Commissioner and based on his report held that the tiles had manufacturing defect and held the Respondents jointly and severally responsible. The Forum directed them to pay Rs.2 lakhs to the Appellants along with interest at 9% p.a. from the date of complaint till its recovery. The Respondents filed appeal unsuccessfully before the State Commission. Thereafter a Revision Petition was filed before the National Commission. On 12.03.2012 the Appellant society also made an application being IA.No.1847 of 2013 in Revision Petition No.4047 of 2006 for invoking the powers under Section 14(1)(d) and 14(1)(hb) of the Act for awarding sufficient amount of compensation in addition to what was awarded by the District Forum. The National Commission reversed the findings of the lower fora and held that the Appellant society had failed to establish that it is a "consumer" within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986. Aggrieved by the said order the present appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Sections 2(1) (d), 14(1)(d), 14(1)(hb) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *Kusumam Hotels (P) Ltd. v. Neycer India Ltd.*,
   (1993) 3 CPJ 333 (NC). (Distinguished)

2. *H&R Johnson (India) Ltd. & Ors. v. Lourdes Society Snehanjali Girls Hostel & Anr.*, 2013 SCC OnLine NCDRC 876. (Reversed)

3. *Lourdes Society Snehanjali Girls Hostel & Anr. v. H&R Johnson (India) Ltd.*, IA.No.1 of 2015 in SLP (C) No.36918 of 2013, order dated 01.04.2015 (SC). (Referred to)

vii) Issues raised and decided:

a) The Court held that the National Commission had to exercise the jurisdiction vested in it only if the State Commission or the District Forum had either failed to exercise their jurisdiction or exercised when the same was not vested in them or exceeded their jurisdiction by acting illegally or with material irregularity. In the instant case it was held that the National Commission had certainly exceeded its jurisdiction by setting aside the concurrent finding of fact recorded in the order passed by the State Commission which was based upon valid and cogent reasons.

b) The Court observed that the National Commission while passing the impugned order had ignored certain facts which throw light on the callous attitude on the part of the Respondents namely when the defect in the tiles was brought to the notice of the Respondents by sending various letters, there was no action on their part. Later a local agent on behalf of Respondent No.1 Company visited the premises of the girls hostel and verified that the said tiles were defective and damaged. However, no proper attention was paid by the Respondents towards the issue. Even after the architect and interior designer, J.M. Vimawala, declared the tiles to be defective and assessed the damages to the tune of Rs.4,72,712.37, the Respondents did not pay any heed to the notice.

c) The Court held that the National Commission had wrongly applied the decision of *Kusumam Hotels (P) Ltd.* to the facts of the present case. In the said case the Complainant was a hotel, it was considered to be a commercial activity and therefore it was kept out of the purview of the definition of "consumer" under Section 2(1)(d) of the Consumer Protection Act. However, the National Commission had failed to appreciate the fact that in the present case, the Appellant society is not a commercial establishment; it is rather a registered society helping the Adivasi students in their education by providing hostel facilities. The charges, if any, for accommodation in the hostel are for maintaining the hostel and not for making profit. Thus, the Appellant society is consumer within the meaning of the term consumer under Section

2(1)(d) of the Act. The Court held that the National Commission had erroneously accepted the contention urged on behalf of the Respondents that supply of tiles to the Appellant society by Respondent No.1 through its local agent is for commercial purpose.

d) The appeal was therefore allowed, the impugned order of the National Commission was set aside and the order of the District Forum confirmed by the State Commission was restored. The Court directed the Respondents to pay the amount awarded by the District Forum with interest at 9% p.a. within 6 weeks. An amount of Rs.50,000/- towards the cost of the proceedings was also awarded in favour of the Appellant society.

viii) Citation:

(2016) 8 SCC 286; AIR 2016 SC 3572;

III (2016) CPJ 27 (SC); 2016(3) CPR 333 (SC).

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6. Pratibha Pratisthan & Ors. v. Manager, Canara Bank & Ors.

i) Order appealed against:

From the judgment and order of the National Consumer Disputes Redressal Commission.

ii) Parties:

Pratibha Pratisthan & Ors. - Appellants

versus

Manager, Canara Bank & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.3560 with 3561 of 2008.
Date of Judgment: 07.03.2017.

iv) Case in Brief:

The question before the Court was whether the complaint filed by the Appellant Trust was maintainable under the Consumer Protection Act. The National Commission had held that the complaint filed by the Appellant Trust was not maintainable since the Trust is not a person and therefore not a consumer. Aggrieved by the order of the National Commission the Trust filed the present civil appeals. Appeals dismissed.

v) Acts and Sections referred:

Section 2(b) (c), (d) and (m) and Section 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court held that the definition of the words 'complaint', 'complainant' and 'consumer' makes it clear that a Trust cannot invoke the provisions of the Act in respect of any allegation on the basis of which a complaint could be made. The Court observed that to put this beyond any doubt, the word person has also been defined in the Act and Section 2(m) thereof, defines a person as follows:-

> (m) "person" includes, -
>
> (i) a firm whether registered or not;
>
> (ii) a Hindu undivided family;
>
> (iii) a cooperative society;
>
> (iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860 or not).
>
> The Court noted that on a plain and simple reading of Sections 2(b), (c), (d) and (m) of the Act, it is clear that a Trust is not a person and therefore not a consumer. Consequently, it cannot be a Complainant and cannot file a consumer dispute under the provisions of the Act.

b) The Court, accordingly, upheld the decision of the National Commission and dismissed the appeals.

viii) Citation:

AIR 2017 SC 1303; 2017(2) CPR 5 (SC).

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VI. DEFICIENCY IN SERVICE

(a) AIRLINES

1. Interglobe Aviation Ltd. v. N. Satchidanand

i) Order appealed against:

From the judgment and order dated 31.12.2009 of the High Court of Judicature of Andhra Pradesh at Hyderabad in W.P.No.27754 of 2009.

ii) Parties:

Interglobe Aviation Ltd. - Appellant

versus

N. Satchidanand - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.4925 of 2011 (Arising out of SLP(C) No.21108 of 2010).
Date of Judgment: 04.07.2011.

iv) Case in Brief:

The Respondent and 8 others were booked to travel on IndiGo Flight No.6E-301 from Delhi to Hyderabad on 14.12.2007 scheduled to depart at 6.15 a.m. The Respondent boarded the flight at 5.45 a.m. Due to dense fog, bad weather and poor visibility at Delhi Airport, the flight as also several other flights were delayed. Air traffic clearance was given only at 4.20 p.m. and the flight departed at 4.37 p.m. reaching Hyderabad around 7 p.m. Even after reaching Hyderabad the Respondent and some other passengers were detained at Hyderabad Airport for more than an hour in connection with an enquiry with regard to a complaint by the onboard crew that they had threatened and misbehaved with the air hostesses when the flight was delayed. The Respondent filed a complaint before the Permanent Lok Adalat for Public Utility Services, citing the following reasons and claimed a compensation of Rs.5 lakhs for the delay and deficiency in service resulting in physical discomfort, mental agony and inconvenience: (a) confinement to the aircraft seat from 5.45 a.m. to 4.37 p.m. for nearly 11 hours leading to cramps in his legs; (b) failure to provide breakfast, lunch, tea in the aircraft in spite of the fact that the Respondent was detained for 11 hours before departure; (c) failure to provide access to medical facilities to the Respondent who was a diabetic and hypertension patient; (d) illegal detention from 7 p.m. to 8.30 p.m. at Hyderabad airport upon a false complaint by the crew of the aircraft;

(e) inability to celebrate his birthday on 15.12.2007, on account of the traumatic experience on the earlier day apart from being prevented from attending Court on 14.12.2007. The Permanent Lok Adalat, whose jurisdiction to decide the case was challenged by the Appellant, held that there was laxity and deficiency in service on the part of the Appellant and awarded Rs.10,000/- as compensation and Rs.2,500/- as costs. The said decision of the Permanent Lok Adalat was challenged by the Appellant by filing the Writ Petition in the High Court which dismissed the same by the impugned judgment dated 31.12.2009. Challenging the said order the present appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 11, 14, 17 and 23 of the Consumer Protection Act, 1986; Section 4 and Schedule II R.19 of Carriage by Air Act, 1972; Sections 19 and 22-B(1) of Legal Services Authorities Act, 1987; Section 28 of Contract Act, 1872; Section 19 and 20 of Civil Procedure Code, 1908.

vi) Cases referred:

1. *LIC v. Suresh Kumar*, (2011) 7 SCC 491.
2. *Ravneet Singh Bagga v. KLM Royal Dutch Airlines*, (2000) 1 SCC 66.
3. *A.B.C. Laminart (P) Ltd. v. A.P. Agencies*, (1989) 2 SCC 163.

vii) Issues raised and decided:

a) The following questions arose for consideration of the Court:

   (i) Whether the Permanent Lok Adalat at Hyderabad did not have the territorial jurisdiction?

   (ii) When a flight is delayed due to bad weather, after the boarding of passengers is completed, what are the minimum obligations of an air carrier, in particular a low cost carrier, to ensure passenger comfort?

   (iii) When there is a delay for reasons beyond the control of the airlines, whether failure to provide periodical lunch/dinner or failure to take back the passengers to the airport lounge can be termed as deficiency in service or negligence?

   (iv) Whether the award of compensation of Rs.10,000/- with costs calls for interference?

b) On the first issue, the Court held that one of the conditions in the IndiGo Conditions of Carriage which provided inter alia that 'all disputes shall be subject to the jurisdiction of the Courts of Delhi only'

is invalid since any clause which ousts the jurisdiction of all Courts having jurisdiction and confers jurisdiction on a Court not otherwise having jurisdiction would be invalid. It was also observed that the Permanent Lok Adalat not being a 'court' the provision in the contract relating to exclusivity of jurisdiction of courts at Delhi will not apply. The Court also held that since the ticket was purchased at Hyderabad and the contract was entered into at Hyderabad, a part of the cause of action arose at Hyderabad and therefore the courts and tribunals at Hyderabad, including the Permanent Lok Adalat, had jurisdiction to entertain the application against the Appellant.

c) On the second issue, the Court held that the fact that an airline is a low cost carrier does not mean that it can dilute the requirements relating to safety, security and maintenance. Nor can they refuse to comply with the minimum standards and requirements prescribed by the Director General of Civil Aviation. The fact that a low cost carrier offers only 'no frills' service does not mean that it can absolve itself from liability for negligence, want of care or deficiency in service. The Court however held that non-offer of the preferred diet could not be said to be denial of facilitation, particularly when the airline had no notice of passengers' preference in food. The Court observed that there is nothing to show that the Respondent requested any medical treatment or medicines during the period when he was onboard. He had also not notified the airlines that he was suffering from an ailment which required medication or treatment. Therefore the Respondent could not expect any special facilitation.

d) On the third issue, the Court held that while full service carriers offer several services including free food and beverages onboard, low cost carriers offer the minimal 'no-frills' services which does not include any free food or beverages except water. In the circumstances it was held that the facilitations offered during the period of delay were reasonable and also met the minimum facilitation as per DGCA guidelines at the relevant point of time. In the absence of prior intimation about the preference in regard to food and in emergency conditions, the non-offer of a vegetarian sandwich in the second round of free snacks cannot be considered to be a violation of basic facilitation.

e) The Court held that the Respondent is entitled to compensation for detention at Hyderabad since neither the Permanent Lok Adalat nor the High Court has recorded any finding of wrongful or vexatious

detention or harassment. The Court also observed that if permission was not granted for the passengers to be taken to the airport lounge when the flight was delayed, the airlines cannot be found fault with, especially when the airport and the ATC authorities are not parties to the proceedings. Where the delay is for reasons beyond the control of the airlines as in this case due to bad weather and want of clearance from ATC, in the absence of proof of negligence or deficiency in service, the airlines cannot be held responsible for the inconvenience caused to the passengers. It was held that the justification for damages given by the High Court does not find support either on facts or in law.

f) The appeal was allowed and the order of the Permanent Lok Adalat affirmed by the High Court awarding damages and costs to the Respondent was set aside. The application of the Respondent for compensation was also rejected.

viii) Citation:

(2011) 7 SCC 463.

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(b) ALLOTMENT OF HOUSE SITES /PLOT / KIOSK / INDUSTRIAL SITES

1. Karnataka Industrial Areas Development Board & Anr. v. Prakash Dal Mill & Ors.

i) Order appealed against:

From the judgment and order dated 18.02.2003 of the High Court of Karnataka at Bangalore in WAs Nos.2183-221 and 1492 of 2000.

ii) Parties:

Karnataka Industrial Areas Development Board & Anr. - Appellants

versus

Prakash Dal Mill & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeals Nos.5406-45 of 2005.
Date of Judgment: 06.04.2011.

iv) Case in Brief:

The Respondents had applied for allotment of industrial sites in the industrial layout at Tarihal Village in the year 1983 developed by the Appellant Board.

Letters of allotment were issued to the Respondents incorporating the terms and conditions of allotment. Lease-cum-sale agreements were executed in favour of the Respondents on their complying with the conditions of allotment, as per which the Respondents shall pay 99% of the allotment price immediately and the remaining 1% in ten equal yearly installments plus lease premium along with interest at 12.5%. It is the case of the Respondents that the Appellants, even after a lapse of 11 long years, did not execute the regular sale deeds in favour of the Respondents. On the contrary, the Appellants after a gap of 6 months from the date of expiry of lease period, issued letters to the Respondents with regard to the final allotment price which was considered to be unreasonable, arbitrary, unjust and contrary to what was legitimately expected and assured by the Appellants i.e. only marginal increase based on the cost of land acquisition. On consideration of the objections raised by the Respondents, Appellant No.1 reduced the final allotment price marginally which was still considered very high. Aggrieved, the Respondents filed Writ Petitions before the High Court of Karnataka praying for a writ in the nature of certiorari for quashing the letters enhancing the price. The High Court dismissed the Writ Petitions. The Division Bench of the High Court in Writ Appeal vide impugned order dated 18.02.2003 allowed the same and quashed the enhanced demands proposed by the Appellant. Aggrieved by the order the instant appeals by Special Leave have been filed. Appeals dismissed as devoid of merit.

v) Acts and Sections referred:

Article 12 and 14 of Constitution of India; Sections 2(1) (g) and (o) of the Consumer Protection Act, 1986; Sections 13, 14 and 41 of Karnataka Industrial Areas Development Act, 1966 (18 of 1966); Regulations 7 and 10 of Karnataka Industrial Areas Development Board Regulations, 1969.

vi) Cases referred:

1. *Meerut Development Authority v. Association of Management Studies,* (2009) 6 SCC 171 : (2009) 2 SCC (Civ) 803.
2. *Kanpur Development Authority v. Sheela Devi,* (2003) 12 SCC 497.
3. *Centre for Public Interest Litigation v. Union of India,* (2000) 8 SCC 606.
4. *Indoor Development Authority v. Sadhana Agarwal,* (1995) 3 SCC 1.
5. *Premji Bhai Parmar v. DDA,* (1980) 2 SCC 129.
6. *East India Tobacco Co. v. State of A.P.,* AIR 1962 SC 1733.

vii) Issues raised and decided:

a) The Court observed that though under Clause 7(b) of the agreement, the Board reserved to itself the right to fix the final price of the demised premises which was binding on the lessee, the aforesaid clause would not permit the Board to arbitrarily or irrationally fix the final price. The power of price fixation under Clause 7 being statutory in nature would have to be exercised, in accordance with statutory provisions.

b) It was held that Board being State within the meaning of Article 12 of the Constitution of India is required to act fairly, reasonably and not arbitrarily or whimsically. The High Court had examined the entire issue on the touchstone of Article 14 of the Constitution of India. It had been observed that the fixation of price done by the Board had violated Article 14 of the Constitution of India. The High Court correctly observed that though Clause 7(b) permitted the Board to fix the final price, it cannot be said that where the Board arbitrarily or irrationally fixes the final price of the site without any basis, such fixation of price could bind the lessee. In such circumstances, the Court will have jurisdiction to annul the decision upon declaring the same to be void and non est.

c) The Court observed that a bare perusal of Clause 7(b) would show that it does not lay down any fixed components of final price. Clause 7(b) also does not speak about the power of the Board to revise or alter the tentative price fixed at the time of allotment. The High Court had correctly observed that Clause 7(b) does not contain any guidelines which would ensure that the Board does not act arbitrarily in fixing the final price of the demised premises. Since the validity of the aforesaid Clause was not challenged, the High Court had rightly refrained from expressing any opinion thereon.

d) The Court held that even though the clause gives the Board an undefined power to fix the final price, it would have to be exercised in accordance with the principle of rationality and reasonableness. The Board can and is entitled to take into account the final cost of the demised premises in the event of incurring extra expenditure after the allotment of the site. But in the garb of exercising the power to fix the final price, it cannot be permitted to saddle the earlier allottees with the liability of sharing the burden of expenditure by the Board in developing some other sites subsequent to the allotment of site to the Respondents.

e) The Court observed that all the allottees cannot be said to form one class. Earlier allottees having sites in fully developed segments cannot be intermingled with the subsequent allottees in areas which may be wholly undeveloped. Such action is clearly a violation of Article 14.

f) The Court held that the Board cannot be permitted to exercise its powers of fixing the final price under Clause 7(b) at any indefinite time in the future after the allotment is made. This would render the words "as soon as" in Clause 7(b) wholly redundant. The Board has sought to fix the final price after a gap of 13 years. It was held that such a course is not permissible in view of the expression "as soon as" contained in Clause 7(b). The High Court correctly concluded that the fixation of final price by the Board is without authority of law. It violates Article 14 of the Constitution of India being arbitrary and unreasonable exercise of discretionary powers.

g) The appeals were dismissed as devoid of merits.

viii) Citation:

(2011) 6 SCC 714.

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2. Haryana Urban Development Authority v. Shushila Devi Sharma

i) Order appealed against:

From the judgment and order dated 07.09.2010 in R.P.No.2725 of 2011 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Haryana Urban Development Authority - Petitioner

versus

Shushila Devi Sharma - Respondent

iii) Case No and Date of Judgment:

Petition for Special Leave to Appeal (Civil)…/2011 (CC 14018 of 2011 with IA No.1).
Date of Judgment: 02.09.2011.

iv) Case in Brief:

Shri Ram Phal Aggarwal was allotted a plot measuring 75.62 sq. yards on the basis of a bid given by him in the auction conducted by the Petitioner in 1987. The cost of the plot was Rs.3,27,500/-, 10% of which had been paid by the

allottee. After about one year Shri Ram Phal Aggarwal sold the plot to the Respondent and allotment letter dated 28.12.1988 was issued in her favour. For the next 11 years, concerned officers of the Petitioner did not carry out the necessary development of the site and did not offer possession of the plot. Therefore, the Respondent filed complaint under Section 12 of the Consumer Protection Act, 1986. The District Forum allowed the complaint and issued direction for refund of Rs.55,379/- along with compensation of Rs.1,13,190/- in lieu of escalation in the cost of construction and further compensation of Rs.10,000/- for mental agony and harassment. The State Commission agreed with the District Forum that the concerned authorities had failed to carry out the development and there was deficiency in service. Along with revision filed against the order of the State Commission, the Petitioner also filed an application for condonation of delay of 130 days. The National Commission dismissed the application for condonation of delay. On merits also the National Commission agreed with the State Commission that the District Forum had rightly come to the conclusion that there was deficiency in service and the Complainant deserved to be compensated. Aggrieved by the said order, the present petition for Special Leave to appeal had been filed. Special Leave Petition dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 14(1)(d) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

The Court held that the orders passed by the three Consumer Fora do not suffer from any legal error which may warrant interference by the Court under Article 136 of the Constitution. The Special Leave Petition was accordingly dismissed.

viii) Citation:

IV (2011) CPJ 3 (SC).

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3. Haryana Urban Development Authority v. Viresh Sangwan & Anr.

i) Order appealed against:

From the judgment and order dated 23.08.2010 in Revision Petition No.2664/ 2010 of the National Consumer Disputes Redressal Commission.

Deficiency in Service - Allotment of House Sites/Plot/Kiosk/Industrial Sites

ii) Parties:

Haryana Urban Development Authority - Appellant

versus

Viresh Sangwan & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.9691 of 2011 (Arising out of SLP (C) No.33789 of 2010). Date of Judgment: 08.11.2011.

iv) Case in Brief:

Plot No.478 measuring 335.50 sq. mtr. in Sector 12A was allotted by competent authority of HUDA to Shri Champat Jain in January 1986 subject to the terms and conditions specified in allotment letter dated 23.01.1986. The possession of the plot was handed over to Shri Champat Jain on 27.02.1998 by the Junior Engineer, HUDA. The allottee accepted the possession and signed the possession certificate. After sometime Shri Champat Jain sold the plot to Devender Yadav and Narender Yadav and revised allotment letter dated 17.11.1999 was issued in their names. After 6 years and 2 months, conveyance deed dated 18.01.2006 was executed between HUDA and the transferees as per the requirement of Regulation 20 of the Regulations. Within a week of the execution of conveyance deed, the transferees sold the plot to the Respondents by registered sale deed dated 24.01.2006 and re-allotment letter dated 03.03.2006 was issued in their favour. At the time of execution of the sale deed, the Respondents did not raise any objection about the total area of the plot or any encroachment made by the villagers. However, after 1 year and 3 months they filed a Petition under Section 12 of the CP Act before the District Forum alleging deficiency in service and for issue of a direction to HUDA to allot alternative plot. They claimed that the actual area was less than 335.50 sq. mtr. and there was encroachment on the plot. In support of their contention, they produced a report allegedly prepared by the Junior Engineer of HUDA. The District Forum, relying on the report of the Junior Engineer, allowed the complaint and directed the Appellant to allot them alternative plot of the same size in the same sector or in an adjoining sector. The Appellant filed an appeal before the State Commission which was dismissed. The National Commission also negatived the Appellant's challenge to the order of the State Commission and dismissed the Revision filed by the Appellant. Aggrieved by the order of the National Commission the present appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986; Regulation 53 of the Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court held that the finding recorded by the District Forum that there was deficiency in service on the Appellant's part is *ex facie* erroneous and the State Commission and the National Commission committed serious error by confirming the direction given by the District Forum for allotment of alternative plot to the Respondents. The Court observed that, unfortunately, none of the Consumer Forums adverted to the fact that possession of the plot was delivered to the original allottee Shri Champat Jain on 27.02.1998 free from all encumbrances and there is no provision in the Haryana Urban Development Authority Act, 1977 and the Regulations for delivery of possession to the transferees. It is quite possible that Shri Champat Jain did not take steps to protect the property and by taking advantage of his absence at the site, the people from the neighbouring areas may have opened their doors towards the plot or made some encroachment. However, the Appellant cannot be blamed for the encroachment. If there was any encroachment or the area of the plot was less than the one specified in the allotment/re-allotment letter, the Respondents would have immediately lodged a protest with the vendor. The Court observed that by taking shelter of a manipulative report prepared by the Junior Engineer the Respondents succeeded in convincing the District Forum to ordain allotment of an alternative plot.

b) The Court held that the Appellant cannot be held responsible for the encroachment, if any, made after possession of the plot had been delivered to Shri Champat Jain and neither Devender Yadav and Narender Yadav who purchased the plot from Shri Champat Jain nor the Respondents could possibly accuse the Appellant of deficiency in service in the matter of allotment of plot on the ground that some people had made encroachment on it.

c) In the result the appeal was allowed. The orders of the Forums below including the impugned order of the National Commission were set aside and the complaint filed by the Respondents was dismissed.

viii) Citation:

AIR 2012 SC 506; IV (2011) CPJ 65 (SC).

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4. Meerut Development Authority v. Mukesh Kumar Gupta

i) Order appealed against:

From the judgment and order dated 10.01.2012 in R.P.No.3656 of 2011of the National Consumer Disputes Redressal Commission.

ii) Parties:

Meerut Development Authority - Petitioner

versus

Mukesh Kumar Gupta - Respondent

iii) Case No and Date of Judgment:

Petition for Special Leave to Appeal (Civil) CC.No.8841 of 2012.
Date of Judgment: 09.05.2012.

iv) Case in Brief:

The Petitioner had induced the Respondent to part with his hard earned money in 1992 by promising a plot of land which, to the knowledge of the officers of the Petitioner, was under litigation. Since the plot was not allotted, the Respondent filed a consumer complaint in 2009 before the District Forum. The District Forum rejected the contention of the opposite party that the complaint was barred by limitation and held that the Complainant had recurring cause for filing complaint in matter of non-delivery of possession of plot and awarded cost of Rs.50,000/-. The appeal preferred by the OP was dismissed by the State Commission as well as the National Commission. Aggrieved by the orders of the Consumer Fora, the present Petition for Special Leave to Appeal had been filed. Petition dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court rejected the contention of the Petitioner that the complaint filed by the Respondent in 2009 was hopelessly time barred because the cause of action accrued in 1992 and that the Consumer Fora committed

serious error by ordaining execution of sale deed and at the same time relieving the Respondent of his obligation to pay interest for delayed payment of the balance price of the plot. The Court observed that the Petitioner, who is an instrumentality of the State had acted in total disregard of the constitutional principles and fairness. It was held that the manner in which the Petitioner went about advertising the plots and inducing the citizens to part with their money with the hope that they will get plot of land on which they will be able to construct house for themselves and their families is reprehensible. The Court observed that the petition deserved to be dismissed with exemplary costs.

b) The Court observed that the complaint filed by the Respondent who had patiently waited 27 years with the hope that he will get the plot was rightly not dismissed by the District Forum as barred by limitation because he had a recurring cause for filing a complaint in the matter of non-delivery of possession of the plot.

c) The Court dismissed the Special Leave Petition and imposed costs of Rs.50,000/- on the Petitioner to be deposited with the Supreme Court Legal Services Committee within a period of two months from the date of the order.

viii) Citation:

IV (2012) CPJ 12 (SC).

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5. Punjab Urban Planning & Dev. Authority & Ors. v. Raghu Nath Gupta & Ors.

i) Order appealed against:

From the judgment and order dated 05.11.2008 in CWP.No.6929 of 2007 of the High Court of Punjab and Haryana at Chandigarh.

ii) Parties:

Punjab Urban Planning & Dev. Authority & Ors - Appellants

versus

Raghu Nath Gupta & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal Nos.5887 of 2012 and 5888 of 2012.
Date of Judgment: 16.08.2012.

iv) Case in Brief:

The Appellant authority conducted a public auction on 16.03.2001 for sale of commercial plots. Raghu Nath Gupta, the Respondent was the successful bidder of a single storey shop for a total consideration of Rs.31,75,000/-. The possession of the said shop was handed over to the Respondent on 25.05.2001 on payment of Rs.7,93,750/- being 25% of the total cost of the site. The balance 75% was to be repaid in three equated yearly installments with interest at 15% p.a. The Respondent raised construction on the allotted site in the year 2002. The Appellant completed the development work by 20.12.2002 and provided all the facilities for the enjoyment of the various commercial plots allotted. The Respondent filed representations first before the Estate Officer and then before the Additional Chief Administrator requesting not to charge interest till the basic amenities like parking, lights, roads, water, sewerage etc., were provided on the site. The Additional Chief Administrator rejected the representation vide his order dated 31.03.2007 which was challenged by the Respondents before the High Court by filing CWP.No.6929 of 2007. The High Court allowed the CWP vide the impugned order placing reliance on the Judgment of the Supreme Court in *Shantikunj Investment* (supra). Challenging the order of the High Court, the present appeals had been filed. Appeals allowed.

v) Acts and Sections referred:

Sections 2(1) (g) and (o) of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *Municipal Corporation, Chandigarh & Ors. v. Shantikunj Investment (P) Ltd.*, II (2006) SLT 592. (Referred) [Para 3]

2. *U.T. Chandigarh Administration & Anr. v. Amerjeet Singh & Ors.*, II (2009) CPJ 1 (SC)=II (2009) SLT 736. (Relied) [Para 13]

vii) Issues raised and decided:

a) The Court after going through the auction notification published by PUDA noted that as per Clause 5 of the notification which was binding on both the parties, "the site is offered on 'as is where is' basis and the Authority will not be responsible for leveling the site or removing the structures, if any thereon". The said condition was accepted by the Respondents. The Respondents were given the option to pay the entire amount in lump sum or avail of the installment facility offered. It was made clear in the allotment letter that, in case, there was a failure to pay the installment by the due date, the Estate Officer would proceed to take action for imposition of penalty charged @ 2% p.m. of the

amount i.e. from the due date in addition to normal simple interest. It was further stated in the allotment letter that in the case of non-payment of installment along with interest due thereon for a continuous period of three months, the whole or any parts of the money paid in respect of the site, should be forfeited and the Estate Officer could even cancel the allotment.

b) The Court observed that the Respondents had accepted the commercial plots with open eyes, subject to the above mentioned conditions. They could have ascertained the facilities available at the time of auction and after having accepted the commercial plots on 'as is where is' basis, they cannot contend that PUDA had not provided the basic amenities. The Court further observed that there was not much delay on the part of PUDA to provide those facilities as well. The electrical works and health works were completed by 24.12.2002 and 22.11.2002 respectively and all the facilities like parking, lights, roads, water, sewerage etc., were also provided.

c) The Court held that the High Court had not properly comprehended the scope of the Judgment in *Shantikunj Investment* (supra) and the terms and conditions of the auction. Relying on the Judgment of the Court in *U.T. Chandigarh Administration & Anr. v. Amerjeet Singh & Ors.* (supra), the Court held that the said Judgment provided a complete answer to the various contentions raised by the Respondents and reiterated having accepted the offer of commercial plots in a public auction with a super imposed condition i.e. on 'as is where is' basis and having accepted the terms and conditions of the allotment letter, the Respondents cannot say that they are not bound by the terms and conditions of the auction notice, as well as that of the allotment letter. On facts also, the Court held that there was no inordinate delay on the part of PUDA in providing those facilities.

d) The Court held that the High Court was not justified in holding that the Respondents are not liable to pay the interest, penal interest and penalty for the period commencing from 01.06.2001 to 31.12.2002 for the belated payment of installments. Consequently the impugned Judgment was set aside and the appeals were allowed.

viii) Citation:

III (2012) CPJ 33 (SC).

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6. S. Srinivasa Murthy v. Karnataka Housing Board

i) Order appealed against:

From the judgment and orders dated 09.09.2004 and 14.03.2008 of the National Consumer Disputes Redressal Commission.

ii) Parties:

S. Srinivasa Murthy - Appellant

versus

Karnataka Housing Board - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.5584 of 2012 (arising out of S.L.P (C) No.12334 of 2009). Date of Judgment: 22.08.2012.

iv) Case in Brief:

The Appellant applied for allotment of HIG Flat in V Phase, Yelahanka under the self financing scheme. He was allotted Flat No.37, First Floor by allotment letter dated 29.11.1993. The tentative cost of the flat was shown as Rs.3,40,000/-. As per the advertisement, the flat was to be ready for occupation by December 1994 but the construction was completed only in 1998 and possession was delivered to the Appellant on 19.05.1999. Meanwhile, the Appellant sent a letter dated 14.12.1998 to the executive engineer of the Respondent with the request that he may be permitted to change the mode of purchase from lease-cum-sale basis to outright sale basis. He also conveyed his willingness to pay the balance amount required for the purpose. The Respondent accepted the request and allotted a flat in 3500-Multi-tenements at V Phase, Yelahanka on outright sale basis. The cost of the flat was shown to be Rs.5,23,232/-. After receipt of the revised allotment letters dated 22.01.1999 and 25.01.1999, the Appellant sent a communication on 15.02.1999 to the Housing Commissioner protesting against the alleged failure of the concerned authority to take cognizance of the fact that he had already deposited Rs.3,75,750/-. Thereafter the Respondent issued a letter dated 06.04.1999 asking the Appellant to pay the balance amount of Rs.1,57,482/-. The Appellant accepted the revised allotment and deposited the remaining amount. The Respondent had also suggested to the Appellant that for the purpose of registration of the sale deed, the price of the flat be shown as Rs.4,31,918/- so that he will be required to pay registration charges on 81% of the total cost. The Appellant conveyed his acceptance vide letters dated 22.08.1998, 27.11.1998 and 15.05.1999. After taking possession of the flat, the

Appellant filed complaint under Section 17 of the Consumer Protection Act, 1986. The State Commission rejected the Appellant's plea for award of interest on the amount deposited by him. The Appellant's grievance that there were deficiencies in the flat was also rejected by the State Commission. On the issue of delay in the delivery of possession, the State Commission partly ruled in favour of the Appellant and directed the Respondent to pay compensation of Rs.25,000/-. The appeal preferred by the Appellant against the order of the State Commission was dismissed by the National Commission vide order dated 09.09.2004. The application filed by the Appellant for Review of the said order was also dismissed by the National Commission vide impugned order dated 14.03.2008. It is against these orders that the Civil Appeal had been filed. Appeal dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986; Section 115 of Evidence Act (1 of 1872).

vi) Case referred:

GDA v. Balbir Singh,
(2004) 5 SCC 65 (AIR 2004 SC 2141 : 2004 AIR SCW 2362). [Para 14]

vii) Issues raised and decided:

a) The Court noted that the National Commission had agreed with the State Commission that the cost indicated in the allotment letter was tentative and the Respondent had the right to revise the same and further that the Appellant was not entitled to complain against the cost mentioned in the revised allotment letters because he had voluntarily sought change in the mode of purchase. The National Commission had also held that the compensation awarded by the State Commission was just and proper.

b) The Court further noted that the applicant took possession on 19.05.1999 which was promised to be given in 1994. The State Commission had already awarded interest at 12% p.a. which was in tune with the decision of the Apex Court in the case of *GDA v. Balbir Singh* (supra) and the National Commission had therefore rejected the claim of the Appellant for interest at 18% p.a.

c) The Court held that the Appellant cannot make any grievance against the cost specified in the revised allotment letters issued on 22.01.1999 and 25.01.1999 because he had voluntarily sought change in the mode of purchase and unequivocally agreed to pay the cost of

Rs.5,23,232/-. It was observed that the Appellant's plea that the cost of the flat cannot be more than what was specified in the registered sale deed sounds attractive but lacks merit. A careful reading of the letters sent by the Appellant dated 22.08.1998, 27.11.1998 and 15.05.1999 to the Respondent made it clear that he has conveyed his unequivocal willingness for registration of the sale deed showing the cost of the flat as Rs.4,31,918/- although the actual cost was Rs.5,23,232/-. The Court observed that having taken advantage of the offer made by the Board to get the deed registered at a price less than the actual cost of the flat, the Appellant cannot turn around and demand refund of Rs.1,01,314/-.

d) The Court held that the Appellant's grievance against the quantum of compensation awarded by the State Commission also merits rejection because the complaint filed by him was not bona fide.

e) Consequently the appeal was dismissed.

viii) Citation:

(2012) 8 SCC 424; III (2012) CPJ 37 (SC); AIR 2013 SC 990.

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7. Pradeep Sharma v. Chief Administrator, Haryana Urban Development Authority & Anr.

i) Order appealed against:

From the judgment and order dated 19.07.2011 in Revision Petition No.671/2011 and order dated 29.09.2011 in Review Application No.142/2011 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Pradeep Sharma - Appellant

versus

Chief Administrator,
Haryana Urban Development Authority & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal Nos.52-53 of 2016 (Arising out of SLP (Civil) Nos.5567-5568 of 2012).

Date of Judgment: 07.01.2016.

iv) Case in Brief:

The Appellant/Complainant was allotted a plot measuring 250 sq. yards vide memo dated 01.01.2001 at the rate of Rs.1,865/- per sq. yard. Appellant

deposited 10% as earnest money and 15% of the sale consideration on 22.01.2001. Balance amount was to be deposited in 6 yearly equal installments with 15% interest p.a. On 04.10.2002 the Respondent authority issued a demand notice to the Appellant calling upon him to pay a sum of Rs.59,782.50. Appellant failed to deposit the amount and possession of the plot was not given to him. Alleging deficiency in service he filed a complaint before the District Forum. During the pendency of the complaint, the amount deposited by the Appellant towards price of the plot was refunded to him and was accepted by him. However, this fact was not taken to the notice of the District Forum which passed an order on 19.12.2005 allowing the complaint and directing the Respondent to re-allot the same plot to the Appellant on the same price and handover possession of the same to him. The Forum directed that the amount already paid by the Appellant be adjusted against price of the plot now to be allotted to the Appellant. Respondents were also directed to pay Rs.50,000/- on account of mental agony, harassment and damages and Rs.5,000/- on litigation expenses. Aggrieved by the said order, HUDA filed appeal before the State Commission. When the appeal was pending before the State Commission, the Appellant filed execution petition and in compliance of the order dated 02.09.2009 by the District Forum in execution petition, physical possession was handed over to the Appellant. The State Commission allowing the appeal of the HUDA set aside the order of the District Forum and held that having voluntarily surrendered the plot, the Appellant cannot claim any relief with respect to the plot. It was further held that since he had accepted the refund amount of 10% after surrendering the plot, the Complainant was no longer a consumer. Against the order of the State Commission, the Appellant preferred Revision Petition before the National Commission which was dismissed. The Review Application was also dismissed. Challenging the said orders the present appeals had been filed. Appeals allowed.

v) Acts and Sections referred:

Sections 2(1), (g), (o), 21 and 23 of the Consumer Protection Act, 1986; Sections 15 and 17 Haryana Urban Development Authority Act (13/1997).

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court observed that even when the matter was pending before the State Commission in appeal, the Estate Officer of the Respondent authority, in pursuance of the order passed by the District Forum in

Execution Petition, regularized the allotment of the plot and handed over possession on 07.10.2009. Taking note of the above facts the Court had directed the Respondent authority to hold an enquiry and identify the persons responsible for issuing orders/certificates like regularization, delivery of possession etc. In spite of the Court's order there was delay in conducting enquiry and taking action against officials of the HUDA responsible for dereliction of duties. On a further direction from the Court, the HUDA filed an action taken report against erring officials.

b) The Court noted the Appellant's submission that he is a retired Government official and that before obtaining no dues certificates from the Respondent authority he had deposited a sum of Rs.6,79,557/- and that after obtaining actual physical possession, he had spent his hard earned money and substantial part of his retiral benefits in putting of the construction and that he be permitted to retain the plot and the building constructed over the plot in question. It was also submitted that by so permitting the Appellant to retain the plot, HUDA may not lose in any manner.

c) Considering the facts and circumstances of the case, the Court after ascertaining the present circle rate of Sector 64 in which the disputed plot is situated and considering the fact that the Appellant had deposited the then cost of the plot way back in 2009, directed HUDA to permit the Appellant to retain the plot subject to the condition that the Appellant pays the cost of the plot at the prevailing HUDA rate i.e. Rs.10,500/- per sq. mtr. Appellant was directed to deposit the amount within 4 months of the date of judgment and on such deposit, HUDA was directed to execute necessary document and issue no objection certificate and clearances as may be required within 4 weeks thereafter. The Respondent authority was directed to proceed against delinquent officials/officers who are responsible for lapses in accordance with law. In so far as action taken in disciplinary proceedings, Respondent authority was directed to file compliance report before the Court within 9 months.

viii) Citation:

AIR 2016 SC 438; 2016(1) CPR 111 (SC).

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(c) BANKING

1. Gurgaon Gramin Bank v. Smt. Khazani & Anr.

i) Order appealed against:

From the judgment and order dated 25.11.2009 in Revision Petition No.4098/ 2009 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Gurgaon Gramin Bank - Appellant

versus

Smt. Khazani & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.6261 of 2012 @ SLP (C) No.8875 of 2010.
Date of Judgment: 04.09.2012.

iv) Case in Brief:

Smt. Khazani, the 1st Respondent had availed of a loan from the Appellant Bank to purchase a buffalo and the same was insured for Rs.15,000/- for a period from 06.02.2001 to 06.02.2004 with New India Assurance Co. Ltd., the 2nd Respondent herein. Smt. Khazani had made payment of Rs.759/- as premium on 05.03.2001. The buffalo unfortunately died on 27.12.2001. Smt. Khazani lodged a claim for insurance money through the Appellant bank and also supplied the ear tag to the Bank for forwarding the same to the insurance company. No steps were taken by the bank or the insurance company to pay the amount. The 1st Respondent's notice dated 30.07.2003 did not yield any result either. She filed complaint before the District Forum. Allowing the complaint the Forum directed the bank to pay the insurance money along with interest at the rate of 9% p.a. from the date of death of the buffalo till actual payment is made. A sum of Rs.3,000/- was also allowed to the Complainant towards compensation and cost of litigation. The Bank's appeal against the Forum's order was rejected by the State Commission. The Revision Petition filed by the Bank before the National Commission was also rejected vide impugned order dated 25.11.2009. Aggrieved by the order of the National Commission, the present appeal had been filed. Appeal dismissed with costs.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) On a direction from the Court with regard to the amount spent on the litigation the Chief Manager stated in his affidavit that a total sum of Rs.12,950/- had been spent. The Court observed that for a paltry amount of Rs.15,000/-, the Bank already spent a total amount of Rs.12,950/- leaving aside the time spent and other miscellaneous expenses spent by the officers of the bank for to and fro expenses etc. The Court observed that the issues raised are purely questions of facts examined by the three forums including the National Commission and that there was no important question of law to be decided by the Supreme Court. It was observed that these types of litigation should be discouraged and message should go, otherwise for all trivial and silly matters people will rush to the Court.

b) The Court observed that Gramin Bank like the Appellant should stand for the benefit of the *gramins* who sometimes avail of loan for buying buffalos, to purchase agricultural implements, manure, seeds upon the income which they get out of that. Crop failure due to drought or natural calamities, disease to cattle or their death may cause difficulties to *gramins* to repay the amount. Rather than coming to their rescue, banks often drive them to litigation leading them extreme penury. Assuming that the bank is right, but once an authority like the District Forum takes a view, the bank should graciously accept it rather than going in for further litigation and even to the level of Supreme Court. Driving poor *gramins* to various litigative forums should be strongly deprecated because they have also to spend large amounts for conducting litigation. The Court condemned this type of practice unless the stake is very high or the matter affects large number of persons or affects a general policy of the bank which has far reaching consequences.

c) In this case the Court found no error in the decisions taken by the fact finding authorities including the National Commission. The appeal was accordingly dismissed with cost of Rs.10,000/- to be paid by the bank to the 1st Respondent within a period of one month.

viii) Citation:

2012(4) CPR 1 (SC); IV (2012) CPJ 5 (SC); 2013(4) CPR 377 (SC).

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2. Central Bank of India v. Jagbir Singh

i) Order appealed against:

From the order dated 19.11.2013 in Revision Petition No.3648/2013 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Central Bank of India - Appellant

versus

Jagbir Singh - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.3645 of 2015 (Arising out of SLP (Civil) No.2343 of 2014. Date of Judgment: 16.04.2015.

iv) Case in Brief:

The Respondent purchased a tractor after getting loan sanctioned from the Appellant Bank. The vehicle was initially insured as required under the Motor Vehicles Act, 1988 but no premium of insurance was paid by the Respondent for the period after 25.05.2005. On 24.09.2007 the said vehicle met with an accident with a motor cycle in which Pankaj, son of Babu Ram Garg, died due to the rash and negligent driving on the part of Diwan Singh, driver of the tractor owned by Respondent Jagbir Singh. The Motor Accident Claims Tribunal-II, New Delhi awarded compensation to the tune of Rs.4,01,460/- with 7.5% interest p.a. against driver and owner of the vehicle. The Respondent filed a complaint before the District Consumer Disputes Redressal Forum praying that the Appellant Bank as the creditor bank should be made liable to pay the compensation awarded against him by the Tribunal. The Forum allowed the claim and held the bank liable for the legal consequences for not getting the insurance renewed. The appeal filed by the Bank was dismissed by the State Commission on the ground that the Bank, which had a right to recover insurance premium as per the loan agreement, cannot escape its liability. The Bank filed Revision Petition before the National Commission which was dismissed as barred by limitation. Aggrieved by the said order the present appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986; Section 146 of the Motor Vehicles Act, 1988.

vi) Cases referred:

1. *Pradeep Kumar Jain v. Citi Bank & Anr.*, (1999) 6 SCC 361. [Para 7]
2. *HDFC Bank Ltd. v. Kumari Reshma & Ors.*, AIR 2015 SC 290. [Para 8]

vii) Issues raised and decided:

a) The Court held that the time taken by the Appellant Bank in seeking permission to file the Revision Petition, as the matter had to be processed at various levels, cannot be said to have been not sufficiently explained for the purpose of condonation of delay and that the impugned order dismissing the Revision Petition on grounds of limitation cannot be sustained.

b) On merits of the case, the Court held that none of the authorities under the Consumer Protection Act had taken note of the law laid down by the Court on the issue of liability of the financier, in the cases of accident occurred, after the vehicle is purchased with loan sanctioned to the owner of the vehicle. It was observed that in *Pradeep Kumar Jain v. Citi Bank & Anr.,* (supra), the Court had held that "when the obligation was upon the Appellant to obtain such a policy, merely by passing of a cheque to be sent to the insurance company would not obviate his liability to obtain such policy". The law relating to liability of the creditor bank had been further explained by a three-judge Bench of the Court in *HDFC Bank Ltd. v. Kumari Reshma & Ors.,* in which it had been held that the creditor bank is not liable to get renewed the insurance policy on behalf of the owner of the vehicle from time to time. In Para 24 of the said judgment it was noted that in several cases the person in possession of the vehicle under the hypothecation agreement had been treated as the owner. It was also observed that in *Purnya Kala Devi v. State of Assam & Anr.* [2014 (4) SCALE 586], a three-judge Bench had categorically held that the person in control and possession of the vehicle under an agreement on hypothecation should be construed as the owner and not alone the registered owner. It was also observed in the cited case that the legislative intention was that the registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control.

c) In view of the principle of law laid down by the Court in the cases cited, it was held that the impugned order passed by NCDRC and the orders passed by the State Commission and District Forum are liable to be set aside. They were accordingly set aside and the appeal was allowed.

viii) Citation:

AIR 2015 SC 2070.

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(d) CARRIAGE OF GOODS

1. M/s. Nagpur Golden Transport Company (Registered) v. Nath Traders and Ors.

i) Order appealed against:

From the judgment and order dated 18.02.2003 of the National Consumer Disputes Redressal Commission in Revision Petition No.371/2000 and 10.04.2003 in Misc. Petition No.98/2003.

ii) Parties:

M/s. Nagpur Golden Transport Company (Registered) - Appellant

versus

Nath Traders and Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.3546 of 2006.

Date of Judgment: 07.12.2011.

iv) Case in Brief:

Respondent No.3 booked a consignment of monoblock pumps with the Appellant for transportation from Coimbatore to Respondents 1 and 2 at Gwalior in March 1997. While the Appellant was transporting the consignment in a truck, there was an accident and the monoblock pumps were damaged. Respondents 1 and 2 did not take delivery of the 198 damaged monoblock pumps at Gwalior. In the circumstances the Appellant returned the 198 damaged monoblock pumps to Respondent No.3. Respondents 1 and 2 filed complaint before the Consumer Forum, Gwalior claiming that they were entitled to Rs.3,61,131/- towards the price of monoblock pumps which they had paid, damages of Rs.70,000/-, loss of profit of Rs.14,000/-, costs of Rs.5,000/- and interest at 18%. The District Forum, allowing the complaint, awarded the sum of Rs.3,60,131/- along with interest at 18% p.a. from 01.04.1997 till the date of payment, Rs.500/- as counsel's fee and another Rs.500/- as costs. The State Commission on appeal filed by the Appellant found no legal infirmity in the order of the District Forum but reduced the rate of interest from 18% to 12%. The Appellant filed a Revision but by the impugned order dated 18.02.2003, the National Commission dismissed the Revision. Aggrieved by the said order the present appeal had been filed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 14, 18, 22 and 23 of the Consumer Protection Act, 1986; Sections 70, 151 and 161 of Contract Act, 1872; Sections 10 and 17 of Carriage by Road Act, 2007.

vi) Cases referred:

1. *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd.,* 1943 AC 32 : (1942) 2 All ER 122 (HL).

vii) Issues raised and decided:

a) The question of law raised before the Court was whether the Appellant was entitled to receive the 198 monoblock pumps from Respondent No.3 when he is liable to pay the price of monoblock pumps to Respondents 1 and 2. After hearing the arguments of both sides, the Court held that if the District Forum directed the Appellant to pay Rs.3,60,131/- to Respondents 1 and 2 and this sum of Rs.3,60,131/- covered the price of monoblock pumps and this price of monoblock pumps had also been received by Respondent No.3 from Respondents 1 and 2, the Appellant was entitled to the return of the damaged 198 monoblock pumps from Respondent No.3. The Court observed that in case Respondent No.3 had disposed of the 198 monoblock pumps in the meanwhile, the Appellant was entitled to the value of the 198 damaged monoblock pumps realized by Respondent No.3. It further observed that if the damaged monoblock pumps are not returned by Respondent No.3 to the Appellant or if the value of damaged monoblock pumps realized by Respondent No.3 is not paid to the Appellant, Respondent No.3 would stand unjustly enriched.

b) The Court remanded the matter to the District Forum, Gwalior, with the direction to issue notice to the parties and after taking evidence, if necessary, order the return of the 198 monoblock pumps by Respondent No.3 to the Appellant and if the 198 damaged pumps are not available with Respondent No.3, to find out the value of the damaged monoblock pumps realized by Respondent No.3 and direct Respondent No.3 to pay the said value to the Appellant.

c) The appeal was allowed to the extent indicated above.

viii) Citation:

AIR 2012 SC 357; (2012) 1 SCC 555; I (2012) CPJ 30 (SC).

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2. Transport Corporation of India Ltd. v. Ganesh Polytex Limited

i) Order appealed against:

From the order dated 20.12.2006 of the National Consumer Disputes Redressal Commission in Original Petition No.341/1993.

ii) Parties:

Transport Corporation of India Ltd. - Appellant

versus

Ganesh Polytex Limited - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.1427 of 2007.
Date of Judgment: 05.11.2014.

iv) Case in Brief:

The Respondent is engaged in the business of manufacturing and selling of yarn and export of fabric of different specifications whereas the Appellant is engaged in the business of transporting of goods from one place to another for consideration. In the year 1992, the Respondent received an indent for export of 100% cotton yarn fabric to M/s. Azim Garments Ltd. in Bangladesh. The Respondent entrusted five consignments of goods to the Appellant on various dates. The Respondent claimed that all the relevant documents including the consignee copies of the consignment notes were duly communicated to the Islami Bank Bangladesh limited, for negotiation and acceptance by American Express Bank Ltd., the bank of the Complainant. The Respondent wanted the goods to be rebooked back to him by the transporter. Since the said consignments were not delivered, Respondent filed a complaint before the National Commission. It was claimed by the Appellant transporter that except one, all consignments were delivered to Bangladesh Customs Officer. The assertion of the Appellant was rejected by the National Commission vide impugned order holding that documents showing delivery at Bangladesh border are bogus since copies of invoices produced by the Appellant and copies of invoices filed by the Complainant did not tally with each other. Aggrieved by the said order the present Civil Appeal had been filed. Appeal dismissed.

v) Acts and Sections referred:

Sections 23 of the Consumer Protection Act, 1986; Sections 40, 41, 50, 51, 74 and 75 of Customs Act, 1962; Sections 78(4) & (6) of Evidence Act, 1872; Rule 13 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

vi) Cases referred:

1. *Ganesh Polytex Ltd. v. Transport Corporation of India Ltd.,* Original Petition No.341 of 1993, order dated 20.12.2006. [Para 1]

vii) Issues raised and decided:

a) Import and export of goods into or out of India is regulated by Customs Act, 1962. An exporter of any goods by land is required to make an entry thereof by presenting to the proper officer the bill of export under Section 50 of the Act. Under Section 51 the proper officer, if satisfied that the exporter has paid the duty and other charges and that such goods are not prohibited goods, will make an order permitting clearance and loading of goods for exportation. Under Section 40 a person in charge of conveyance is not permitted to load export goods unless the bill of export duly passed by the proper officer is handed over to him. Under Section 41 the person in charge of conveyance has to deliver to the proper officer an export report in the prescribed form. The Court observed that the best proof of the Appellant that it had transported the goods beyond the Petrapole Customs Station and out of the Customs frontier of India would have been to produce the two documents i.e. copies of the bill of export and export report. There was no pleading on behalf of the Appellant before the National Commission nor any discussion in the order under appeal regarding the existence of the two documents vis-à-vis the four consignments in question. The dates on which the documents were issued had also not been mentioned in the appeal.

b) It was the case of the Appellant that its legal obligation as transporter ended on its delivering the goods at Benapole Customs Station in Bangladesh. The Court observed that unloading of imported goods into Bangladesh must be regulated by the law of Bangladesh. The Appellant did not plead as to what is the procedure prescribed under the law of Bangladesh for the unloading of imported goods at its customs stations. Nor did the Appellant give details of the dates of the actual delivery of each of the four consignments at Benapole.

c) The Court observed that the letter from customs officer of Bangladesh dated 10/11.04.2002 produced by the Appellant as to acceptance of bills of entry for three different consignments did not confirm that goods covered by the said bills of entry are the same goods which are covered by four consignments notes of the Respondent. The Appellant never pleaded as to existence of any different procedure for unloading

of imported goods in Bangladesh under the law of that country. The Court held that the proof of public documents is required to be made in the manner specified under Section 78 of the Evidence Act. In the instant case there was nothing on record that the said letter had been duly proved in accordance with Section 78 of the Evidence Act.

d) The Court further held that in the absence of any material on record, the mere fact that the Respondent claimed duty drawback, did not necessarily lead to the inference that the Appellant had duly delivered the goods in question at Benapole Customs Station.

e) The Court observed that in view of the fact that the Appellant admitted the entrustment of goods by the Respondent for transportation to Benapole (Bangladesh), the burden to prove that the Appellant satisfactorily discharged his legal obligation to deliver the goods at Benapole in accordance with law is on the Appellant, which burden the Appellant failed to discharge. The Court held that the National Commission rightly allowed the claim of the Respondent and there is no reason to interfere with the same.

f) The Appeal was accordingly dismissed.

viii) Citation:

IV (2014) CPJ 19 (SC); (2015) 3 SCC 571; AIR 2015 SC 826.

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3. Virender Khullar v. American Consolidation Services Ltd. & Ors.

i) Order appealed against:

From the judgment and order dated 22.03.2012 in Original Complaint No.89/ 1995 and 90/1995 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Virender Khullar - Appellant

versus

American Consolidation Services Ltd. & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.4861 of 2012 with Civil Appeal No.9217 of 2012.
Date of Judgment: 16.08.2016.

iv) Case in Brief:

The Appellants/Complainants entrusted consignments containing men's wearing apparels in December 1994 to Respondent No.1, American

Consolidation Services Ltd. (ACS) and cargo receipts were issued to them by Respondent No.1. As per the receipts so issued, the consignments were to the order of Respondent No.2, Central Fidelity Bank, Richmond VA, USA. Respondent No.1 on its part handed over the consignments to Respondent No.4, M/s. Hoeg Lines, Lief Hoegh & Co., A/S Oslo, Norway in Mumbai for delivery of the consignments at the port of destination. It was alleged that in the Bill of Lading issued by the shipping carriers, the name of the consignee was changed from Central Fidelity Bank to Coronet Group Inc. besides there being several other changes in the name and description of the shipper as Cavalier Shipping Company. Since payments were not received till March, 1995, the Appellants filed complaint before the National Consumer Disputes Redressal Commission (NCDRC) initially against Respondent No.1. Respondent No.1 contested the claim on the ground that he acted only as an agent of the consignee i.e. Zip Code Inc., a subsidiary of Coronet Group and acted only as a consolidator and forwarder (not a carrier), it had no liability as provided in Section 230 of the Indian Contract Act, 1872 on behalf of the principal. After hearing the parties the NCDRC, vide separate orders dated 20th January, 2004 accepted both the claims, to the extent of Rs.20,82,908.40 of Appellant Virender Khullar and claim to the extent of Rs.15,27,461.76 of Appellant Girish Chander and directed the amount to be paid by Respondent No.1 with interest. The said order was challenged by Respondent No.1 before the Supreme Court in Civil Appeal Nos.2079 of 2004 and 2080 of 2004 and the same were disposed of holding that the Claimants should have impleaded the consignee as well as the carrier as parties in the claim petitions apart from impleading the Appellant. In the light of the said order, Respondent No.2, Central Fidelity Bank, Respondent No.3 Zip Code and Respondent No.4 Hoegh Lines/ American President Lines Limited, were impleaded. Respondent Nos.3 and 4 failed to turn up and were proceeded *ex parte*. There was no relief sought as against Respondent No.2. The NCDRC, in their impugned order dated 22.03.2012 held that it was only Respondent No.3, Zip Code, the intermediary consignee of the cartons in question mentioned in cargo slips, who received the delivery of the consignments without making payment to the bank or the Complainants and as such liable to pay the compensation to the Appellants and accordingly directed Respondent No.3 to make payment of Rs.20,82,902.40 in favour of Appellant Virender Khullar and Rs.15,25,461/- in favour of Appellant, Grish Chander with interest at the rate of 12% p.a. w.e.f April 1, 1995. The Respondent No.3 did not challenge the order of the NCDRC. But the Complainants through the present appeal have challenged the fresh decision of NCDRC as other Respondents are held not liable to make the payment. Appeals dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 14(1)(d) and 23 of the Consumer Protection Act, 1986; Section 230 of Contract Act, 1872.

vi) Case referred:

Marine Container Services South Pvt. Ltd. v. Go Go Garments, (1998) 3 SCC 247. (Relied) [Para 13]

vii) Issues raised and decided:

a) The Court after perusing copies of cargo slips noted that the notified party/intermediary consignee was Respondent No.3, Zip Code. In the column of name of consignee "to order of Central Fidelity Bank, Richmond VA" is mentioned. Cargo slips further disclosed that Hoegh Clipper/Eagle Prestige was export carrier. The Court also noted that admittedly the goods in question were handed over by the Appellants to Respondent No.1. But there was neither any pleading nor proof that the Appellants paid any sum for transportation or any other service to Respondent No.1 at the time the goods were handed over it or subsequent thereto. The Court held that Respondent No.1 was simply an agent of the buyer with whom Appellants had entered into contract. It was nobody's case that the goods were lost in transit. Rather it is a case where it has come on record that the consignment was received by Respondent No.3, Zip Code Inc., a part of Coronet Group Inc. After going through the relevant terms and conditions attach with the cargo slips, it was held that since Respondent No.1 was simply an agent of Coronet Group Inc., in view of Section 230 of the Indian Contract Act, 1872, it cannot be held personally liable to enforce the contract between its principal and the Appellants.

b) The Court pointed out that in *Marine Container Services South Pvt. Ltd. v. Go Go Garments*, it had been made clear that defence under Section 230 of the Indian Contract Act is available in the cases under Consumer Protection Act by the agents of the principal with whom the Complainant had the agreement.

c) As far as liability of Respondent No.2, Central Fidelity Bank and that of Respondent No.4 is concerned, the Court agreed with the NCDRC that Respondent No.4 had carried the consignment and delivered the same as per Bill of Lading and there is no contract between the Appellants and Respondent No.4. Also Respondent No.2 Bank cannot be held liable for deficiency in service, as the amount was not collected

from the consignee, as such there was no question of remitting it to the Appellants/Complainants by the Bank. In the circumstances, Respondent No.3, Zip Code Inc. which is subsidiary to Coronet Group Inc., the consignee named in the cargo slips, is the only party which can be held liable for taking delivery without depositing the price of goods with the bank.

d) The Court found no infirmity in the impugned order of NCDRC and accordingly dismissed the appeals.

viii) Citation:

AIR 2016 SC 3798; III (2016) CPJ 22 (SC); 2016(3) CPR 590 (SC).

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(e) EDUCATIONAL SERVICES

1. Ranchi University v. Sneh Kumar

i) Order appealed against:

From the judgment and order dated 03.08.2007 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Ranchi University - Appellant

versus

Sneh Kumar - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.3163 of 2011 [Arising out of SLP(C) No.3374 of 2008].
Date of Judgment: 08.04.2011.

iv) Case in Brief:

The Respondent passed M.Sc. (Mathematics) from the Appellant University in 1991. He filed complaint under Section 12 of the Consumer Protection Act, 1986 alleging deficiency in service by asserting that even though he had deposited the requisite fee, the Appellant University did not issue M.Sc. certificate. The Appellant did not appear to contest the complaint. By an ex-parte order dated 26.11.2002, the District Forum ordained the Appellant to issue certificate to the Respondent and also pay compensation of Rs.50,000/-. The State Commission dismissed the appeal filed by the Appellant. The National Commission while agreeing with the Appellant that various statutory services performed by it does not come within the purview

of the term 'service' under the Act, its failure to supply provisional certificate justified the award of compensation to the Respondent. Aggrieved by the order the present appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 12, 15, 19 and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Supreme Court observed that it is not in dispute that the Respondent is employed as a teacher in Mathematics in Agarwal Mahila Mahavidyalaya. Such an appointment could not have been possible without producing evidence of his having secured post graduate degree. The Court observed that the Appellant's plea that the Respondent had demanded duplicate provisional certificate appears to be plausible and the Consumer Fora committed serious error by ordering payment of compensation to the Respondent by assuming that the Appellant had not issued the provisional certificate in the first instance.

b) In the result the appeal was allowed and the impugned order as also those passed by the State Commission and the District Forum were set aside.

viii) Citation:

AIR 2011 SC 1824; I (2012) CPJ 29 (SC).

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2. Abhyudya Sanstha v. Union of India & Ors.

i) Order appealed against:

From the judgment and order dated 07.01.2009 and 16.01.2001 of the High Court of Judicature of Bombay, Nagpur Bench in W.P.No.2701/2008 in CAW No.52/2009 in W.P.No.2701/2008 (Arising out of SLPs (C) Nos.5795-96/2009.

ii) Parties:

Abhyudya Sanstha - Appellant

versus

Union of India & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal Nos.4305-06 of 2011 with Nos.4307-16 of 2011.
Date of Judgment: 12.05.2011.

iv) Case in Brief:

The Appellant institution had applied for grant of recognition for starting D.Ed course in 2006 and 2007 from the National Council for Teacher Education (NCTE). The request was rejected after inspection by the Western Regional Committee (WRC) of NCTE and based on the recommendation of the State Government that there was no requirement of trained teachers in the State. In the meanwhile at the instance of some other parties, the High Court quashed the recognition granted by WRC to certain institutions. The Appellants, herein, although not concerned at all with that order, filed the present appeals against that order by Special Leave. In their applications they stated that the High Court's order would adversely affect their right to continue the DEd course. In the synopsis and list of dates, they made a categorical statement that NCTE had granted permission/recognition to them for starting the DEd course. Before the Supreme Court, the Appellants admitted that they had not been granted recognition by WRC but solicited for a direction to WRC to reconsider their applications and protect the students who had got admission on the basis of allotment made by the State Government. They added that the statements made in the synopsis and list of dates of the Special Leave Petitions about grant of recognition by NCTE were not deliberate. NCTE opposed the SLPs. The appeals were dismissed with exemplary costs.

v) Acts and Sections referred:

Article 136 of Constitution of India; Sections 2(1) (g) and (o) of the Consumer Protection Act, 1986; Sections 12, 14 to 16, 17-A and 32 of National Council for Teacher Education Act, 1993; Regulations 7(11) and 8(12) of National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2007.

vi) Cases referred:

1. *Dalip Singh v. State of U.P.,* (2010) 2 SCC 114 : (2010) 1 SCC (Cri) 324.
2. *G.Narayanaswamy Reddy v. Govt. of Karnataka,* (1991) 3 SCC 261.
3. *Hari Narain v. Badri Das,* AIR 1963 SC 1558.

vii) Issues raised and decided:

a) The Court observed that since they were not apprised of the true status of the applications filed by the Appellants for grant of recognition and

patently wrong and misleading statements were made that they had been duly recognized by NCTE, the Court entertained the Special Leave Petition along with a large number of other similar cases filed by those who had been granted recognition by WRC, issued notices and passed orders of *status quo*. Later on further interim orders were passed directing the State Government to allot students to the Appellants for DEd course. If the Appellants had not misrepresented the facts and made wrong statement on the issue of their recognition by WRC, the Supreme Court would not have entertained the Special Leave Petition, not to say of passing interim orders.

b) The Court observed that those managing the affairs of the Appellants do not belong to the category of innocent, illiterate/uneducated persons who are not conversant with the relevant statutory provisions and the Court process. The Court further observed that the Appellants had not approached the Court with clean hands and succeeded in polluting the stream of justice by making a patently false statement. It was therefore held that they are not entitled to relief under Article 136 of the Constitution.

c) The Court held that although in the absence of cogent material, it is not possible to record a finding that the students were party to the patently wrong and misleading statement made by the Appellants, it is not possible to overlook the fact that none of the Appellants had been granted recognition by WRC, and in view of the prohibition contained in Section 17-A of the Act r/w. Regulation 8(12), the Appellants could not have admitted any student. The Court observed that with the view to make business and earn profit in the name of education, the Appellants successfully manipulated the judicial process for allocation of the students. Therefore, there is no valid ground much less justification to confer legitimacy upon the admission made by the Appellants in a clandestine manner. Any such order by the Court will be detrimental to the national interest. Therefore, it would not be proper to issue direction for regularizing the admission made by the Appellants on the strength of the interim orders passed by the Supreme Court.

d) The Court ordered that each of the Appellants should pay costs of Rs.2,00,000/- which should be deposited with the Maharashtra State Legal Services Authority within a period of 3 months.

e) The Court held that none of the students who had taken admission on the basis of allotment made by the State Government etc. shall be

eligible for the award of degree etc. by the affiliating body. If the degree has already been awarded to any such student, the same shall not be treated valid for any purpose whatsoever. The Court directed WRC to publish the list of students who were admitted by the Appellants pursuant to the interim orders passed by the Supreme Court and forward the same to the Education Department, which shall circulate the same to all Government and aided institutions so that they may not employ the holders of such degrees.

f) The Appellants were directed to pay Rs.1,00,000/- to each of the students by way of compensation in lieu of the injury inflicted upon them by way of misrepresentation about their entitlement to admit the students to DEd course.

g) The appeals were disposed of on the above lines.

viii) Citation:

(2011) 6 SCC 145.

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(f) HIRE PURCHASE

1. Citicorp Maruti Finance Ltd. v. S. Vijayalaxmi

i) Order appealed against:

From the judgment and order dated 27.07.2007 in Revision Petition No.737/ 2005 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Citicorp Maruti Finance Ltd. - Appellant

versus

S. Vijayalaxmi - Respondent

iii) Case No and Date of Judgment:

Civil Appeal Nos.9711 to 9716 of 2011 (Arising out of SLP(C) No.19314 of 2007 with 3119 of 2008 with 9550, 10544, 11696, 10547 of 2009.

Date of Judgment: 14.11.2011.

iv) Case in Brief:

The Respondent entered into a hire purchase agreement with the Appellant for the purchase of a Maruti Omni Car as per which the Appellant granted

a sum of Rs.1,82,396/- which was repayable along with interest in 60 equal monthly hire charges of Rs.4,604/- each. Timely payment of the hire charges was the essence of the agreement. On the failure of the Respondent to pay the hire charges in time, the Appellant sent him a legal notice on 10.10.2002. As many as 26 cheques issued by the Respondent were dishonoured on presentation. Appellant asked the Respondent to make payment of the total amount of Rs.1,31,299.44 within 3 days from the date of receipt of notice. Subsequently, on a request made by the Respondent, the Appellant made a onetime offer of settlement on 10.05.2003 for liquidating the outstanding dues of Rs.1,26,564.84 for Rs.60,000/- subject to the payment being made by 16.05.2003 in cash. It was specifically mentioned in the offer that in case there was delay in making the payment of Rs.60,000/- the offer would stand voided and the Appellant would be entitled to claim from the Respondent the total dues as on date. Since the Respondent did not make the payment the Appellant took possession of the financed vehicle and informed the police station before and after taking possession thereof from the Respondent's residence. An inventory sheet was also prepared which was duly countersigned by the husband of the Respondent. The Appellant then sold the vehicle after having the same valued by approved valuers and inviting bids from interested parties. The vehicle was sold to the highest bidder M/s. Chin Chin Motors for a sum of Rs.70,000/-. The Appellant informed the Respondent that the sale proceeds of Rs.70,000/- had been adjusted against the outstanding dues amounting to Rs.1,21,920.48 and asked her to pay the balance amount of Rs.51,920.48. The Respondent filed consumer complaint against the Appellant in the District Forum, Sheikh Sarai. The District Forum allowed the complaint and directed the Appellant to pay a sum of Rs.1,50,000/- along with interest at the rate of 9% p.a. from the date of filing complaint till the date of payment together with a sum of Rs.5,000/- towards harassment and cost of litigation. The order of the Forum was confirmed by the State Commission with the direction to pay a further sum of Rs.50,000/- towards punitive damages. On a Revision Petition filed by the Appellant, the National Commission, vide impugned order, modified the order of the State Commission setting aside the punitive damages of Rs.50,000/- while confirming the rest of the order. However, the Appellant was asked to pay a sum of Rs.10,000/- to the Complainant/Respondent by way of cost. Aggrieved by the said order, the present appeals have been filed. The Court held that since the Appellant Bank had already accepted the decision of the District Forum and had paid the amounts as directed, no relief can be granted to the Appellant.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986; Section 21 of Hire Purchase Act (26 of 1972); Section 45JA Reserve Bank of India Act (2 of 1934).

vi) Cases referred:

1. *Bharathi Knitting Company v. DHL Worldwide Express Courier,* [(1996) 4 SCC 704:AIR 1996 SC 2508:1996 AIR SCW 3115]. [Para 16]
2. *ICICI Bank Ltd. v. Prakash Kaur,* (2007) 2 SCC 711:AIR 2007 SC 1349:2007 AIR SCW 1667]. [Para 17, 21]
3. *Sundaram Finance Ltd. v. State of Kerala,* AIR 1996 SC 1178. [Para 18]

vii) Issues raised and decided:

a) Since the Appellant had complied with the order of the District Forum and the National Commission had set aside the punitive damages imposed by the State Commission, the only issue that remained to be considered was whether the fora below were right in holding that the vehicles had been illegally and/or wrongfully recovered by use of force from the loanees. The Court observed that the aforesaid question had already been settled by several decisions of the Court and in particular in the decision rendered by *ICICI Bank Ltd. v. Prakash Kaur* (supra). It had been held therein that even in case of mortgaged goods subject to hire purchase agreements, the recovery process has to be in accordance with law. The Court observed that the recovery process referred to in the agreements also contemplates such recovery to be effected in due process of law and not by use of force. Till such time as the ownership is not transferred to the purchaser, the hirer normally continues to be the owner of the goods, but that does not entitle him on the strength of the agreement to take possession of the vehicle by use of force. The Court further observed that the guidelines which had been laid down by the Reserve Bank of India as well as the Appellant Bank itself, in fact, support and make a virtue of such conduct. If any action is taken for recovery in violation of such guidelines or the principles as laid down by the Court, such an action cannot but be struck down.

b) The Court observed that in the instant case, the situation is a little different, since after the vehicle had been seized, the same was also

sold and third party rights had accrued over the vehicle. It is possibly on such account that the Appellant Bank chose to comply with the directions of the District Forum notwithstanding the pendency of the case.

c) The Court therefore held that no relief can be granted to the Appellant and the appeals were disposed of with the observations made hereinabove.

viii) Citation:

IV (2011) CPJ 67 (SC); AIR 2012 SC 509.

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(g) HOUSING

1. Narne Construction Private Limited & Ors. v. Union of India & Ors.

i) Order appealed against:

From the judgment and order dated 13.08.2010 of the High Court of Judicature of Andhra Pradesh at Hyderabad in W.P.Nos.28246/2009, 302, 3947, 5091of 2010, 26520/2009, 360, 364, 405, 429, 304-305, 339, 356-357, 5003, 5088, 5121, 5131 and 5903 of 2010. (Arising out of SLPs (C) Nos.3499-517/2011.

ii) Parties:

Narne Construction Private Limited & Ors. - Appellants

versus

Union of India & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal Nos.4432-50 of 2012.
Date of Judgment: 10.05.2012.

iv) Case in Brief:

The Appellants promoted ventures for development of lands into house sites and invited the intending purchasers through paper publication and brochures to join as members. The Complainants responded and joined as members on payment of fees. The sale and allotment of plots were subject to terms and conditions mutually agreed upon. The sale was not open to any general buyer but restricted only to the persons who had joined as members. The sale was not on "as it is where it is" basis. The terms and conditions stipulated for sale

of only developed plots and that registration of the plots would be made after the sanction of layout by the authorities concerned. The sale price was not for the virgin land but included the development of sites and provision of infrastructure. Since the Appellants did not honour the terms and conditions the customers/members filed Writ Petition in the High Court. The Appellants contested the case claiming that they were not service providers under Section 2(1)(o) of the CP Act, 1986. The High Court relying on the decision of the Supreme Court in *LDA v. M.K.Gupta* (supra) held that the activities of the Appellant company in the case involving offer of plots for sale to its members with an assurance of development of infrastructure/amenities, layout approvals etc. was a "service" within the meaning of clause (o) of section 2(1) of the Act and would therefore be amenable to the jurisdiction of the fora established under the statute. Aggrieved by the said order the present appeals had been filed. Appeals dismissed.

v) Acts and Sections referred:

Sections 2(1) (g) and (o) of the Consumer Protection Act, 1986; Section 54 of Transfer of Property Act, 1882.

vi) Cases referred:

1. *Narne Constructions P. Ltd. v. Union of India,* W.P.No.28246 of 2009 order dated 13.08.2010 (AP). [Para 1]
2. *U.T. Chandigarh Administration v. Amarjeet Singh,* (2009) 4 SCC 660:(2009) 2 SCC (Civ) 273. (Distinguished) [Para 7]
3. *Bangalore Development Authority v. Syndicate Bank,* (2007) 6 SCC 711. (Relied upon) [Para 8]
4. *LDA v. M.K.Gupta,* (1994) 1 SCC 243. (Relied upon) [Para 1, 3, 4, 5, 6]

vii) Issues raised and decided:

a) The Court held that having regard to the nature of the transaction between the Appellant company and its customers which involved much more than a simple transfer of a piece of immovable property, it is clear that the same constituted "service" within the meaning of the Act. It was not a case where the Appellant company was selling the given property with all advantages and/or disadvantages on "as is where is" basis, as was the position in *U.T. Chandigarh Administration v. Amarjeet Singh* (supra). It is a case where a clear cut assurance was made to the purchaser as to the nature and extent of development that would be carried out by the Appellant company as a part of the package

under which sale of fully developed plots with assured facilities was to be made in favour of the purchasers for valuable consideration. To the extent the transfer of the site with developments in the manner and to the extent indicated earlier was a part of the transaction, the Appellant company had indeed undertaken to provide a service.

b) The Court observed that in *LDA* case (supra), the Court while dealing with the meaning of the expressions "consumer" and "service" under the Consumer Protection Act observed that the provisions of the Act must be liberally interpreted as the enactment in question was a beneficial piece of legislation. In the context of the house construction and building activities carried on by a private or statutory body, it was observed that construction of a house or a flat is for the benefit of the person for whom it is constructed. He may do it himself or hire services of a builder or contractor. The latter being for consideration is "service" as defined in the Act. Similarly when a statutory authority develops lands or allots a site or constructs house for the benefit of common man it is as much service as by a builder or contractor. The one is contractual service and the other statutory service. If the service is defective or it is not what was represented then it would be unfair trade practice as defined in the Act.

c) The Court also observed that in *Bangalore Development Authority v. Syndicate Bank* (supra), it was held that where full payment is made and possession is delivered, but title deed is not executed without any justifiable cause, the allottee may be awarded compensation for harassment and mental agony in addition to appropriate direction for execution and delivery of title deed.

d) The Court observed that the legal position on the subject is fairly well settled by the pronouncements of the Supreme Court and do not require any reiteration. It was held that the High Court had correctly noticed the said pronouncements and applied them to the facts of the case at hand leaving no room for interference.

e) Accordingly the appeals were dismissed.

viii) Citation:

(2012) 5 SCC 359; AIR 2012 SC 2369; II (2012) CPJ 4 (SC).

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(h) HOUSING (FRAUDULENT ALLOTMENT)

1. Pratap Singh Yadav v. Haryana Urban Development Authority & Anr.

i) Order appealed against:

From the judgment and orders dated 25.09.2012 and 26.11.2012 in Revision Petition No.186/2011 and Review Application No.191/2012 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Pratap Singh Yadav - Appellant

versus

Haryana Urban Development Authority & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal Nos.10418-10419 of 2016.
Date of Judgment: 28.10.2016.

iv) Case in Brief:

The Applicant was allotted the Residential Plot No.2342 situate in Sector-II, HUDA, Faridabad in November 1998. The Appellant deposited 25% of the tentative price of the plot within the stipulated time. On receipt of a letter dated 30.10.2000 from the Respondent, the Appellant appeared before the Estate Officer and filed an application for surrender of the plot and allotment in his favour. The application was allowed by the Estate Officer and after deducting 10% of the earnest money, the balance amount deposited by the Appellant was refunded to him by cheque dated 01.12.2000 which was received and encashed by the Applicant without protest. However, the Applicant filed a consumer complaint before the District Forum seeking a direction for restoration of a plot in question or for allotment of a plot of similar size at the same price besides compensation. The District Forum allowed the complaint and directed the Respondent not only to pay interest at the rate of 12% on the deposit made by the Appellant but also to deliver the possession of the plot. The Forum awarded a sum of Rs.50,000/- towards compensation for mental agony and harassment caused to the Applicant. Litigation expenses of Rs.5,000/- were also awarded. The Respondent filed an appeal before the State Commission which was allowed holding that since the Applicant had voluntarily surrendered the plot in question, he was not a consumer within the meaning of the Consumer Protection Act. The Appellant filed a Revision Petition before the National Commission which was dismissed by the impugned

order. The Review Application filed by the Appellant was also dismissed. Aggrieved by the said orders the present appeals have been filed. Appeals partly allowed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Pradeep Sharma v. Chief Administrator,
Haryana Urban Development Authority & Anr.,
AIR 2016 SC 438; 2016(1) CPR 111 (SC). (Relied) [Para 7]

vii) Issues raised and decided:

a) The Court noted that pursuant to the order passed by the District Forum, the disputed plot was transferred to the Appellant by a Conveyance Deed dated 09.01.2008. The building plans submitted by the Appellant for construction over the disputed plot were also sanctioned by the Estate Officer. A "no due" certificate was also issued by the Estate Officer on 15.03.2009. The Appellant had also constructed a house over the plot in question. The Court directed HUDA to conduct a preliminary fact finding enquiry as to how the said developments had taken place without a formal order of allotment especially when HUDA had challenged the order of the District Forum before the State Commission. Based on the report submitted by HUDA, the Court noted that the entire process leading to the allotment of the plot, execution of conveyance deed, approval of building plan, issue of full occupation certification etc., had been vitiated by reason of complicity of the officials working in HUDA and named in the report.

b) In the backdrop of the above, two issues came up for consideration. The first concerned the action to be taken against the officials of HUDA found responsible for the mischief while the second related to the approach that needed to be adopted with regard to the fraudulent allotment and subsequent construction of the house by the beneficiary of the mischief.

c) As regards the first issue the Court directed HUDA to take proper disciplinary action against those found responsible and to suitably punish them in accordance with law.

d) On the second issue the Court ascertained from HUDA that the rate for allotment for land in Sector-II, Faridabad for the period of 2015-2016 is Rs.18,000/- per sq. mtr. Though the Appellant had been a beneficiary

of a fraudulent allotment, yet keeping in view the peculiar facts and circumstances of the case, demolition of the house and restoration of the plot to HUDA, it was considered, would work rather harshly for the Appellant. The Court noted that in an identical case viz *Pradeep Sharma v. Chief Administrator, Haryana Urban Development Authority & Anr.*, the Court had directed the appellant therein to retain the house on his depositing the prevailing cost of the plot in dispute after adjusting the amount already deposited. The Court found no reason to deny similar relief to the appellant in the instant case also. Accordingly the Court directed HUDA to allow the allotment to continue subject to the appellant depositing the prevalent price of the plot at the rate of Rs.18,000/- per sq. mtr. within a period of six months. In case the needful is not done within the time allowed, the Court directed that the appeal shall stand dismissed and the order passed by the National Commission and State Commission would be affirmed.

e) The appeals were partly allowed accordingly.

viii) Citation:

IV (2016) CPJ 1 (SC); 2017(1) CPR 279 (SC).

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(i) HOUSING (NON-DELIVERY OF POSSESSION)

1. Shivalik Vihar Sites P. Ltd & Ors. v. Darshan Singh

i) Order appealed against:

From the judgment and order of the National Consumer Disputes Redressal Commission.

ii) Parties:

Shivalik Vihar Sites P. Ltd & Ors. - Petitioners

versus

Darshan Singh - Respondent

iii) Case No and Date of Judgment:

Petition for Special Leave to Appeal (Civil) No.33470 of 2012.
Date of Judgment: 10.12.2012.

iv) Case in Brief:

The Respondents booked flats in Shivalik Apartments, Kharar (Punjab) proposed to be built by the Petitioner. They deposited the total cost of the flats.

In the allotment letters issued by the petitioners it was clearly mentioned that possession of the flats will be handed over within 13 months. After waiting for almost 2 years the Respondents filed complaints under Section 12 of the Consumer Protection Act, 1986. They also filed civil suit in the Court of Civil Judge, Kharar and succeeded in persuading the concerned Court to pass an order of *status quo* in the matter of alienation of the land on which the petitioner was to build the apartments. The complaints filed by the Respondents were allowed by the District Consumer Disputes Redressal Forum. The appeals filed by the petitioners under Section 15 of the Act were dismissed by the State Consumer Disputes Redressal Commission which agreed with the District Forum that non-delivery of flats to the Respondents amounted to deficiency in service. As the petitioners failed to implement the directions given by the District Forum, the Respondents filed execution petitions under Section 27-A of the Act and claimed refund of the amount deposited by them. The District Forum allowed the execution petitions and ordered refund of the amount deposited by the Respondents. The appeals filed by the petitioners against the orders of the District Forum were dismissed by the State Commission and the same was the fate of the Revision Petitions filed by them. The National Commission also imposed costs of Rs.50,000/- in both the cases. Aggrieved by the orders of the National Commission the present SLPs had been filed. The SLPs were dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 14(1)(d) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court noted that the District Forum had allowed the complaint of the Respondents in the following terms:

"(i) The OPs shall hand over the possession of the flat in question to the Complainant within a period of 10 months from the date of filing of the present complaint i.e. by 18.09.2010 along with litigation costs of Rs.5,500/- or

(ii) The OPs shall refund the deposited amount of Rs.9,78,129/- along with Rs.5,500/- as costs of litigation within 30 days from the date of receipt of copy of the order.

(iii) The OPs shall pay within 30 days from the date of receipt of copy of the order interest as damages @ 9% p.a. on the amount of Rs.9,78,129/- w.e.f. date of deposit till the possession is delivered or the amount of Rs.9,78,129/- is refunded to the Complainant.

In case the OPs fail to comply with the directions (i) or (ii), they will be liable to refund the entire amount with penal interest @ 12% p.a. from the date of deposit i.e. 22.11.2005 till payment is actually made to the Complainant. In case direction (iii) is not complied with within 30 days the OPs shall be liable to pay the same with penal interest @ 12% p.a. w.e.f. from the date of monthly payments became due till the date of actual payment to the Complainant".

b) The Court held that the finding recorded by the District Forum that there was deficiency in service on the petitioners' part is based on correct analysis of the facts and documents produced by the parties and the State Commission rightly refused to interfere with the same. It was held that the direction given by the District Forum for refund of the amount deposited by the Respondents was also correct and the State Commission and the National Commission did not commit any error in approving the same.

c) The Court was of the view that the National Commission had been more than lenient because small amount of cost of Rs.50,000/- was imposed while dismissing the Revision filed in the execution petition.

d) The Court accordingly dismissed the Special Leave Petitions and directed the Petitioners to pay the entire amount to the Respondents within a period of one month.

viii) Citation:

I (2013) CPJ 15 (SC).

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(j) INSURANCE CLAIM

1. LIC of India & Anr. v. Hira Lal

i) Order appealed against:

From the judgment and order dated 17.04.2009 in R.P.No.3625 of 2007 of the National Consumer Disputes Redressal Commission.

ii) Parties:

LIC of India & Anr. - Appellants

versus

Hira Lal - Respondent

iii) Case No and Date of Judgment:

Special Leave to Appeal (Civil) No.28693 of 2009.
Date of Judgment: 23.08.2011.

iv) Case in Brief:

The Respondent had filed a complaint under Section 12 of the Consumer Protection Act for directing the Petitioner to pay the amount in accordance with the insurance policy on the premise that he had suffered permanent blindness due to an accident. The District Forum dismissed the complaint. The State Commission after threadbare examination of the matter allowed the appeal filed by the Respondent. The Revision Petition filed by the Petitioners against the order of the State Commission was dismissed by the National Commission. The present Special Leave to Appeal had been filed challenging the order of the National Commission. Special Leave Petition dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 12 and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court noted that the State Commission had discussed the meaning of the expression 'accident' in detail. The expression 'accident' is used in the insurance policy in ordinary sense of the word i.e. an unlocked mishap or untoward event which is not expected or designed. As per Dictionary of Insurance Law, by E.R. Hardy, 1981 edition, "accident means, a term involving the idea of something fortuitous and unexpected. It is difficult to define the term 'accident' as used in a policy of this nature, so as to draw with perfect accuracy a boundary line between injury or death from accident, and injury or death from natural causes; such as shall be of universal application. At the same time, we may safely assume that in the term 'accident' as so used, some violence, casualty or *vis major*, is necessarily involved. We cannot think disease produced by the action of a known cause can be considered as accidental". The State Commission had also reproduced the definition

of the term accident as per Mozley and Whiteley Law Dictionary, Eighth Edition, 1970 as follows:-

> "Accident: As a ground for seeking the assistance of a Court of equity, accident means not merely inevitable casualty, or the act of God, or, as it is called, *Vis major*, but also such unforeseen events, misfortunes, losses, acts or omissions as are not the result of negligence or misconduct."

The State Commission had also observed that the sum and substance of the dictionary meaning clearly showed that it has to be something unexpected and not attributable to the person concerned like Appellant in the present case. Therefore the only irresistible conclusion based on legal evidence as well as dictionary meaning of the word 'accident' is that 100% blindness in case of the Appellant is an accident. Another reason to take this view is that it is not the case either of the Respondents or in the opinion of the doctor that the 100% blindness occurred due to anything attributable to the Appellant himself and/or he was instrumental in his blindness in any way. The State Commission had also reasoned that when two interpretations are possible, while examining a case of the present nature, one beneficial to the consumer has to be followed. The State Commission had further observed that the LIC Act was a piece of social legislation aimed at ensuring that the beneficiaries get their legitimate due in accordance with law and that the approach of the Courts should not be too pedantic or narrow besides being contrary to the meaning of the word 'accident' as discussed above. The State Commission had accordingly allowed the appeal and set aside the District Forum's order.

b) The Court observed that the National Commission had independently examined the matter and agreed with the State Commission that the Respondent had suffered blindness due to accident and he was entitled to the insurance amount.

c) The Court held that the concurrent finding arrived at by the State Commission and the National Commission on the cause of blindness of the Respondent did not suffer from any legal infirmity.

d) The Special Leave Petition was accordingly dismissed.

viii) Citation:

IV (2011) CPJ 4 (SC).

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2. Goel Jewellers v. National Insurance Co. Ltd.

i) Order appealed against:

From the judgment and order of the National Consumer Disputes Redressal Commission.

ii) Parties:

Goel Jewellers - Appellant

versus

National Insurance Co. Ltd. - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.7460 of 2011.

Date of Judgment: 09.09.2011.

iv) Case in Brief:

The Appellant had filed an original complaint under Section 21 of the Consumer Protection Act, 1986, before the National Commission claiming that there was robbery of his jewellery at gun point and that the claim preferred by him for insurance amount was not accepted by the Respondent. The National Commission had dismissed the complaint as his claim was not supported by the contents of the first information report lodged on 28.10.1997. Aggrieved by the order of the Commission the present appeal had been filed. Appeal dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 21 and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

The Court observed that the finding recorded by the National Commission that repudiation of the Appellant's claim by the Respondent insurance company was justified did not suffer from any legal infirmity. The appeal was accordingly dismissed.

viii) Citation:

IV (2011) CPJ 1 (SC).

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3. Export Credit Guarantee Corporation of India Ltd. v. M/s. Garg Sons International

i) Order appealed against:

From the judgment and order dated 18.02.2003 in Revision Petition No.662 to 674/2002, 933/2002 and FA No.238, 246 and 247/2001 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Export Credit Guarantee Corporation of India Ltd. - Appellant

versus

M/s. Garg Sons International - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.1557 of 2004 with Civil Appeal Nos.1542 to 1553, 1555, 1556, 1558 and 1559 of 2004.

Date of Judgment: 17.01.2013.

iv) Case in Brief:

The Appellant is a Government Company which is in the business of insuring exporters. Respondent, M/s. Garg Sons International purchased a policy for the purpose of insuring a shipment to foreign buyers i.e. M/s. Natural Selection Company Ltd. of U.K. The buyer committed default in making payments towards such policy from 28.12.1995 onwards with respect to the said assignment. The insured sought enhancement of credit limit to the tune of Rs.50 lakhs with respect to the said defaulting foreign importer. Subsequently he presented 17 claims. The insurer rejected all the claims on the ground that the insured did not ensure compliance with Clause 8 of the Insurance Agreement which stipulated the period within which the insurer is to be informed about any default committed by a foreign importer. The insured filed several complaints before the State Consumer Disputes Redressal Commission which allowed the same directing the insurer to make requisite payments due under different claims with 9% interest, litigation expenses etc. The insurer preferred appeals before the National Commission which held that 9 claims were to be rejected and 4 were worthy of acceptance. Aggrieved by the order of the National Commission both the parties had preferred the present appeals. The appeals were disposed of allowing Appeal Nos.1547 and 1557 of 2004 and disallowing the remaining appeals.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *Oriental Insurance Co. Ltd. v. Sony Cheriyan,*
   AIR 1999 SC 3252.
2. *Polymat India Pvt. Ltd. v. National Insurance Co. Ltd.,*
   AIR 2005 SC 286.
3. *M/s. Sumitomo Heavy Industries Ltd. v. Oil and Natural Gas Co.,*
   AIR 2010 SC 3400.
4. *Rashtriya Ispat Nigam Limited v. M/s. Dewan Chand Ram Saran,*
   AIR 2012 SC 2829.
5. *Vikram Greentech (I) Ltd. & Anr. v. New India Assurance Co. Ltd.,*
   AIR 2009 SC 2493.
6. *Sikka Papers Ltd. v. National Insurance Co. Ltd. & Ors.,*
   AIR 2009 SC 2834.

vii) Issues raised and decided:

a) The Counsel for the insurer submitted that as per the Judgment of the National Commission only 5 claims made by the insured were accepted and that 11 claims were rejected, though in the said order only 9 claims were found to be rejected and 4 were shown as accepted. He contended that there were typographical errors in the Judgment and that only in respect of 2 appeals i.e. Appeal Nos.1547 and 1557 of 2004 all the statutory requirements were complied with and these appeals alone deserved to be allowed. The Counsel for the insured, admitting that there was a typographical error argued that Appeal Nos.1543, 1544, 1545, 1546 and 1559 of 2004 should also be allowed.

b) The Court went through the relevant Clauses of the insurance policy dated 23.03.1995 viz. Clause 8 which dealt with declaration of overdue payments and Clause 19 which dealt with Exclusion of Liability. The Court observed that if both the conditions (a) and (b) of Clause 19 are read together, it would become evident that the insured must make a declaration in the prescribed form on the 15th of every month as regards whether or not there has been any default committed by the foreign importer, either in part, or in full, for a period exceeding 30 days with respect to shipments made within the policy period and that non-compliance with the said terms of contract will exonerate the insurer of all liability in this regard.

c) The Court observed that it is a settled legal proposition that while construing the terms of a contract of insurance, the words used therein must be given paramount importance and it is not open for the Court to add, delete or substitute any words. It is also well settled that since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the policy, its terms have to be strictly construed in order to determine the extent of liability of the insurer. The Judgments referred to above were cited in this context.

d) After going through the factual matrix as revealed by the records, the Court held that the insured failed to comply with the requirement of Clause 8(b) of the Agreement informing the insurer about the non-payment of outstanding dues by the foreign importer within the stipulated time except in 2 cases viz. Appeal Nos.1547 and 1557 of 2004.

e) The Court therefore held that only 2 claims pertaining to the Appeal Nos.1547 and 1557 of 2004 deserved to be allowed. The others were disallowed. The appeals were disposed of accordingly.

viii) Citation:

II (2013) CPJ 1 (SC); 2013(4) CPR 373 (SC); 2017(1) CPR 53 (SC).

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4. Sandeep Kumar Chourasia v. Divisional Manager, The New India Insurance Co. Ltd. & Anr.

i) Order appealed against:

From the judgment and order dated 14.01.2008 of the National Consumer Disputes Redressal Commission in FA.No.339/2006 (Arising out of SLP(C) No.25991/2008).

ii) Parties:

Sandeep Kumar Chourasia - Appellant

versus

Divisional Manager,
The New India Insurance Co. Ltd. & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.2759 of 2013.

Date of Judgment: 02.04.2013.

iv) Case in Brief:

In July 1997, Shri P.D. Chourasia, the Appellant's father took insurance cover under "the Janta Gramin Vyaktigat Durghatna Policy" for Rs.7,00,000/- in the name of the Appellant. The policy covered death, permanent total disablement, loss of two limbs or two eyes, one limb and one eye directly caused by accident. While he was playing outside his house on 22.10.1999, the Appellant fell down and sustained injuries in the right portion of his head and the right eye. He was initially treated in Government Hospital and then in a private hospital. Dr.Jaishri Gopinath, Assistant Surgeon, Government Hospital, Bhilai issued medical certificate dated 22.11.1999 that an account of the injury caused to his right eye, the Appellant suffered total loss vision in the right eye and severe loss of hearing in both ears. Similar certificates were issued by Dr.K.K.Mishra and Dr.A.K.Varma with little variation in the degree of disability. The District Medical Board, Durg also issued a certificate dated 27.10.2005 which showed that the Appellant had suffered 100% disability in the right eye. Appellant's father lodged a claim with the Respondent for compensation by asserting that his son had suffered loss of vision due to accidental fall. The claim was repudiated on the ground that it was not covered by the policy. The Appellant filed complaint through his father for award of compensation of Rs.7,00,000/- with interest. The Respondent insurer pleaded that the loss of vision and hearing was not caused due to the accident but the right eye of the Applicant was inflicted with phthisis bulbi and he was hard of hearing since birth. The Medical Board constituted upon a direction by the State Commission examined the Applicant on 05.08.2005 and submitted its report. The Board had opined that: "(i) Phthisis bulbi in the right eye is the cause of loss of vision (ii) there is total loss of vision in the right eye (iii) the patient had pathological myopia for which radial keratotomy surgery had been done earlier. The loss of vision could have been caused by fall while playing and (iv) the loss of vision in right eye is irreversible". The State Commission heavily relied upon another medical report dated 28.10.1999 prepared by Dani Hospital wherein it was mentioned that the loss of vision could be attributed to phthisis bulbi in the right eye of the Appellant. The State Commission also referred to the report dated 05.08.2005 sent by the Medical Board but concluded that the loss of vision was not the result of accidental fall. The National Commission upheld the orders of the State Commission and dismissed the appeal filed by the Appellant. Aggrieved by the orders of the State Commission and the National Commission, the present appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 13(4)(iv), 18 and 23 of the Consumer Protection Act, 1986; Section 45 of Evidence Act, 1872.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court held that unfortunately both the Consumer Commissions did not bother to carefully go through the report dated 05.08.2005 of the Medical Board. In that report the doctors concerned had opined that the loss of vision could have been caused by a fall while playing. In their pleadings the Respondents had not contested the statements contained in the complaint, which was duly supported by the affidavit of the father of the Appellant, that while playing outside the residence the Appellant had an accidental fall and the consequential injury to the right eye led to the loss of vision.

b) The Court held that the State Commission and the National Commission committed a serious error by dismissing the complaint of the Appellant by assuming that his right eye was afflicted with the disease of phthisis bulbi and the same was the cause of loss of vision. The available medical literature shows that phthisis bulbi is the end-stage anatomic condition of the eye in response to severe ocular disease, infection, inflammation or trauma. Clinically it is categorized by a soft atrophic eye with disorganization of intraocular structures. Phthisis bulbi can be caused due to ocular injury, radiation, infection or diffusion disease. Initial damage to intraocular structures either from penetrating trauma or inflammation can eventually lead to widespread atrophy and disorganization of the eye. They completely ignored the report of the Medical Board dated 05.08.2005 which had opined that phthisis bulbi can be caused due to injury caused due to fall. Before the State Commission, sufficient evidence was produced by the Appellant to prove that he had an accidental fall on 22.10.1999 and as a result of that, the right side of his head and the right eye were injured. The Court held that there is no escape from the conclusion that the Appellant's case is covered by the policy issued by the Respondent No.1 and the State Commission and the National Commission committed a serious error by rejecting his claim.

c) Allowing the appeal the Court set aside the orders of the State Commission and the National Commission and directed that Respondent to pay compensation of Rs.7,00,000/- to the Appellant with interest at the rate of 6% p.a. from the date of filing the complaint.

viii) Citation:

(2013) 4 SCC 270; III (2013) CPJ 29 (SC); 2013(2) CPR 321 (SC).

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5. Metal Powder Company Ltd. v. Oriental Insurance Company Ltd.

i) Order appealed against:

From the order dated 28.04.2006 of the Madurai Bench of the Madras High Court in A.S.No.1350/1989.

ii) Parties:

Metal Powder Company Ltd. - Appellant

versus

Oriental Insurance Company Ltd. - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.481 of 2009.

Date of Judgment: 07.04.2014.

iv) Case in Brief:

This is an appeal by the plaintiff against a decree of reversal made by the High Court of Madras by its judgment and order dated 28.04.2006. The plaintiff had purchased yellow phosphorous from M/s. Metallgeseliachaft AG, Frankfurt, West Germany. The said commodity was booked through M.V. "Palam Trader" to be delivered at Bombay Port and from Bombay Port to the plaintiff's factory at Maravankulam. The goods were insured for a sum of Rs.2,65,000/-. The policy specifically included and covered amongst other risks "loss due to non-delivery of goods at Maravankulam". The ship caught fire while in transit. The first intimation of the mishap was communicated to the plaintiff by Richard Hoggs International Limited, Greece, the agents of the owners of the vessel "Palam Trader". The plaintiff was informed that the estimate of the cost of repairs to the ship are much higher than the ship's insured value and therefore the ship owner considered the vessel as a total loss and had given notice of abandonment of the ship to the underwriters. The aforesaid facts were communicated to the defendant insurance company by

the plaintiff followed by a claim to indemnify the plaintiff for the value of goods insured i.e. Rs.2,65,000/-. The defendant repudiated its liability on the ground that the ship was abandoned by its owners due to bankruptcy and therefore the claim made by the plaintiff was covered by an exclusion Clause i.e. 4.6 of the Institute Cargo Clauses which formed a part of the terms and conditions of the insurance policy. Since the defendant did not respond to the legal notice on behalf of the plaintiff, a suit was filed claiming the value of the goods insured i.e. Rs.2,65,000/- along with interest calculated at 18% p.a. from 21.03.1984 to 30.09.1995 which was quantified at Rs.73,053/-. The Trial Court decreed the plaintiff's suit for an amount of Rs.3,38,053/- inclusive of interest at 18% p.a. up to 30.09.1985. The insurance company filed a regular first appeal before the High Court which was allowed by the impugned judgment and order. Aggrieved by the said order the present appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Clauses 4.6 and 5.1 of the Insurance Policy.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court noted that the risk covered under the policy were "All risks" – Marine, theft, pilferage, non-delivery, civil commotion, strikes, riots, breakage, damage, dentage, etc". "Non-delivery" being a specific risk covered by the insurance policy, the failure to deliver the cargo as agreed, would clearly amount to loss of the subject matter insured.

b) The Court observed that Clause 4.6 which was sought to be invoked by the defendant insurer excludes liability of the insurer for loss or damage arising from the insolvency or financial default of the owners etc. It was further observed that insolvency or bankruptcy would always be a matter of authoritative determination under the relevant municipal laws of a country and certainly not a matter of individual perceptions and opinions. The Court noted that no material to establish the insolvency or bankruptcy of the owners is available on record. In the absence of any material whatsoever to show that Clause 4.6 can be attracted in the present case, it was held that the finding to the said effect by the High Court cannot be sustained.

c) Insofar as Clause 5.1 is concerned, it was held that the same is not attracted inasmuch as no question of unseaworthiness of the vessel,

much less, prior knowledge of the plaintiff of such unseaworthiness can arise in the present case so as to exclude the loss and damage suffered by the plaintiff from the purview of the insurance cover as contemplated by Clause 5.1.

d) The Court accordingly set aside the judgment of the High Court dated 28.04.2006 and restored the judgment and decree dated 28.04.1989 passed by the Trial Court. The Appeal was allowed.

viii) Citation:

(2014) 5 SCC 771; IV (2014) CPJ 9 (SC); 2015(2) CPR 645 (SC).

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6. Kokkilagadda Subba Rao v. Divisional Manager, United India Assurance Co. Ltd. & Ors.

i) Order appealed against:

From the judgment and order dated 10.01.2005 in First Appeal No.397 of 2002 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Kokkilagadda Subba Rao - Appellant

versus

Divisional Manager, United India Assurance Co. Ltd. & Ors.- Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.5822 of 2006.
Date of Judgment: 16.04.2014.

iv) Case in Brief:

The Appellant was the owner of a fishing boat in Andhra Pradesh registered with the Respondent insurance company. The fishing boat capsized on 27.07.1992 while the insurance policy covering the boat was still valid. The Appellant made a claim with insurance company on 03.08.1992 for a sum of Rs.6 lakhs. The insurance company appointed M/s. Reliance Surveillance as a Surveyor who in their report dated 03.05.1993 opined that it may be treated as a total loss. Dissatisfied with their report, the insurance company appointed another Surveyor M/s. Coastal Consultants Private Limited. The second Surveyor in their report dated 15.06.1993 expressed doubt whether the vessel sank in Andhra Pradesh coastal waters or in Orissa coastal waters. The consultant subsequently submitted an addendum to their report in consultation with M/s. Mohanty Associates and concluded that the fishing boat sank in

Orissa coastal waters and since the vessel had transgressed the required territorial limits, there was violation of policy conditions. The insurance company repudiated the claim based on the said report. The Appellant approached the Andhra Pradesh State Consumer Disputes Redressal Commission seeking compensation of Rs.6 lakhs from the insurance company with 24% interest. The complaint was dismissed. The appeal, filed by the Appellant before the National Commission, was also dismissed vide impugned order. Aggrieved by the same, the present appeal had been filed. Appeal dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986; Section 64 UM(3) of Insurance Act, 1938.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court noted that both the State Commission and the National Commission had held that the fishing vessel was used in the high seas for fishing and that it sank in the Orissa coast. Accordingly the claim made by the Appellant was not covered by the policy issued by the insurance company.

b) It was contended by the Appellant that in view of Section 64 UM(3) of the Insurance Act, 1938, the insurance company could not have called for a second survey report. The Court held that the said contention was not open to the Appellant at this stage. This contention was not raised before the State Commission or before the National Commission. The only question raised before them was whether the vessel capsized in the Andhra sea coast or Orissa sea coast. Both the fora had given a finding that the vessel was utilized for fishing in the high seas contrary to the insurance policy and it sank in Orissa sea coast. It was held that there was no case for disturbing the said finding. The Court further held that there was no reason to entertain a fresh argument for the first time without its having been agitated before any of the earlier fora.

c) The appeal was dismissed as devoid of merits.

viii) Citation:

IV (2014) CPJ 18 (SC); 2014(2) CPR 258 (SC).

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7. BHS Industries v. Export Credit Guarantee Corp. & Anr.

i) Order appealed against:

From the order dated 20.08.2007 in First Appeal No.189/2007 of the National Consumer Disputes Redressal Commission.

ii) Parties:

BHS Industries - Appellant

versus

Export Credit Guarantee Corp. & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal Nos.2729 of 2009.

Date of Judgment: 07.07.2015.

iv) Case in Brief:

The Appellant, a small scale industry and a proprietary concern dealing in handicraft goods was desirous of exporting its goods to a buyer namely M/s. Treasures of India, Atlanta, USA. The Appellant took insurance cover from the 1st Respondent on 15.06.1999 who issued a Shipment Comprehensive Risk Policy on the same date. The maximum liability of the Respondent/Insurer under the policy was Rs.30 lakhs. The insurer had initially granted provisional credit limit of Rs.8 lakhs on 14.07.1999 which was enhanced to Rs.10 lakhs on 20.07.1999 and later on enhanced to Rs.20 lakhs. The appellant sent one consignment of Rs.6,50,000/- to M/s. Treasures of India on 15.07.1999 and a declaration to that effect was communicated to the Respondents. On 20.08.1999 the appellant made another shipment of Rs.4,76,139/- to the same buyer and declaration was sent to the corporation. The appellant sent two more shipments amounting to Rs.2,77,732/- and Rs.1,00,512/- on 20.08.1999. As the earlier two transactions covered the credit limit of Rs.10 lakhs and as the Corporation was causing undue delay in granting the limit, the latter two consignments were sent at the risk of the appellant. As the buyer refused to accept the goods the appellant communicated the same on 22.10.1999 to the Corporation and on 10.12.1999 intimated regarding shipments which were not covered under the insurance. The appellant claimed that though he had complied with the requirement of the Respondent, the Corporation vide letter dated 06.06.2000 repudiated the claim of the appellant on the ground that there had been violation of the terms and conditions of the contract of the insurance. The State Commission, Union Territory of Chandigarh, before whom a complaint was filed rejected the claim of the Complainant-Appellant

on two counts, namely, the claim was barred by limitation and that under the postulates of the policy it was totally untenable. The National Commission affirmed the order of the State Commission on appeal. Aggrieved by the Judgments of the State Commission and National Commission, the present appeal had been filed. Appeal dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *United India Insurance Co. Ltd. v. M.K.J. Corpn.,* III (1996) CPJ 8 (SC)=1996 (SLT SOFT) 2275. (Referred & Discussed) [Para 9]
2. *Amalgamated Electricity Co. v. Ajmer Municipality,* (1968) (SLT SOFT) 122. (Referred & Discussed) [Para 10]
3. *Bay Berry Apartments (P) Ltd. and Another v. Shobha and Others,* VIII (2006) SLT 241. (Referred & Discussed) [Para 11]
4. *Polymer India (P) Ltd. and Another v. National Insurance Co. Ltd. and Others,* IV (2004) CPJ 49 (SC)=VII (2004) SLT 243. (Relied) [Para 12]
5. *General Assurance Society Ltd. v. Chandmull Jain,* 1966 (SLT SOFT) 184. (Relied) [Para 13]
6. *Baj (Run Off) Ltd. v. Durham and Others,* (2012) UKSC 14. (Referred & Discussed) [Para 14]
7. *High Court of Judicature for Rajasthan v. P.P. Singh,* I (2003) SLT 652. (Referred) [Para 15]
8. *Marathwada University v. Seshrao Balwant Rao Chavan,* 1989 (SLT SOFT) 491. (Referred) [Para 15]
9. *Babu Varghese v. Bar Council of Kerala,* II (1999) SLT 605. (Referred) [Para 15]
10. *United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal,* IV (2004) CPJ 15 (SC)=V (2004) SLT 876. (Referred) [Para 16]
11. *Oriental Insurance Co. Ltd. v. Sony Cheriyan,* II (1999) CPJ 13 (SC)=VI (1999) SLT 565=II (1999) ACC 196 (SC). (Referred & Discussed) [Para 17]
12. *ABL International Ltd. & Anr. v. Export Credit Guarantee Corporation of India Ltd. & Ors,* 109 (2004) DLT 415 (SC)= I (2004) SLT 381. (Not Applicable) [Para 28]

13. *Kumari Shrilekha Vidyarthi v. State of U.P.,* 1990 (SLT SOFT) 195. (Not Applicable) [Para 28]

vii) Issues raised and decided:

a) The Appellant's claim was repudiated by the corporation on the following grounds:

"1. The terms of payment mentioned in order form as DA-90 days via Sea, but you have affected the shipment worth Rs.4,76,139/- by Air on DA-60 days. As far as shipment worth Rs.6,50,000/- effected on DA-90 days is concerned, the Invoice shows the terms of payment as DA-90 days, whereas the Bill of Exchange was drawn on DA-60 days basis. This is construed as a violation of contract on the part of you.

2. You have omitted to declare shipments amounting to 50% in number and 34% in value. This is considered as serious and uncondonable lapse, violating Clauses Nos.1, 2, 8(a), 10, 19(1), 28, 7(a) and 29 of the Policy Bond.

3. Bill was not Noted and Protested at buyer's country".

b) The Supreme Court dealt with Clause 5 of the contract that dealt with shipments not covered. It was observed that Clause 5(c) of the policy required the grant of credit by the insured to the buyer not for a longer period than 180 days unless specifically agreed to the contrary by the Corporation in writing. It was noted that as per letter dated 02.09.1999, the Appellant had shown the terms of payment due within 90 days of shipments. The Appellant had given a credit of 60 days which was well within the outer limit of 90 days. The Court did not agree with the findings of the State Commission and the National Commission that there had been violation of the terms of the policy as regards the reduction of the period for payment. What was stipulated was that the Corporation should not be liable if the insured gives credit for more than 180 days. That was the outer limit and as the insured had fixed the debt within the said period, that cannot be held against him.

c) The second violation of condition related to omission of declaration of shipments amounting to 50% in number and 30% in value. The Court held that Clauses 8(a) and 19(a) are absolutely clear as crystal and as per the stipulation therein the insured was obliged to deliver to the Corporation a declaration on or before 15th day of each calendar month in a prescribed format details of all shipments made during the previous

month and was required to give a "nil declaration" if no shipment had been made. Clause 19(a), the exclusionary clause, stated that the Corporation shall cease to have any liability in respect of gross invoice value of any shipment or part thereof if the insured had failed to declare, without any omission, all the shipments required to be declared in terms of Clause 8(a) of the policy and to pay premium in terms of Clause 10 of the policy. The Court observed that payment of premium alone does not make the Corporation liable to indemnify the loss or fasten the liability on it. The insured had to understand the policy in entirety. The construction of the policy in entirety and in a harmonious manner left no room for doubt that there is no equivocality or ambiguity warranting an interpretation in favour of the insured-appellant. The Court held that the finding of the Commission that the Appellant had not taken steps to retrieve the goods is absolutely immaterial for the present purpose. The said finding though is flawed, the ultimate conclusion, was correct.

d) Since there had been violations of the terms and conditions of the contract of insurance, the appeal was found to be devoid of merit and was dismissed.

viii) Citation:

III (2015) CPJ 1 (SC); 2017(1) CPR 18 (SC).

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8. United India Insurance Co. Ltd. v. Orient Treasures Pvt. Ltd.

i) Order appealed against:

From the judgment and order dated 19.03.2007 of the National Consumer Disputes Redressal Commission in Original Petition No.375/1999.

ii) Parties:

Civil Appeal No.2140 of 2007

United India Insurance Co. Ltd. - Appellant

versus

Orient Treasures Pvt. Ltd. - Respondent

With

Civil Appeal No.5141 of 2007

Orient Treasures Pvt. Ltd. - Appellant

versus

United India Insurance Co. Ltd. - Respondent

iii) Case No and Date of Judgment:

Civil Appeals No.2140 of 2007 with 5141 of 2007.
Date of Judgment: 13.01.2016.

iv) Case in Brief:

The Respondent in Civil Appeal No.2140 of 2007, who is engaged in the business of sale of various kinds of jewellery, had insured the jewellery kept in their shop with the Appellant under successive "Jewellers Block Policies" with effect from 02.07.1993 onwards. On 02.06.1995, when the policy was in currency, there was a burglary in the shop and according to the Respondent, gold and silver ornaments valued at Rs.40,63,735.53 were taken away. The Respondent informed the Appellant immediately who appointed a Surveyor to assess the actual loss. The Surveyor assessed the total loss at Rs.36,10,211/-. After investigation, police submitted a final investigation report on 24.06.1995 treating the case as untraceable. The Respondent then submitted his claim with the Appellant which was however repudiated on the ground that the stolen gold and silver articles were found to have been kept on the display window and in the sales counters at the time of the burglary which took place in the night of 02.06.1995, which according to the Appellant was contrary to the terms of the policy and therefore not covered in the policy. It was contended that as per Clauses 4 and 5 of proposal form (which was part of insurance policy) r/w Clause 12 of Insurance Policy, items kept in display window or lying out of safe, though covered under the policy during daytime in business hours, were excluded under the policy after business hours at night. In order to claim benefit of policy in respect of such articles after business hours, it was obligatory upon insured to keep such items inside safe during night hours till opening of shop on next day. It was further stated that Respondent did not pay any additional premium to get coverage of aforesaid two instances to avoid rigours of Clauses 4, 5 and 12. Aggrieved by the repudiation of the claim, the Respondent filed a complaint before the National Commission claiming a sum of Rs.1,32,06,786.30. The Commission vide impugned order partly allowed the petition and directed Appellant insurance company to pay a sum of Rs.36,10,211/- with interest at 10% p.a. from 03.12.1995 till the date of payment and also directed the insurance company to pay costs at Rs.50,000/- to the Respondent. Aggrieved by the order the Appellant insurance company filed the present appeal. The Respondent also filed CA.5141 of 2007 seeking enhancement of compensation. Civil Appeal No.2140 of 2007 filed by the insurance company was allowed. The appeal filed by the Complainant was dismissed as infructuous.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 21 and 23 of the Consumer Protection Act, 1986; Clauses 4 and 5 read with Clause 12 of Insurance Policy.

vi) Cases referred:

1. *General Assurance Society Ltd. v. Chandumull Jain & Anr.,* 1966 (SLT Soft) 184=AIR 1966 SC 1644. (Referred) [Para 22]
2. *United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal,* V (2004) SLT 876=IV (2004) CPJ 15 (SC). (Referred) [Para 22]
3. *Oriental Insurance Co. Ltd. v. Sony Cheriyan,* VI (1999) SLT 565=II (1999) CPJ 13 (SC)= II (1999) ACC 196 (SC). (Referred) [Para 22]
4. *Rahee Industries Ltd. v. Export Credit Guarantee Corporation of India Ltd. & Anr.,* (2009) 1 SCC 138. (Referred) [Para 22]
5. *Sikka Papers Ltd. v. National Insurance Co. Ltd. & Ors.,* III (2009) CPJ 90 (SC). (Referred) [Para 22]
6. *Vikram Greentech India Ltd. & Anr. v. New India Assurance Co. Ltd.,* IV (2009) SLT 35=II (2009) CPJ 34 (SC). (Referred) [Para 22]
7. *New India Assurance Co. Ltd. v. Zuari Industries Ltd. & Ors.,* VII (2009) SLT 122=IV (2009) CPJ 19 (SC)=IV (2009) ACC 390 (SC). (Referred) [Para 22]
8. *Amravati District Central Cooperative Bank Ltd. v. United India Fire and General Insurance Co. Ltd.,* III (2010) SLT 232=II (2010) ACC 622 (SC). (Referred) [Para 22]
9. *Suraj Mal Ram Niwas Oil Mills P. Ltd. v. United India Insurance Co. Ltd. & Anr.,* VIII (2010) SLT 375=IV (2010) CPJ 38 (SC)= IV (2010) ACC 653 (SC). (Referred) [Para 22]
10. *Deokar Exports P. Ltd. v. New India Assurance Co. Ltd.,* I (2009) CPJ 6 (SC)=I (2009) ACC 93 (SC). (Referred) [Para 22]
11. *Export Credit Guarantee Corp. of India Ltd. v. Garg Sons International,* I (2013) SLT 614=II (2013) CPJ 1 (SC). (Referred) [Para 22]
12. *Rust v. Abbey Life Assurance Co. Ltd. & Anr.,* (1979) Vol.2 Lloyd's Law Reports 334. (Referred) [Para 22]
13. *General Assurance Society Ltd. v. Chandumull Jain & Anr.,* VII (2011) SLT 29=III (2011) CLT 431 (SC). (Relied) [Para 30]

vii) Issues raised and decided:

a) A constitution bench of the Supreme Court in *General Assurance Society Ltd.* (Supra) had held that in interpreting documents relating to a contract of insurance, the duty of the Court is to interpret the words in which the contract is expressed by the parties, because it is not for the Court to make a new contract, however reasonable, if the parties have not made it themselves.

b) The Court observed that mere perusal of the note appended to Clause 4 would go to show that the Appellant insurance company had made it clear in the proposal form itself that *"window display of articles at night is not covered"*. This clearly meant that the insurance coverage was given to the articles kept in "window display during day time in business hours" whereas insurance coverage was not given to the articles when they were kept in "window display at night".

c) Similarly, the Court observed, that mere perusal of note appended to Clause 5 would show that the Appellant had made it clear in the proposal form itself to the Respondent that *"stock which is kept out of the safe after business hours at night"* is not covered under the policy. This clearly meant that "stock kept out of safe during business hours", if stolen, was insured and given coverage under the policy but if it was kept out of safe after business hours of night it was not covered under the policy and the Appellant was not liable to indemnify the loss sustained by the Respondent of any such stolen articles.

d) The Court observed that the language/wording of the note in both the Clauses is plain, clear, unambiguous and creates no confusion in the mind of the reader about its meaning. That apart Clause 12 of the policy in clear terms provided that the Appellant would not be liable to indemnify any loss under the policy if such loss or damage to the insured property occurs while the insured property was kept in window display at night or while it was kept out of safe after business hours.

e) The Court rejected the contention of the Respondent that the rule of *contra proferentem* should be applied to interpret Clauses 4 and 5. The Court held that there was no ambiguity in the language/wording of Clauses 4 and 5 to invoke the said rule.

f) In the light of the above the Court held that the order of the National Commission cannot be sustained and set aside the same. The appeal filed by the insurance company was allowed. Appeal filed by the Respondent for enhancement was dismissed as infructuous.

viii) Citation:

(2016) 3 SCC 49; AIR 2016 SC 363; I (2016) CPJ 6 (SC); 2016(1) CPR 115 (SC); 2016(2) CPR 645 (SC).

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9. Heaven Diamonds Pvt. Ltd. v. Oriental Insurance Co. Ltd.

i) Order appealed against:

From the judgment and order dated 20.11.2012 in Original Petition No.357/ 1999 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Heaven Diamonds Pvt. Ltd. - Appellant

versus

Oriental Insurance Co. Ltd. - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.2800 of 2013.

Date of Judgment: 02.02.2016.

iv) Case in Brief:

The Appellant Company is engaged in diamond business including manufacture of diamond impregnated scaives (grinding wheels). The company packed scaives in two wooden boxes and exported to Belgium. The purchaser of the goods at Belgium, M/s. Nice Diamonds BVBA, inspected the shipment of two boxes and refused to accept the same. According to them one box was totally broken and the scaives were damaged while in the other box the scaives were very rusty and diamond layer was with holes. They found that they could not use those scaives as they were totally lost. The National Commission dismissed the Appellant's complaint based on the report dated 09.02.1999 by a Surveyor according to which while one box was broken, the other box was apparently in better external condition but the grinding wheels in both cases were rusty to varying extent, on both sides. The National Commission also took into account another report of a Surveyor, M/s. K.L. Assar & Company who had been deputed by the insurance company to survey manufacturing process of the Complainant who had mentioned in his report that in spite of his request, the Complainant did not allow the Surveyor to enter inside the cabin to inspect the machines. Aggrieved by the orders of the National Commission the present appeal had been filed. Appeal dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court noted that the National Commission gave due weightage to the fact that the scaives were found rusty even in the box which was not damaged and that the Complainant did not cooperate with the Surveyor who had gone to inspect their manufacturing place. The National Commission had observed that no evidence was led by the Complainant on the quantum of loss. There was undisputable fact that after rejection of the aforesaid goods, the Complainant had received back those goods. The said goods were in possession of the Complainant itself. The Complainant did not produce any expert evidence on the manufacture and working of these machines and value of the salvage, if any. The Complainant did not produce any evidence in order to show as to what had happened to those goods.

b) The Court held that the National Commission had applied its mind to all the relevant facts and even after noting its mistake in making the observation that goods have been received back by the Complainant no material infirmity so as to interfere with the impugned order could be found. The Court accordingly dismissed the appeal.

viii) Citation:

II (2016) CPJ 1 (SC); 2017(1) CPR 295 (SC).

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10. United India Insurance Co. Ltd. v. Leisure Wear Export Ltd. ETC, ETC.,

i) Order appealed against:

From the judgment and order dated 05.07.2004 in First Appeal Nos.30-33/ 2000 of the National Consumer Disputes Redressal Commission.

ii) Parties:

United India Insurance Co. Ltd. - Appellant

versus

Leisure Wear Export Ltd. ETC, ETC., - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.1004 of 2006 with Civil Appeal No.1016 of 2006.
Date of Judgment: 29.06.2016.

iv) Case in Brief:

The Respondent/Complainant is engaged in the business of sale of various kinds of hosiery goods and ready-made garments at Ludhiana. He had taken an insurance policy to the extent of Rs.2 crores with the Appellant company which was valid for the period from 13.06.1996 to 12.06.1997. The Respondent received an order from M/s. Magna Overseas, Moscow for supply of hosiery goods and ready-made garments to them at Moscow. The Respondent dispatched 320 cardboard cartons in two separate consignments and duly notified to the Appellant. The consignments landed at Port Odessa in Ukraine and from there it was moved by road to Moscow. When the delivery was taken it was found short of 142 and 139 cartons respectively. The insurance company appointed M/s. Ingostarkh Insurance Company, Moscow as surveyors to assess the loss. They confirmed the short delivery but when the claim for the loss sustained by the consignee was lodged with them as per the policy in the first instance, they did not settle the claim. Therefore the consignee authorized the Respondent to file the claim against the Appellant for recovery of the loss. The Respondent filed two separate complaints against the Appellant before the State Redressal Commission, Punjab. The State Commission allowed both the complaints and awarded Rs.19,90,000/- in all to the Complainant by way of compensation including loss of earning, interest etc. The Appellant filed appeals before the National Commission, which were dismissed vide impugned order. Hence, the present appeals were filed. Both the appeals dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986; Sections 17 and 52 of Marine Insurance Act, 1963.

vi) Cases referred:

1. *New India Assurance Co. Ltd. v. G.N. Sainani,*
   III (1997) CPJ 1 (SC)=1997 (SLT Soft) 1268. (Distinguished) [Para 34]
2. *Oberai Forwarding Agency v. New India Assurance Co. Ltd. & Anr.,*
   II (2000) SLT 86=I (2000) CPJ 7 (SC). (Distinguished) [Para 35]

vii) Issues raised and decided:

a) The short question which arose for consideration was whether the complaint petition filed by the Respondent under the Consumer Protection Act against the insurer was maintainable or not.

b) It was claimed by the Appellant that since the Respondent had already assigned the policy in question in favour of the consignee, i.e. M/s.Magna Overseas, it was for the consignee/assignee to file the complaint for realization of the amount from the insurer.

c) The Court after examining the provisions of Sections 17 and 52 of the Marine Insurance Act, 1963 dealing with "assignment of interest" and "when and how policy is assignable" observed that there was no express agreement between the Respondent (insured) and M/s.Magna Overseas (consignee) agreeing to insured's rights under the contract of insurance in favour of M/s. Magna Overseas (consignee). Under these circumstances, by virtue of Section 17, it was held that the Respondent is legally entitled to retain, enjoy and exercise all those rights which are available to them under the contract of insurance which they have entered into with the Appellant despite making assignment of their policy in favour of the assignee.

d) The Court held that, firstly, they do not find that the Respondent (insured) assigned the contract of insurance policy in favour of their consignee as contended by the Appellant. Secondly, even assuming that the Respondent (insured) assigned the contract of insurance policy in favour of their consignee, yet the assignment so made did not have any adverse effect on the rights of the insured under the contract of insurance policy as the rights continued to remain with them under Section 17 of the Act. It was therefore held that the Respondent was legally entitled and had the *locus* to file a complaint against the Appellant.

e) The Court further held that in the light of the authorization letter dated 04.07.1997 duly issued by the consignee in favour of the Respondent authorizing the Respondent to file a complaint petition before the Consumer Forum, the Respondent was entitled and had the *locus* to file a complaint against the Appellant for realization of compensation.

f) The Court held that both the State Commission and the National Commission were justified in overruling the objection of the Appellant and were justified in holding that the complaint filed by the Respondent was maintainable.

g) The Court found no merit in the appeals and accordingly dismissed the same.

viii) Citation:

AIR 2016 SC 3145; III (2016) CPJ 11 (SC); 2017(1) CPR 273 (SC).

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11. Galada Power and Telecommunication Ltd. v. United India Insurance Co. Ltd. & Anr.

i) Order appealed against:

From the judgment and order dated 06.03.2009 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Galada Power and Telecommunication Ltd. - Appellant

versus

United India Insurance Co. Ltd. & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal Nos.8884-8900 of 2010.
Date of Judgment: 28.07.2016.

iv) Case in Brief:

The case of the Complainant before the District Forum was that between 01.03.1998 and 13.04.1998, 21 trucks of "All Aluminium Alloy Conductor" (AAAC) wire packed in wooden drums were delivered at stores of Power Grid Corporation of India Ltd. (PGCIL) at Assam. In all the trucks shortage was noticed by PGCIL on 25.03.1998. As there was shortage, which is called transit loss for which the Appellant had taken a policy from the insurer, it put forth a claim before the insurer for Rs.35 lakhs. The insurer appointed a Surveyor who gave a first report in September, 1998 assessing the loss at approximately Rs.2 lakhs in each case, thereby the amount assessed by the Surveyor was approximately Rs.43 lakhs. But the claim was repudiated by the insurer on the ground that the claim "does not fall under the purview of transit loss". The Appellant filed a batch of 21 complaints before the District Forum claiming a total compensation of Rs.43.59 lakhs with interest at 18% p.a. from the Respondent namely United India Insurance Co. Ltd. and India Transport Organization. The District Forum dismissed the claim. 21 appeals were filed before the Andhra Pradesh State Consumer Redressal Commission which held that the repudiation of the claim, in spite of the Surveyor's report which was based on physical verification of the consignment, was unjustified. The State Commission allowed the appeals and determined the compensation at Rs.43 lakhs to be paid jointly by the insurer and the carrier. Both the insurer and carrier filed independent Revisions before the National Commission. The Revision filed by the carrier stood dismissed and was not challenged. Out of 21 Revision Petitions filed by the insurer, 17 were allowed on the ground that

intimation by the Complainant was not made within 7 days of arrival of the vehicles at the destination mentioned in the policy. The National Commission accordingly set aside the orders passed by the State Commission. The present appeals have been made challenging the orders of the National Commission. Appeals allowed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 14(1)(d) and 23 of the Consumer Protection Act, 1986; Insurance Act (4 of 1938); Section 115 of Evidence Act (1 of 1872).

vi) Cases referred:

1. *Krishna Wanti v. Life Insurance Corporation of India,* 82 (1999) DLT 598 (DB). (Approved) [Para 12]
2. *Manak Lal v. Dr. Prem Chand Singhvi,* 1957 (SLT Soft) 15. (Relied) [Para 14]
3. *Krishna Bahadur v. Purna Theatre,* V (2004) SLT 378. (Relied) [Para 15]
4. *State of Punjab v. Davinder Pal Singh Bhullar,* IX (2011) SLT 48=IV (2011) DLT (Crl.) 880 (SC)= IV (2011) CCR 394 (SC). (Relied) [Para 16]

vii) Issues raised and decided:

a) The Court observed that the National Commission had relied upon Clause 5 of the policy that relates to "duration" and on that basis had rejected the claim by putting the blame on the Complainant. It was further observed that the letter of repudiation does not whisper a single word with regard to delay or in fact does not refer at all to the duration Clause. What had been stated in the letter of repudiation was that the claim lodged by the Complainant does not fall under the purview of transit loss because of the subsequent investigation report. The Court held that in absence of any mention in the letter of repudiation and also from the conduct of the insurer in appointing a Surveyor, it can safely be concluded that the insurer had waived the right which was in its favour under the duration Clause. The Court relied on the judgment of the High Court of Delhi in *Krishna Wanti* (supra) wherein the High Court had taken note of the fact that if the letter of repudiation did not mention an aspect, the same could not be taken as a stand when the matter is decided.

b) The Court also relied on *Manak Lal v. Dr. Prem Chand Singhvi* (supra), *Krishna Bahadur v. Purna Theatre* (supra) and *State of Punjab v. Davinder*

Pal Singh Bhullar (supra) and observed that waiver is an intentional relinquishment of a right. In the instant case the insurer was in custody of the policy. It had prescribed the Clause relating to duration. It was very much aware about the stipulation made in Clause 5(3) to 5(5), but despite the stipulation therein, it appointed a Surveyor. Additionally in the letter of repudiation, it only stated that the claim lodged by the insured was not falling under the purview of transit loss. Thus, by positive action, the insurer has waived its right to advance the plea that the claim was not entertainable because conditions enumerated in duration Clause were not satisfied. The Court held that the National Commission could not have placed reliance on the said terms to come to the conclusion that there was no policy cover in existence and that the risks stood not covered after delivery of goods to the consignee.

c) On merits of the claim the Court held that the findings recorded by the State Commission were absolutely justified and tenable in law being based on the materials brought on record. The Court after perusing the Surveyor's report and the judgment and order of the State Commission was completely satisfied that the determination made by the Commission was absolutely impeccable.

d) The Court accordingly set aside the judgment and order of the National Commission and allowed the appeals on the lines of the order passed by the State Commission.

viii) Citation:

AIR 2016 SC 4021; IV (2016) CPJ 5 (SC); 2017(1) CPR 4 (SC).

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12. Industrial Promotion & Investment Corporation of Orissa Ltd. v. New India Assurance Co. Ltd. & Anr.

i) Order appealed against:

From the judgment and order dated 17.08.2005 in Application No.45/2001 of the Monopolies and Restrictive Trade Practices Commission, New Delhi.

ii) Parties:

Industrial Promotion &
Investment Corporation of Orissa Ltd. - Appellant

versus

New India Assurance Co. Ltd. & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.1130 of 2007.
Date of Judgment: 22.08.2016.

iv) Case in Brief:

The Appellant, a wholly owned Public Sector Undertaking of the Government of Orissa, extended a term loan of Rs.40,74,000/- to M/s. Josna Casting Centre Orissa Pvt. Ltd. As the loan amount was not repaid, the Appellant took over the assets of M/s. Josna Casting Centre Orissa Pvt. Ltd. on 14.02.1992. On 23.01.1996 the Appellant insured the said assets with Respondent No.1 for a sum of Rs.46,00,000/- under the Miscellaneous Accident Policy, Rs.60,40,000/- under the Fire Policy and Rs.46,00,000/- under the Burglary and House Breaking Policy. When the seized assets were put to auction on 22.01.1997, it was noticed that some parts of plant and machinery were missing. An FIR was registered regarding the theft/burglary. On 07.02.1997, the Appellant informed the Respondent No.1 about the theft and requested for issuance of a claim form. On 16.12.1997, a claim was lodged for Rs.34,40,650/- under the Burglary and House Breaking Policy. The claim was repudiated by the Respondent No.1 on 31.03.1998 on the ground that the alleged loss did not come within the purview of the insurance policy. The Appellant filed Compensation Application No.45 of 2001 under Section 12-B r/w Section 36A of MRTP Act, 1969 which was rejected by the MRTP Commission vide impugned order. Aggrieved by the said order the present appeal had been filed. Appeal dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) of the Consumer Protection Act, 1986 and Sections 12-B, 36A of Monopolies and Restrictive Trade Practices Act, 1969.

vi) Cases referred:

1. *United India Insurance Co. Ltd. v. Orient Treasures (P) Ltd.,*
   I (2016) CPJ 6 (SC)=I (2016) SLT 337. (Not Applicable) [Para 4]
2. *United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal,*
   IV (2004) CPJ 15 (SC)=V (2004) SLT 876. (Not Applicable) [Para 5]
3. *General Assurance Society Ltd. v. Chandmull Jain & Anr.,*
   1966 (SLT Soft) 184. (Relied) [Para 11]

vii) Issues raised and decided:

a) The Court observed that it was clear from the facts of the case that the Appellant had made out a case of theft without a forcible entry. The

case of the Appellant is that forcible entry is not required for a claim to be made under the policy. Following the well-accepted principle that a contract of insurance which is like any other commercial contract, should be interpreted strictly, the Court was of the opinion that the policy covers loss or damage by burglary or house breaking which have been explained as theft following an actual, forcible and violent entry from the premises. A plain reading of the policy would show that a forcible entry should precede the theft and unless they are proved the claim cannot be accepted. Having considered the submissions made on both sides the Court held that there was no error committed by MRTP Commission in rejecting the claims of the Appellant.

b) The Court held that in *General Assurance Society Ltd. v. Chandmull Jain & Anr.,* it had been held that there is no difference between a contract of insurance and any other contract except that in a contract of a insurance there is a requirement of *uberima fides*, i.e. good faith on the part of the insured and the contract is likely to be construed *contra proferentes*, i.e. against the company in case of ambiguity or doubt. It was further held in the said judgment that the duty of the Court is to interpret the words in which the contract is expressed by the parties and it is not for the Court to make a new contract, however reasonable.

c) The Court held that the policy in the present case is in a standard form. The policy for burglary and house breaking in *United India Insurance Co. Ltd. v. Orient Treasures (P) Ltd.,* (supra) and the policy in this case are identical. The Court further held that there was no ambiguity in the relevant clause of the policy and the rule of *contra proferentem* is not applicable.

d) The Court accordingly upheld the order of the MRTP Commission and dismissed the appeal.

viii) Citation:

IV (2016) CPJ 11 (SC); 2017(1) CPR 300 (SC).

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13. National Insurance Co. Ltd. v. Hindustan Safety Glass Works Ltd.

i) Order appealed against:

From the judgment and order dated 23.04.2007 in Original Petition No.161 of 1996 of the National Consumer Disputes Redressal Commission.

ii) Parties:

National Insurance Co. Ltd. - Appellant

versus

Hindustan Safety Glass Works Ltd. - Respondent

With

National Insurance Co. Ltd. - Appellant

versus

Kanoria Chemicals and Industries Ltd. - Respondent

iii) Case No and Date of Judgment:

Civil Appeal Nos.3883 of 2007 with 1156 of 2008.
Date of Judgment: 07.04.2017.

iv) Case in Brief:

Civil Appeal Nos.3883 of 2007

The Respondent, Hindustan Safety Glass Works Ltd., had taken out two policies with the Appellant insurance company, the first policy for an amount of Rs.4.9 lakhs to cover the risks on office building, residential quarters and canteen etc., in Calcutta and the second policy for an amount of about Rs.5.7 crores to cover the risks on building, machinery, stocks, store, furniture, wiring and fittings etc. The policies included damage or loss due to flood and inundation. On 6th August, 1992 there was heavy rain in Calcutta resulting in heavy accumulation of rain water in and around the factory/works of the insured. The Respondent, who suffered heavy damages, filed claims on 7th and 8th August, 1992 for a total amount of Rs.52 lakhs. N.T. Kothari & Co. who were appointed as Surveyor by the insurance company on 24.09.1992 submitted its report on 11.11.1993 estimating the loss at Rs.24 lakhs. Not accepting their report, the insurance company appointed Seascan Services (WB) Pvt. Ltd. as a Surveyor to report on the loss or damage suffered by the insured. The second Surveyor gave its report on 23.11.1994 assessing the loss or damage, initially at Rs.26 lakhs, which was reduced in February 1995 to Rs.24 lakhs. Despite the reports given by the two Surveyors the insurance company did not settle the claim. The Respondent filed a complaint before the National Commission claiming a compensation of Rs.52.32 lakhs, Rs.1.81 lakhs towards expenses incurred and interest at 18% p.a. The claim was repudiated by the insurance company on 22nd May 2001, nearly 5 years after the complaint was filed before the National Commission. The National Commission, by the impugned order, allowed the complaint and awarded an

amount Rs.21,05,803.89 with interest at 9% p.a. from 11th May 1995 along with costs of Rs.20,000/-. Aggrieved by the said order, the present appeal had been filed. Appeal dismissed.

Civil Appeal No.1156 of 2008

In this appeal the insured, Kanoria Chemicals and Industrial Ltd., suffered loss or damage to its goods in an incident that occurred on 6th September 1993. Though the claim was lodged the very next day, it was repudiated by National Insurance on 27th December 1999 while the complaint filed by the insured was pending with the National Commission since 6th March 1998. The National Commission had held that the loss or damage had occurred due to an explosion that occurred in the machine which resulted in short circuit and consequent loss or damage. Aggrieved by the finding, the present appeal had been filed by the insurance company. This appeal was also dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 21, 23 and 24A of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *State Bank of India v. B.S. Agricultural Industries (I),* (2009) 5 SCC 121:(AIR 2009 SC 2210). (Referred) [Para 15]
2. *Kandimalla Raghavaiah and Co. v. National Insurance Co. Ltd.,* (2009) 7 SCC 768:(AIR 2010 SC (Supp) 880). (Referred) [Para 16]

vii) Issues raised and decided:

Civil Appeal Nos.3883 of 2007

a) The Court observed that the National Commission had noted the following four objections raised by the insurance company:

   (i) Complaint was barred by condition No.6(ii) of the policies;

   (ii) Complaint was barred by limitation as it was filed on 13.08.1996 while the loss/damage to the insured properties had taken place in August 1992;

   (iii) Alleged loss had been caused due to accumulation of dust and moisture on the stocks lying unattended because of lock-out in the factory from 03.05.1991 and not as a result of inundation/flood;

   (iv) None of the two survey reports can form the basis for payment of the amount claimed.

b) The Court held that the National Commission had rejected all the contentions for valid reasons:

i) A plain reading of condition No.6(ii) of the insurance policies leads to the conclusion that the National Insurance would not be liable for any loss or damage 12 months after the event that caused the loss or damage to the insured unless the claim is the subject matter of a pending action or arbitration. The Court rejected the contention of the National Insurance that the expression "pending action" must relate to action instituted in a Court of law. The Court held that when a claim is made by the insured that itself is actionable and there is no question of requiring the insured to approach a Court of law for adjudication of the claim. This would amount to encouraging avoidable litigation which certainly cannot be the intention of the insurance policies and is in any case not in public interest.

ii) The Court rejected the contention of the insurance company, placing reliance on *State Bank of India v. B.S. Agricultural Industries (I)* and *Kandimalla Raghavaiah and Co. v. National Insurance Co. Ltd.*, that the complaint was barred by limitation. The Court observed that the insured had lodged a claim the very next day after the date of the incident. The insurance company appointed two Surveyors and took more than two years in surveying or causing survey of the loss suffered by the insured. The Court held that the delay was attributable to National Insurance and cannot prejudice the claim of insured. The Court also observed that National Insurance repudiated the claim of the insured only on 22.05.2001, well after the complaint was filed.

iii) As regards the third contention the Court noted that this has been contradicted by the reports of the two Surveyors appointed by it. The Court further observed that it is possibly to get over this difficulty that National Insurance advanced the fourth contention namely that none of the two survey reports could form the basis for payment of the amount claimed.

iv) The Court observed that the second survey report was prepared in consultation with the Central Glass and Ceramic Research Institute, Calcutta and the insurance company failed to provide any reason as to how the second report was also tainted. The Court noted that the National Commission had accepted the

second survey report and did not find any reason to disagree with the findings of the Commission.

Civil Appeal No.1156 of 2008

a) In this appeal also the Court rejected the contention of the National Insurance that the complaint was barred by limitation in view of condition No.6(ii) of the insurance policy or Section 24A of the Act. The Court noted that the claim was repudiated on 27.12.1999 while a complaint filed by the insured was pending in the National Commission since 06.03.1998.

b) On merits also the Court noted that the only issue was whether the loss or damage to the insured machine was caused by an explosion or by a short circuit. The National Commission had held, on a consideration of the evidence, that an explosion had occurred in the machine and that resulted in short circuit and consequent loss or damage to the machine. The Court held that this view is not only based on the evidence on record but in any event a possible view. The Court held that even in this appeal the National Insurance had not been able to make out a case for interference with the order passed by the National Commission.

In the result both the appeals were dismissed.

viii) Citation:

AIR 2017 SC 1900; II (2017) CPJ 1 (SC); 2017(2) CPR 1 (SC).

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(k) LEGAL SERVICES

1. Central Bureau of Investigation, Hyderabad v. K. Narayana Rao

i) Order appealed against:

From the judgment and order dated 09.07.2010 of the High Court of Andhra Pradesh at Hyderabad in Crl. Petition No.2347/2008.

ii) Parties:

Central Bureau of Investigation, Hyderabad - Appellant

versus

K. Narayana Rao - Respondent

iii) Case No and Date of Judgment:

Criminal Appeal No.1460 of 2012.
Date of Judgment: 21.09.2012.

iv) Case in Brief:

On 30.11.2005, CBI, Hyderabad, based on information registered an FIR against Shri P.Radha Gopal Reddy (A1) and Shri Udaya Sankar (A2), the then Branch Manager and the Assistant Manager respectively of Vijaya Bank, Narayanaguda Branch, Hyderabad for the Commission of offences punishable under Sections 120-B, 419, 420, 467, 468 and 471 r/w. Section 109 of Indian Penal Code, 1860 and Section 13(2) r/w. Section 13(1)(b) of the Prevention of Corruption Act, 1988. The allegation was that they abused their official position as public servants and conspired with private individuals Shri P.Y.Kondala Rao (A3), the builder and Shri N.S.Sanjeeva Rao (A4) and other unknown person for defrauding the bank by sanctioning and disbursement of housing loans to 22 borrowers in violation of the Bank's rules and regulations and thereby caused wrongful loss of Rs.1.27 crores to the Bank and corresponding gain for themselves. In the charge sheet filed after investigation, Shri K.Narayana Rao the Respondent herein, who is a legal practitioner and a panel advocate for Vijaya Bank was also arrayed as A6. The allegation against him was that he gave false legal opinion in respect of 10 housing loans. It was specifically alleged that the Respondent (A6) and Mr.K.C. Ramdas (A7), the valuer had failed to point out the actual ownership of the properties and to bring out the ownership details and names of apartments in their reports and also the falsity in the permissions for construction issued by the Municipal Authorities. Being aggrieved the Respondent filed Criminal Petition No.2347 of 2008 under Section 482 of the Code before the High Court of Andhra Pradesh for quashing the criminal proceedings. By the impugned order dated 09.07.2010, the High Court quashed the proceedings insofar as the Respondent (A6) is concerned. Being aggrieved, CBI, Hyderabad filed the present appeal by way of Special Leave. Appeal dismissed.

v) Acts and Sections referred:

Sections 2(1) (g) and (o) of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *Sajjan Kumar v. CBI,*
   (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371.
2. *P. Vijayan v. State of Kerala,*
   (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488.
3. *K. Narayana Rao v. State of A.P.,*
   Criminal Petition No.2347 of 2008, order dated 09.07.2010.

4. *Jacob Mathew v. State of Punjab,*
(2005) 6 SCC 1 : 2005 SCC (Cri) 1369.

5. *Mahaveer Prashad Gupta v. State (NCT of Delhi),*
(2000) 8 SCC 115 : 2000 SCC (Cri) 1453.

6. *Rupan Deol Bajaj v. Kanwar Pal Singh Gill,*
(1995) 6 SCC 194 : 1995 SCC (Cri) 1059.

7. *State of Haryana v. Bhajan Lal,*
1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426.

8. *State of Bihar v. Murad Ali Khan,*
(1988) 4 SCC 655 : 1988 SCC (Cri) 27.

9. *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra,*
(1984) 2 SCC 556 : 1984 SCC (Cri) 335.

10. *Shivnarayan Laxminarayan Joshi v. State of Maharashtra,*
(1980) 2 SCC 465 : 1980 SCC (Cri) 493.

11. *State of Bihar v. Ramesh Singh,*
(1977) 4 SCC 39 : 1977 SCC (Cri) 533.

vii) Issues raised and decided:

a) The Court observed that the liability against an opining advocate arises only when the lawyer was an active participant in a plan to defraud the bank. In the given case there is no evidence to prove that A6 was abetting or aiding the original conspirators. However, it is beyond doubt that a lawyer owes an "unremitting loyalty" to the interests of the client and it is the lawyer's responsibility to act in the manner that would best advance the interest of the client. Merely because his opinion may not be acceptable, he cannot be mulcted with the criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. At the most he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence, and cannot be charged for the offence under Sections 420 and 109 IPC along with other conspirators without proper and acceptable link between them. It was held that there was no tangible material in the present case to connect the Respondent with other conspirators for causing loss to the institution.

b) The Court held that the only assurance that a professional can give is that (i) he is possessed of the requisite skill in that branch of profession

which he is practicing and (ii) while undertaking performance of the task entrusted to him, he would exercise his skill with reasonable competence.

c) Judged by the above standard, the Court held that there is no *prima facie* case for proceeding in respect of the charges alleged insofar as the Respondent is concerned. The Court upheld the conclusion of the High Court in quashing the criminal proceedings and rejected the stand taken by the CBI.

viii) Citation:

(2012) 9 SCC 512.

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(l) LIABILITY TO PAY COMPENSATION

1. Vinod Kumar Thareja v. M/s. Alpha Construction & Ors.

i) Order appealed against:

From the judgment and order of the National Consumer Disputes Redressal Commission.

ii) Parties:

Vinod Kumar Thareja - Appellant

versus

M/s. Alpha Construction & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.1493 of 2011 (Arising out of SLP(C) No.7283 of 2010).
Date of Judgment: 08.02.2011.

iv) Case in Brief:

The Appellant, owner of a plot measuring about 11000 sq. ft., entered into a joint venture agreement with Respondent-builder for development of the said plot by construction and sale of nine duplex flats. Under the said agreement the first Respondent was responsible for construction and sale of the flats, the Appellant was entitled to 45% of the sale proceeds and the first Respondent was entitled to the balance 55%. The first Respondent was solely responsible for completion of construction and quality of construction. The Appellant and the first Respondent entered into sale agreements with Respondents 2 and 3

conveying an extent of 968 sq. ft. of land with a skeletal structure for Rs.6,00,000/-. Respondents 2 and 3 filed a complaint before the District Forum alleging deficiency in service since the flats constructed by the builder were demolished by the Municipal Authorities. The Complainants demanded refund of the sum of Rs.11,80,000/- paid by them with interest of Rs.3,35,000/- along with compensation and punitive damages. The Appellant was not impleaded as a party before the District Forum. The first Respondent also did not make any application for impleading the Appellant as co-respondent. The District Forum allowed the complaint and directed the first Respondent to refund the sum of Rs.11,80,000/- to Respondents 2 and 3 along with interest at 18% p.a. The first Respondent filed an appeal before the State Commission in which he made an application for impleading the Appellant as third Respondent. The said application was allowed by the State Commission and the Appellant was impleaded as a Respondent. The Appellant contested the case by stating that question of fastening any liability against him did not arise. The State Commission allowed the appeal of the first Respondent in part by holding that the Appellant was also liable since the sale deed had been executed jointly by the Appellant and the first Respondent. The State Commission directed the Respondents 2 and 3 to re-convey the property in favour of the Appellant and directed the first Respondent and the Appellant to refund the amount paid by the Respondents 2 and 3. However the interest payable was reduced from 18% to 9% p.a. The National Commission before whom a Revision Petition was filed by the Appellant dismissed the same by the impugned order observing that the builder and owner both are jointly responsible for all omissions and commissions. Aggrieved by the said order the present appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) One of the questions that arose for consideration was whether the Respondent against whom an order for payment has been made in a complaint under the Consumer Protection Act, can in an appeal filed by him, seek impleadment of a third party by contending that such third party is also liable either partly or wholly, even if the Complainant had not sought any relief against such third party. The Court observed

that the Complainants had no grievance against the Appellant nor did they seek any relief against the Appellant. The first Respondent herein who was the sole Respondent before the District Forum did not seek impleadment of the Appellant as a Respondent before the District Forum. The order of the District Forum holding the first Respondent guilty of deficiency in service was not challenged by the Complainants. It was therefore held that the only question that can therefore be considered in an appeal by the first Respondent was whether it was liable to pay the amount to the Respondents 2 and 3 and, if so, the extent thereof. The Court held that the issue in the appeal and the relief that can be granted in the appeal can only be qua the Complainant and not qua some third party.

b) The Court further observed that if a service provider who has been liable to a Complainant wants contribution from anyone else, on the ground that such third party had also contributed to the deficiency in service, it is for the service provider to take independent action against such third party, in respect of the liability.

c) On the argument of the first Respondent that the Appellant did not protest when he was impleaded as third Respondent in the appeal, the Court observed that being impleaded as a party in an appeal is different from being made liable by an order in the appeal. A person may not have any grievance if he is merely impleaded as a party but may have a grievance in regard to the impleading, if such impleading led to making him liable for any payment.

d) The Court set aside the order of the National Commission and the State Commission making the Appellant jointly liable with first Respondent. The appeal was allowed. It was however made clear that if the first Respondent has any claim or cause of action against the Appellant, it is at liberty to seek redressal of its grievances against the Appellant.

e) The order of the State Commission affirmed by the National Commission to the extent that it reduced the interest from 18% to 9% p.a. and requiring Respondents 2 and 3 herein to re-convey the flat to the vendor was not disturbed.

viii) Citation:

AIR 2011 SC 996; II (2011) CPJ 3 (SC).

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(m) LIFE INSURANCE

1. Indirawati Singh Sandhu v. Life Insurance Corporation of India

i) Order appealed against:

From the judgment and order of the National Consumer Disputes Redressal Commission.

ii) Parties:

Indirawati Singh Sandhu - Appellant

versus

Life Insurance Corporation of India - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.7067 of 2011.
Date of Judgment: 16.08.2011.

iv) Case in Brief:

The Appellant's husband, Shri Narender Pal Singh Sandhu, had obtained a policy on 11.08.1993. After 13 days he died. The complaint filed by the Appellant under Section 12 of the Consumer Protection Act, 1986 for issue of a direction to the Respondent to pay the amount specified in the policy was dismissed by the District Forum which relied upon document R-3 produced by the Respondent to show that the deceased had taken treatment as an indoor patient. The District Forum had taken the view that the deceased had concealed the facts relating to his illness and therefore the Complainant was not entitled to claim compensation. The Appeal and the Revision filed by the Appellant were dismissed by the State Commission and National Commission respectively. Aggrieved by the order of the National Commission the present appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 12 and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court, after a reading of the policy, observed that the Appellant's husband late Shri Narender Pal Singh Sandhu son of Shri Risal Singh Sandhu had obtained policy on 11.08.1993 by giving his address

H.No.18, Old Housing Board Colony, Murthal Adda, Sonepat. As against this the certificate produced by the Respondent showed that the same was issued in respect of Narinder Singh son of Sardha Singh resident of H.No.905, Sector 13, Faridabad. In the memo of appeal and revision filed by her, the Appellant had indicated that certificate R-3 does not relate to her husband but neither the State Commission nor the National Commission bothered to consider this aspect of the case and dismissed the appeal and revision filed by her by assuming that the deceased had misrepresented the facts for the purpose of obtaining the policy.

b) Since the orders passed by the District Forum, the State Commission and the National Commission were founded on a document which had no bearing on the decision of the complaint filed by the Appellant the Court held that they were liable to be set aside. Accordingly the impugned order as also the orders of the District Forum and the State Commission were set aside and the matter was remanded to the District Forum for fresh adjudication of the complaint filed by the Appellant.

viii) Citation:

IV (2011) CPJ 1 (SC).

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2. P. Vankat Naidu v. Life Insurance Corporation of India & Anr.

i) Order appealed against:

From the judgment and order of the National Consumer Disputes Redressal Commission.

ii) Parties:

P. Vankat Naidu - Appellant

versus

Life Insurance Corporation of India & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.7437 of 2011.
Date of Judgment: 26.08.2011.

iv) Case in Brief:

P. Srikanth, son of the Appellant, who was a Class I contractor obtained a policy on 28.04.2002 for Rs.10 lakhs. In column 11(A) of the proposal form, the insured had indicated that during the last five years he had not consulted

any medical practitioner for any ailment. The insured died on 19.12.2003 due to cardiac respiratory failure. Being the nominee of the insured, the Appellant submitted claim on 16.04.2004 but did not get any favourable response from the Respondents. He filed a consumer complaint for issuance of a direction to the Respondents to pay the insurance amount with bonus and interest at the rate of 24% p.a. The Respondents contested the claim and pleaded that the Complainant was not entitled to the insurance amount because at the time of taking the policy the insured had suppressed the facts relating to his illness. The District Forum, after considering the pleading and the evidence produced by the parties, allowed the complaint and directed the Respondents to pay Rs.10 lakhs with 12% interest and compensation and cost of Rs.10,000/- each. The State Commission dismissed the appeal filed against the order of the District Forum. The National Commission reversed the concurrent finding recorded by the District Forum and the State Commission observing that the information relating to hospitalization and treatment was specifically sought in the proposal form but it was suppressed by the assured and therefore the insurance company was justified in repudiating the claim. Challenging the said order of the National Commission, the present appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 14(1)(d) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court observed that the District Forum had given a finding that 'in the absence of any other cogent proof as to the said patient's earlier heart ailment or other ailments alleged by the opposite parties, it cannot be taken that the said insurance policy holder P.Srikanth was a chronic heart patient with great risk to life and that was suppressed by the said insured policy holder Srikanth to have an undue advantage in future under that policy. Especially when the Electro Cardiogram Report dated 03.09.2002 of the said insured policy holder P.Srikanth shows no abnormality'.

b) The Court further observed that the State Commission had referred to the evidence of Dr.Shankar Sarma who had treated the assured for abdominal pain and had stated that no evidence was placed by the Appellants to substantiate that the assured was treated for cardiac problem.

c) The Court agreed with the finding recorded by the District Forum and the State Commission that the Respondents had failed to prove that the deceased had suppressed information relating to his illness. According to the Court the said finding was based on correct appreciation of the oral and documentary evidence produced by the parties and the National Commission committed serious illegality by upsetting the said findings on a wholly unfounded assumption that the deceased had suppressed information relating to hospitalization and treatment.

d) The Court observed that since the Respondent had come out with the case that the deceased did not disclose correct facts relating to his illness, it was for them to produce cogent evidence to prove the allegation. Since they did not produce any tangible evidence, it was held that the National Commission was not justified in interfering with the concurrent finding recorded by the District Forum and the State Commission.

e) In the result the appeal was allowed. The impugned order was set aside and the orders passed by the District Forum and the State Commission were restored.

viii) Citation:

IV (2011) CPJ 6 (SC).

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(n) MARINE INSURANCE

1. The New India Assurance Co. Ltd. v. Priya Blue Industries (P) Ltd.

i) Order appealed against:

From the judgment and order dated 19.05.2005 of the National Consumer Disputes Redressal Commission in Original Petition No.129/1998.

ii) Parties:

The New India Assurance Co. Ltd. - Appellant

versus

Priya Blue Industries (P) Ltd. - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.3714 of 2005 with Civil Appeal No.2116 of 2006.
Date of Judgment: 09.03.2011.

iv) Case in Brief:

The Respondent/Complainant was carrying on ship-breaking and scrap-dealing business. It imported to port Alang a very large bulk ore and oil carrier for scrapping (ship-breaking/demolition). The Respondent took a marine insurance policy for hull and machinery for the said vessel after taking possession thereof for the distance between Alang Anchorage and Alang Ship-breaking Yard. The insurance cover was for Rs.25.70 crores. During the "funeral voyage", the vessel was completely damaged and could not be beached at the specified place because of extremely rough weather resulting in total loss. The Respondent claimed an amount of Rs.18.30 crores with interest at 19.5% p.a. along with costs. The Appellant insurance company appointed two Surveyors and the Respondent/Complainant with the acceptance and approval of the Appellant insurance company appointed Tony Fernandez Average Adjusters Pvt. Ltd. as its Surveyor. The Surveyors submitted their reports. But the insurance company did not respond to the calls of the Respondent/Complainant to settle the claim. The Respondent filed a complaint before the National Commission claiming an amount of Rs.18.30 crores and certain other reliefs. The National Commission allowed the complaint vide impugned order and directed the Appellant company to pay a sum of about Rs.13.70 crores with interest as specified. Aggrieved by the said order the present appeal had been filed. The Respondent also filed a cross-appeal. The Appellant insurance company contended that the Respondent/Complainant had suppressed a certain material fact about the defects in the engine and was therefore not entitled to any relief. Both the appeal and the cross-appeal were dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The main contention of the Appellant insurance company was that the Respondent had committed utmost breach of the principle of good faith by not disclosing that one engine of the vessel (viz. starboard engine) was not working. The National Commission after examining the complete correspondence between the parties prior to filing of the complaint and written statement filed before the National Commission had found that at no point of time the insurance company took any

plea or stand that there was any suppression on the part of the Complainant in not disclosing that one engine of the vessel was not functioning. The Court held that the Appellant insurance company did not show any material available on record in support of its contention. Nor could it point out any material or evidence which had a bearing on the issue that had escaped the attention of the Commission. The Court held that the present case is not a case of non-consideration of any evidence available on record by the Commission. The findings and conclusions drawn by the National Commission were based on proper appreciation and elaborate consideration of the entire material on record. The Court further held that the Commission did not commit any error in appreciating the evidence available on record. The Court accordingly rejected the appeal.

b) For the same reasons it was held that there was no merit in the cross-appeal preferred by the Respondent/Complainant.

viii) Citation:

(2011) 4 SCC 231; II (2011) CPJ 15 (SC); 2013(2) CPR 18 (SC); 2015(3) CPR 458 (SC); 2015(4) CPR 474 (SC).

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2. Silversons v. Oriental Insurance Co. Ltd. & Anr.

i) Order appealed against:

From the judgment and order dated 17.11.2003 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Silversons - Appellant

versus

Oriental Insurance Co. Ltd. & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.1451 of 2005.
Date of Judgment: 15.09.2011.

iv) Case in Brief:

The Appellant entered into an agreement with M/s. Allchem Industries Inc. Florida, USA for the supply of Diphenyl Oxide. The goods were to be shipped from Bombay to Norfolk (USA). The Appellant had obtained a marine cargo policy from the Respondent. The container containing the barrels of Diphenyl

Oxide were loaded by the carrier, M/s. Greenways Shipping Agencies Private Limited sometime in November 1993. When the ship reached the Port at Colombo, the container containing Diphenly Oxide was discharged and positioned at Jaya Container Terminal awaiting shipment to the destination. During the course of inspection at the Terminal, it was noticed that there was leakage of chemical from the container. Thereupon the carrier appointed SGF Marine Surveyors to undertake a survey. The Surveyors in their report attributed the cause of leak to sub-standard barrels being used for gaseous chemical (name unknown) where due to accumulation of gas the barrel would have ruptured emanating the gas followed up with the liquid. On receiving the report, the carrier sent a letter dated 18.12.1993 to the Appellant and informed it about the leakage of chemical from the barrels. The container was not reloaded for shipment following some correspondence between the Appellant and the carrier. After about three months the Appellant sent communication dated 14.03.1994 with the insurer informing about the leakage. The claim lodged by the Appellant was repudiated by the insurer on the ground that intimation regarding discharge of the cargo at Colombo Port was given after gap of more than 60 days. Thereupon the Appellant filed complaint under Section 15 of the Consumer Protection Act for award of compensation of Rs.10,44,621/- with interest at the rate of 17%. The State Commission allowed the complaint against the insurer and the carrier and declared that they are jointly and severally liable to compensate the Appellant. Both the insurer and the carrier appealed before the National Commission which reversed the finding recorded by the State Commission on the issue of deficiency in service and relieved the insurer of its obligation to compensate the Appellant on the ground that the insurer did not promptly inform the insurance company as per the requirement of Clause 9 of the Institute Cargo Clauses. Aggrieved by the said order the present appeal had been filed. Appeal dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 15 and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court observed that as per Clause 9 of the Institute of Cargo Clauses 'if owing to circumstances beyond the control of the Assured either the contract of the carriage is terminated at a port or place other than the destination named therein or the transit is otherwise

terminated before delivery of the goods as provided for in Clause 8 above, then the insurance shall also terminate unless prompt notice is given to the under writers and continuation of cover is requested…". The Court held that although the view taken by the National Commission that for availing benefit of the policy, the insured should give intimation to the insurer within 24 hours or 48 hours or at best within 72 hours appears to be too narrow, it would be sufficient if intimation is given to the insurer within a reasonable period. What should be the reasonable period within which the insured should inform the insurer about the loss of goods would depend upon the facts of which case and no strait-jacket formula can be laid down to determine as to what would constitute prompt notice within the contemplation of Clause 9 of the Institute Cargo Clauses. Insofar as this case is concerned, the Court held that the long time gap of almost three months between the date when the Appellant had been informed about discharge of the cargo at Colombo Port and intimation given by the Appellant to the insurer was unreasonable and by no stretch of imagination it could be construed as a prompt notice.

b) The Court held that the conclusion recorded by the National Commission that the insurer was not liable to indemnify the Appellant for the alleged loss of cargo did not suffer from any legal error.

c) In the result, the appeal was dismissed.

viii) Citation:

IV (2011) CPJ 9 (SC).

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(o) MEDICAL NEGLIGENCE

1. P.B. Desai (Dr.) v. State of Maharashtra & Anr.

i) Order appealed against:

From the judgment and order dated 15.10.2012 of the High Court of Judicature at Bombay.

ii) Parties:

P.B. Desai (Dr.) - Appellant

versus

State of Maharashtra & Anr. - Respondents

iii) Case No and Date of Judgment:

Criminal Appeal No.1432 of 2013.

Date of Judgment: 13.09.2013.

iv) Case in Brief:

Smt. Leela Singhi, wife of Shri. Padamchandra Singhi, the Complainant, was suffering from cancer for which she was under treatment since 1977. As her condition deteriorated, she was taken to USA for treatment. The doctors there declared her beyond surgical treatment and she returned on 29.11.1987. One Dr.A.K.Mukherjee administered the medication prescribed by the doctors in USA. Within a few days the patient started suffering from vaginal bleeding because of which Dr.Mukherjee advised for hospitalization. The Appellant who examined her at the hospital advised Exploratory Laparatomy (Surgery) to see whether the patient's uterus can or cannot be removed to stop the vaginal bleeding. Dr.Mukherjee assisted by two other doctors began the Exploratory Laparatomy procedure on 22.12.1987. On opening the abdomen Dr.Mukherjee found plastering of intestines as well as profuse oozing of ascetic fluids. He immediately called the Appellant who was performing another surgery in another theater. The Appellant after seeing the condition of the patient, from a distance, advised Dr.Mukherjee to close the abdomen. The condition of the patient deteriorated afterwards due to the formation of fistula. The patient was discharged from the hospital after three months. But she never recovered and passed away on 26.02.1989. The Complainant filed complaint with the Maharashtra Medical Council alleging acts of omission and commission on the part of the Appellant, punishable under Section 338 of IPC. Dr.Mukherjee was also made an accused in the complaint and the Appellant was charged with abetment under Section 109 of IPC. Later Dr.Mukherjee was dropped from the proceedings at the instance of the Complainant. Meanwhile the Maharashtra Medical Council initiated disciplinary action against the Appellant and issued a warning under Section 22(1) of the Maharashtra Medical Council Act, 1965. The Appellant did not challenge the proceedings and accepted the order of warning. In the criminal case filed against the Appellant, he was sentenced to suffer simple imprisonment till the rising of the Court and to pay Rs.50,000/- by way of compensation and in default to undergo simple imprisonment for three months. The conviction and sentence were upheld by the Additional Sessions Judge and later confirmed by the High Court of Mumbai vide impugned order. Challenging the conviction the present appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Sections 2(1) (g) and (o) of the Consumer Protection Act, 1986; Section 338 and 109 of Indian Penal Code, 1860.

vi) Cases referred:

1. *Faguna Kant Nath v. The State of Assam,* (1959) 2 Suppl. SCR 1. (Referred) [Para 17]
2. *Madan Raj Bhandari v. State of Rajasthan,* (1969) 2 SCC 385. (Referred) [Para 17]
3. *Lambert v. California,* 355 US 225 (1957). (Relied) [Para 26]
4. *Kusum Sharma & Ors. v. Batra Hospital & Medical Research Centre & Ors.,* II (2010) SLT 73=I (2010) CPJ 29 (SC). (Relied) [Para 41]
5. *Jacob Mathews v. State of Punjab & Anr.,* III (2005) CCR 9 (SC)=VI (2005) SLT 1=122 (2005) DLT 83 (SC)=III (2005) CPJ 9 (SC). (Relied) [Para 42]
6. *R. v. Adomako,* (1994) 3 WLR 288. (Relied) [Para 68]

vii) Issues raised and decided:

a) The Court held that the decision of the Appellant advising Exploratory Laparatomy was not an act of negligence, much less wanton negligence and under the circumstances it was a plausible view which an expert like the Appellant could take keeping in view the deteriorating and worsening health of the patient. As a consequence opening of the abdomen and performing the surgery cannot be treated as causing grievous hurt. It could have been only if the doctors would have faltered and acted in rash and gross negligent manner in performing the procedure. It was not so in this case. At the same time his act of omission, afterwards in not doing surgery himself and remaining absent from the scene and neglecting the patient, even thereafter when she was suffering the consequences of fistula is an act of negligence and is definitely blame worthy. However, it was held that the omission is not of a kind which has given rise to criminal liability under the given circumstances. It was also held that it did not entail criminal liability on the Appellant under Section 338 of the IPC. The crime mentioned in Section 338 IPC required proof that the Appellant caused the patient condition to the acute stage. In this case it was held to be not so.

b) The Court also observed that it was not the case of the prosecution that Dr.Mukherjee did not perform the surgery deftly. The surgery could not be completed as on the opening of the abdomen other complications were revealed. This would have happened in any case irrespective whether abdomen was opened by Dr.Mukherjee or by the Appellant himself. On the contrary, the Complainant's own case is that Dr.Mukherjee's performance was not lacking. On the other hand, it was of superlative quality.

c) The Court concluded that though the conduct of the Appellant constituted professional misconduct for which adequate penalty had been meted out him by the Medical Council, and the negligence on his part also amounted to actionable wrong in tort, it did not transcend into criminal liability and in no case makes him liable for offence under Section 338 of IPC, as the ingredients of that provision have not been satisfied.

d) The appeal was allowed and the judgments of the Courts below were set aside.

viii) Citation:

IV (2013) CPJ 63 (SC).

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2. Balram Prasad v. Kunal Saha and Ors.

i) Order appealed against:

From the Judgment and order dated 21.10.2011 of the National Consumer Disputes Redressal Commission in Original Petition No.240/1999.

ii) Parties:

Civil Appeal No.2867 of 2012

Balram Prasad - Appellant

versus

Kunal Saha and Ors. - Respondents

With

Civil Appeal No.692 of 2012

Advanced Medicare and Research Institute Limited - Appellant

versus

Kunal Saha and Ors. - Respondents

With

Civil Appeal No.2866 of 2012

Kunal Saha - Appellant

versus

Sukumar Mukherjee and Ors. - Respondents

With

Civil Appeal No.731 of 2012

Baidyanath Haldar – Appellant

versus

Kunal Saha and Ors. - Respondents

And

Civil Appeal No.858 of 2012

Sukumar Mukherjee – Appellant

versus

Kunal Saha and Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeals No.2867 of 2012 with Nos.692, 2866, 731 and 858 of 2012. Date of Judgment: 24.10.2013.

iv) Case in Brief:

In 1998, Anuradha Saha, a 36 year old US based child psychologist, who was on a visit to India with her husband (claimant), himself a doctor, complained of skin rash and approached Appellant Dr.Sukumar Mukherjee for treatment. Dr.Mukherjee treated her with injection of Depomedrol on the assumption that it was a case of vasculitis. When her condition did not improve she was admitted to the Advanced Medicare and Research Institute (AMRI), Appellant in Civil Appeal No.692 of 2012, for further treatment under Dr.Mukherjee's supervision. In the said hospital, another specialist Dr.Baidyanath Haldar, Appellant in Civil Appeal No.731 of 2012, examined her and found that she was suffering from Toxic Epidermal Necrolysis (TEN). He stopped the use of the steroid Depomedrol and administered another steroid 40 mg of Prednisolone, without considering the harmful effect of Depomedrol already accumulated in the patient's body. Another junior doctor, Dr.Balram Prasad, Appellant in Civil Appeal No.2867 of 2012 allegedly failed to apply his own mind. Despite treatment by several doctors, Anuradha's condition worsened

and she had to be shifted to the Breach Candy Hospital in Mumbai by an air ambulance. Her condition got better for two days but she died later on. Kunal Saha, her husband filed a petition before the NCDRC alleging medical negligence on the part of Dr.Mukherjee, Dr.Haldar and Dr.Prasad and the Appellant hospital and claimed compensation of Rs.77 crores. His complaint was dismissed by the National Commission. He appealed to the Supreme Court which disposed of the same vide *Malay Kumar Ganguly*, (2009) 9 SCC 221, holding that Anuradha's death was caused due to the cumulative effect of giving treatment contrary to the established medical treatment protocols and that the Appellant doctors/hospital were negligent in the treatment of the deceased. The Court remanded the matter to the National Commission to award just and reasonable compensation to the claimant. Before the National Commission, the claimant filed a revised claim of Rs.97 crores. Restricting the determination to the original claim of Rs.77 crores, the National Commission fixed a total compensation Rs.1.7 crores for the medical negligence. However, the National Commission held that the claimant had also contributed to this negligence by his interference during the treatment and hence deducted 10 % from the total compensation awarding an amount of Rs.1.5 crores to the claimant. Aggrieved by the judgment of the National Commission both the claimant as well as the Appellant doctors/hospital had filed the present appeals. The Court awarded a total amount of Rs.6,08,00,550/- as compensation to Dr.Kunal Saha by partly modifying the award granted by the National Commission under different heads with 6% interest p.a. from the date of application till the date of payment. Civil Appeal No.692 of 2012 filed by the Appellant AMRI hospital was dismissed while the other Civil Appeals were partly allowed.

v) Acts and Sections referred:

Sections 2(1), (g), (o), 12, 13, 14, 18, 22 and 23 of the Consumer Protection Act, 1986; Section 45 of Evidence Act, 1872; Section 163A of Motor Vehicles Act, 1988; Or.2 R.2 and Or.41 R.23A and 23 of Civil Procedure Code, 1908; R.14(1)(e) of Consumer Protection Rules; Articles 14, 21, 141 and 142 of the Constitution of India; Section 3 of Interest Act, 1978.

vi) Cases referred:

1. *Time Global Broadcasting Co. Ltd. v. Parshuram Babaram Sawant,* (2014) 1 SCC 703. [Para 69]
2. *Reshma Kumari v. Madan Mohan,* (2013) 9 SCC 65:(2013) 4 SCC (Civ) 191:(2013) 3 SCC (Cri) 826. [Para 29, 20]

3. *Rajesh v. Rajbir Singh,* (2013) 9 SCC 54:(2013) 4 SCC (Civ) 179: (2013) 3 SCC (Cri) 817:(2014) 1 SCC (L&S) 149. [Para 176]

4. *Kavita v. Dipak,* (2012) 8 SCC 604:(2012) 4 SCC (Civ) 558: (2012) 3 SCC (Cri) 997:(2012) 2 SCC (L&S) 711. [Para 72, 107]

5. *A.Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalana Sangam,* (2012) 6 SCC 430:(2012) 3 SCC (Civ) 735. [Para 37]

6. *Santosh Devi v. National Insurance Co. Ltd.,* (2012) 6 SCC 421:(2012) 3 SCC (Civ) 726: (2012) 3 SCC (Cri) 160:(2012) 2 SCC (L&S) 167. [Para 20, 109, 166, 176]

7. *Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira,* (2012) 5 SCC 370:(2012) 3 SCC (Civ) 126. [Para 37]

8. *New India Assurance Co. Ltd. v. Yogesh Devi,* (2012) 3 SCC 613: (2012) 2 SCC (Civ) 385:(2012) 2 SCC (Cri) 215. [Para 20]

9. *National Insurance Co. Ltd. v. Sinitha,* (2012) 2 SCC 356: (2012) 1 SCC (Civ) 881:(2012) 1 SCC (Cri) 659. [Para 20]

10. *MCD v. Uphaar Tragedy Victims Association,* (2011) 14 SCC 481:(2013) 1 SCC (Civ) 897: (2013) 2 SCC (Cri) 555:(2013) 1 SCC (L&S) 305. [Para 33]

11. *Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd.,* (2011) 13 SCC 236:(2012) 3 SCC (Civ) 452: (2012) 1 SCC (Cri) 825. [Para 72, 107]

12. *National Textile Corporation Ltd. v. Nareshkumar Badrikumar Jagad,* (2011) 12 SCC 695:(2012) 2 SCC (Civ) 791. [Para 36]

13. *Sunil Sharma v. Bachitar Singh,* (2011) 11 SCC 425: (2011) 4 SCC (Civ) 251:(2011) 3 SCC (Cri) 206. [Para 20]

14. *Laxman v. Oriental Insurance Co. Ltd.,* (2011) 10 SCC 756: (2012) 3 SCC (Civ) 1095:(2012) 1 SCC (Cri) 108. [Para 70, 72, 103.7, 107, 115]

15. *Govind Yadav v. New India Insurance Co. Ltd.,* (2011) 10 SCC 683:(2012) 3 SCC (Civ) 1082: (2012) 1 SCC (Cri) 82:(2012) 1 SCC (L&S) 422. [Para 72, 84, 99, 107]

16. *Sanjay Batham v. Munnalal Parihar,* (2011) 10 SCC 665: (2012) 3 SCC (Civ) 1072:(2012) 1 SCC (Cri) 64. [Para 43]

17. *Ibrahim v. Raju,* (2011) 10 SCC 634:(2012) 3 SCC (Civ) 1053: (2012) 1 SCC (Cri) 120. [Para 42, 70, 72, 84, 99, 103.8, 107]

18. *Pushpa v. Shakuntala,* (2011) 2 SCC 240: (2011) 1 SCC (Civ) 399:(2011) 1 SCC (Cri) 682. [Para 20]

19. *Raj Kumar v. Ajay Kumar,* (2011) 1 SCC 343: (2011) 1 SCC (Civ) 164:(2011) 1 SCC (Cri) 1161. [Para 72]

20. *Kunal Saha v. Sukumar Mukherjee,* Original Petition No.240 of 1999, order dated 21.10.2011 (NC). [Para 1, 35, 36, 94.7, 100, 129]

21. *Shyamwati Sharma v. Karam Singh,* (2010) 12 SCC 378: (2010) 4 SCC (Civ) 626:(2011) 1 SCC (Cri) 288. [Para 20]

22. *Arvind Kumar Mishra v. New India Assurance Co. Ltd.,* (2010) 10 SCC 254:(2010) 4 SCC (Civ) 153: (2010) 3 SCC (Cri) 1258. [Para 72, 106, 108]

23. *Arun Kumar Agrawal v. National Insurance Co. Ltd.,* (2010) 9 SCC 218:(2010) 3 SCC (Civ) 664: (2010) 3 SCC (Cri) 1313. [Para 20, 175]

24. *V. Kishan Rao v. Nikhil Super Speciality Hospital,* (2010) 5 SCC 513:(2010) 2 SCC (Civ) 460. [Para 79, 118]

25. *Kunal Saha v. Sukumar Mukherjee,* SLP (C) No.15070 of 2010, order dated 17.05.2010 (SC). [Para 14]

26. *S.P. Aggarwal v. Sanjay Gandhi Postgraduate Institute of Medical Sciences,* First Appeal No.478 of 2005, decided on 31.03.2010 (NC). [Para 91]

27. *Usha Rajkhowa v. Paramount Industries,* (2009) 14 SCC 71: (2009) 5 SCC (Civ) 307:(2010) 1 SCC (Cri) 1289. [Para 20]

28. *R.K. Malik v. Kiran Pal,* (2009) 14 SCC 1: (2009) 5 SCC (Civ) 265:(2010) 1 SCC (Cri) 1265. [Para 23, 71, 105]

29. *Ningamma v. United India Insurance Co. Ltd.,* (2009) 13 SCC 710:(2009) 5 SCC (Civ) 241: (2010) 1 SCC (Cri) 1213. [Para 70, 103.1, 114]

30. *Raj Rani v. Oriental Insurance Co. Ltd.,* (2009) 13 SCC 654:(2009) 5 SCC (Civ) 232: (2010) 1 SCC (Cri) 1171. [Para 20, 70, 103.6, 115]

31. *Rani Gupta v. United India Insurance Co. Ltd.,* (2009) 13 SCC 498:(2009) 5 SCC (Civ) 172: (2010) 1 SCC (Cri) 1080. [Para 20]

32. *Reshma Kumari v. Madan Mohan,* (2009) 13 SCC 422: (2009) 5 SCC (Civ) 143:(2010) 1 SCC (Cri) 1044. [Para 20, 84, 98, 99, 124]

33. *National Insurance Co. Ltd. v. Meghji Naran Soratiya,* (2009) 12 SCC 796:(2009) 4 SCC (Civ) 846: (2010) 1 SCC (Cri) 750. [Para 20]

34. *Oriental Insurance Co. Ltd. v. Angad Kol,* (2009) 11 SCC 356: (2009) 4 SCC (Civ) 535:(2009) 3 SCC (Cri) 1371. [Para 20]

35. *Malay Kumar Ganguly v. Sukumar Mukherjee,* (2009) 9 SCC 221:(2009) 3 SCC (Civ) 663: (2010) 2 SCC (Cri) 299. [Para 5, 13, 22, 44, 45, 51, 67.4, 70, 75, 76, 79, 83, 89, 101, 103.2, 105, 113, 115, 118, 133, 134, 135, 136, 137, 140, 142, 143, 144, 146, 147, 152, 153, 154, 155, 157, 158, 178]

36. *Thazhathe Purayil Sarabi v. Union of India,* (2009) 7 SCC 372: (2009) 3 SCC (Civ) 133:(2009) 3 SCC (Cri) 408. [Para 86, 129]

37. Postgraduate Institute of Medical Education & Research v. Jaspal Singh, (2009) 7 SCC 330:(2009) 3 SCC (Civ) 114: (2009) 3 SCC (Cri) 399. [Para 79, 118]

38. *Sarla Varma v. DTC,* (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770:(2009) 2 SCC (Cri) 1002. [Para 20, 29, 32, 74.5, 80, 108, 118, 122, 124, 164, 166, 176]

39. *Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka,* (2009) 6 SCC 1:(2009) 2 SCC (Civ) 688. [Para 21, 26, 43, 69, 70, 75, 79, 80, 92, 103.3, 112, 118, 123, 135, 179, 180]

40. *Destruction of Public & Private Properties v. State of A.P.,* (2009) 5 SCC 212:(2009) 2 SCC (Civ) 451:(2009) 2 SCC (Cri) 629. [Para 87]

41. *National Insurance Co. Ltd. v. Mahadevan,* (2009) ACJ 1373 (Mad). [Para 175]

42. *Laxmi Devi v. Mohd. Tabbar,*
(2008) 12 SCC 165:(2009) 1 SCC (Cri) 336. [Para 20]

43. *Oriental Insurance Co. Ltd. v. Jashuben,*
(2008) 4 SCC 162:(2008) 2 SCC (Cri) 752. [Para 9, 23, 70, 99, 103.4, 115]

44. *APSRTC v. M. Ramadevi,* (2008) 3 SCC 379:
(2008) 1 SCC (Civ) 884:(2008) 2 SCC (Cri) 42. [Para 20]

45. *State of Punjab v. Jalour Singh,* (2008) 2 SCC 660:
(2008) 1 SCC (Civ) 669:(2008) 1 SCC (Cri) 524:
(2008) 1 SCC (L&S) 535. [Para 20]

46. *Samira Kohli v. Prabha Manchanda,*
(2008) 2 SCC 1:(2008) 1 SCC (Civ) 421. [Para 79, 118]

47. *State of Punjab v. Shiv Ram,* (2005) 7 SCC 1. [Para 79, 118]

48. *Amar Singh Thukral v. Sandeep Chhatwal,*
(2004) 112 DLT 478. [Para 175]

49. *Captain Singh v. Oriental Insurance Co. Ltd.,*
(2004) 112 DLT 417. [Para 175]

50. *Savita Garg v. National Heart Institute,* (2004) 8 SCC 56.
[Para 76, 79, 118, 138, 139]

51. *Chandra Singh v. Gurmeet Singh,* (2003) 7 AD 222 (Del). [Para 175]

52. *Abati Bezbaruah v. Geological Survey of India,*
(2003) 3 SCC 148:2003 SCC (Cri) 746. [Para 20, 108]

53. *Nagappa v. Gurudayal Singh,*
(2003) 2 SCC 274:2003 SCC (Cri) 523. [Para 39, 43, 103.6]

54. *Krishna Gupta v. Madan Lal,* (2002) 96 DLT 829. [Para 175]

55. *J.J. Merchant v. Shrinath Chaturvedi,* (2002) 6 SCC 635. [Para 79, 118]

56. *United India Insurance Co. Ltd. v. Patricia Jean Mahajan,*
(2002) 6 SCC 281:2002 SCC (Cri) 1294. [Para 11, 24, 30, 74.3, 121, 163]

57. *Dardinger v. Anthem Blue Cross & Blue Shield,*
98 Ohio St 3d 77:781 NE 2d 121 (2002). [Para 87]

58. *Lata Wadhwa v. State of Bihar,* (2001) 8 SCC 197. [Para 33, 88, 175]

59. *M.S. Grewal v. Deep Chand Sood,*
(2001) 8 SCC 151:2001 SCC (Cri) 1426. [Para 33]

60. *Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala,* (2001) 5 SCC 175:2001 SCC (Cri) 857. [Para 20]

61. *Charan Singh v. Healing Touch Hospital,* (2000) 7 SCC 668:2000 SCC (Cri) 1444. [Para 77, 79, 83, 118]

62. *Welch v. Epstein,* 342 SC 279:536 SE 2d 408 (Ct App 2000). [Para 87]

63. *Spring Meadows Hospital v. Harjol Ahluwalia,* (1998) 4 SCC 39. [Para 79, 118, 138]

64. *Paschim Banga Khet Mazdoor Samity v. State of W.B.,* (1996) 4 SCC 37. [Para 183]

65. *Sarla Dixit v. Balwant Yadav,* (1996) 3 SCC 179. [Para 20, 108]

66. *Achutrao Haribhau Khodwa v. State of Maharashtra,* (1996) 2 SCC 634. [Para 138]

67. *Indian Medical Association v. V.P.Shanta,* (1995) 6 SCC 651. [Para 68, 74.5, 79, 111, 118, 165]

68. *R.D. Hattangadi v. Pest Control (India) (P) Ltd.,* (1995) 1 SCC 551:1995 SCC (Cri) 250. [Para 70, 103.2, 103.5, 115, 179]

69. *Kerala SRTC v. Susamma Thomas,* (1994) 2 SCC 176:1994 SCC (Cri) 335. [Para 20, 31, 108, 121]

70. *Landgraf v. USI Film Products,* 128 L Ed 2d 229:511 US 244 (1994). [Para 87]

71. *National Insurance Co. Ltd. v. Swaranlata Das,* 1993 Supp (2) SCC 743:1993 SCC (Cri) 788. [Para 20]

72. *R v. Yogasekaran,* (1990) 1 NZLR 399 (CA). [Para 137]

73. *A. Rajam v. M. Manikya Reddy,* 1989 ACJ 542 (AP). [Para 175]

74. *Lim Poh Choo v. Camden and Islington Area Health Authority,* 1980 AC 174:(1979) 3 WLR 44:(1979) 2 All ER 910 (HL). [Para 177]

75. *Cookson v. Knowles,* 1979 AC 556:(1978) 2 WLR 978:(1978) 2 All ER 604 (HL). [Para 130]

76. *Mehmet v. Perry,* (1977) 2 All ER 529 (DC). [Para 175]

77. *Regan v. Williamson,* (1976) 1 WLR 305:(1976) 2 All ER 241. [Para 175]

78. *Smith v. Middleton,* 1972 SC 30. [Para 130]

79. *Berry v. Humm & Co.* (1915) 1 KB 627. [Para 175]

80. *Livingstone v. Rawyards Coal Co.,* (1880) LR 5 AC 25 (HL). [Para 101]

vii) Issues raised and decided:

a) The issues raised by the Claimants/Respondents and the decisions of the Court thereon are discussed below:

i) The amount of compensation under different heads decided by the National Commission is inadequate. The Commission had failed to consider the devaluation of money as a result of "inflation" for awarding higher compensation that was sought for in 1998.

The Court held that the claim had been pending before the National Commission and the Supreme Court for the last 15 years and therefore the rejection of the claim for "inflation" made by the Appellant without assigning any reason was improper. Using the Cost Inflation Index (CII) determined by the Finance Ministry every year, the Court held that the original claim of Rs.77 crores preferred by the Claimant in 1998 would be equivalent to Rs.188.6 crores as of 2013 and therefore just, fair and reasonable compensation had to be determined. The Court held that the decision of the National Commission in confining the grant of compensation to the original claim of Rs.77 crores and awarding meagre compensation under different heads is wholly unsustainable in law as the same is contrary to settled legal principles.

ii) The National Commission did not take into consideration the status, educational qualifications, future prospects and standard of living of the deceased in US to determine just compensation. The US based economics expert Prof. John F. Burke, in his evidence, had stated that the direct loss of income of the deceased on account of her premature death would amount to 5 million and 125 thousand US dollars.

The Court noted that the deceased was a graduate from a highly prestigious Ivy League School in New York and had a brilliant future ahead of her. The National Commission had erred in calculating the entire compensation and prospective loss of income solely based on a pay receipt showing a paltry income of only $30,000 per year which she was earning as a graduate student. The Court noted that the above noted amount was not from a regular source of income and she would have earned a lot more had it been a regular source of income. The Court, while holding that the estimate given by Prof. Burke cannot be taken to be the income of the deceased, held that it would be just and proper to take her earning at $40,000 p.a. on a regular job. Further 30%

should be added to this annual income towards the future loss of income of the deceased. Also, based on the law laid down by the Supreme Court in a catena of cases, 1/3rd of the total income was required to be deducted under the head of personal expenditure of the deceased to arrive at the multiplicand.

iii) The National Commission was not justified in using the multiplier method under Section 163A r/w. Second Schedule of the Motor Vehicles Act, 1988 for determining compensation for medical negligence cases.

The Court held that a straitjacket multiplier method cannot be adopted for determining the compensation and in many cases the Court had relied upon the quantum of the multiplicand to choose the appropriate multiplier. Estimating the life expectancy of a healthy person in the present age as 70 years, it was held that the compensation should be awarded by multiplying the total loss of income by 30. The Court also held that it would be prudent to hold the current value of Indian rupee at a stable rate of Rs.55 per $1. Therefore under the head "loss of income of the deceased", it was held that the Claimant is entitled to an amount of Rs.5.72 crores which is calculated as [$40,000+(30/100x$40,000)-(1/3x$52,000)x30xRs.55]=Rs.5,72,00,550/-.

iv) The Claimant is entitled to pecuniary damages under the heads "loss of income for missed work", "travelling expenses from US to India over the past 12 years" and "legal expenses including advocate fees" etc. The Claimant is also entitled to non-pecuniary damages to the extent of Rs.31.5 crores under the heads "loss of consortium", "emotional distress, pain and suffering of the Claimant husband", "pain and suffering endured by the deceased during her treatment".

After analyzing the evidence and record produced by the Claimant, the Court allowed a compensation of Rs.10 lakhs under the head "travel expenses over the past 12 years" and Rs.1.5 lakhs under the head "legal expenses". The Court enhanced the compensation under the head medical expenses of the deceased from Rs.5 lakhs to Rs.7 lakhs. The Court also enhanced the compensation of travel and expenses at Mumbai for the treatment from Rs.1 lakh awarded by the National Commission to Rs.1.5 lakhs. However, the amount of Rs.5 lakhs awarded by the National Commission under the head of "cost of chartered flight" was upheld. Acknowledging that the deceased had gone through immense pain, mental agony and suffering in the course of the treatment of his wife whose life could not be saved, a lump sum amount of Rs.10 lakhs was awarded, following *Nizam's Institute of Medical Sciences*, under the head of "pain and suffering of the Claimant's wife during the course of

her treatment". Loss of consortium was awarded at Rs.1 lakh. No compensation was awarded under the head of "emotional distress, pain and suffering for the Claimant" himself since this claim bore no direct link with the negligence caused by the Appellant doctors and the hospital in treating the Claimant's wife.

v) The National Commission failed to award any interest for the long period of 15 years as the case of pending before the judicial system in India.

The Court held that the National Commission was most unreasonable in not awarding any interest on the compensation amount. The Court awarded interest at the rate of 6% p.a. from the date of complaint till the date of payment of compensation.

b) The contentions of the Appellant doctors/hospital and the decisions of the Court are as follows:

(i) The compensation amount as fixed by the National Commission is excessive and too harsh and that the proportion of liability on each of them is unreasonable.

The Court held that the National Commission erred in holding that the Claimant had contributed to the negligence of the Appellant doctors and hospital which resulted in the death of his wife when the Supreme Court in *Malay Kumar Ganguly* case clearly absolved the Claimant of such liability and remanded the matter back to the National Commission only for the purpose of determining the quantum of compensation. The Court held that the Claimant had not contributed to the negligence of the doctors and hospital. On the other hand the Court held that the Appellant Dr.Mukherjee, a senior doctor who was in charge of the treatment of the deceased had shown utmost disrespect to his profession by being casual in his approach in treating the patient. Moreover, on being charged with the liability, he attempted to shift the blame on other doctors. The Appellant, Dr.Haldar, also a senior doctor of high repute, had conducted the treatment to the Claimant's wife with utmost callousness which led to her unfortunate demise. The Appellant, Dr.Prasad, a junior doctor, was an independent medical practitioner with a postgraduate degree. But he stood as a second fiddle and perpetuated the negligence in giving treatment to the Claimant's wife. Though he was negligent in treating the Claimant's wife as the attending physician of the hospital, being a junior doctor his contribution to the negligence was held to be far less than the senior doctors involved. The Court accordingly directed that Dr.Mukherjee and Dr.Haldar should pay a compensation Rs.10 lakhs each to the Claimant while

Dr.Prasad was directed to pay Rs.5 lakhs. The Court further held that the Appellant hospital (AMRI) is vicariously liable for its doctors, as was held in *Savita Garg's* case. The Court directed the Appellant hospital to pay the total amount of compensation with interest awarded in the appeal of the Claimant which remained due after deducting Rs.25 lakhs payable by the Appellant doctors.

(ii) In the absence of any amendment to the pleadings in the claim petition, the enhanced claim made by the Appellant cannot be examined for grant of compensation under different heads.

The Court held that the National Commission's view, that the additional claim was not supported by pleadings by filing an application to amend the same regarding the quantum of compensation and the same could not have been amended as it is barred by limitation provided under Section 23 of the CP Act and that the Claimant is not entitled to seek enhanced compensation in view of Order 2 Rule 2 CPC, is not sustainable in law. The Court held that it was the duty of the tribunals, commissions and courts to consider relevant facts and evidence in respect of facts and circumstances of each and every case for awarding just and reasonable compensation. The Court further observed that the Supreme Court has got the power under Article 136 of the Constitution and the duty to award just and reasonable compensation to do complete justice to the affected Claimant.

c) The Court accordingly partly allowed the Civil Appeal No.2867 of 2012 filed by Dr.Balram Prasad, Civil Appeal No.858 of 2012 filed by Dr.Sukumar Mukherjee and Civil Appeal No.731 of 2012 filed by Dr.Baidyanath Haldar by modifying the judgment of the National Commission on the amount of compensation payable by them. Civil Appeal No.2866 of 2012 filed by the Claimant Dr.Kunal Saha was partly allowed and the finding of contributory negligence on his part by the National Commission was set aside. Civil Appeal No.692 of 2012 filed by the Appellant AMRI hospital was dismissed. The total compensation payable was enhanced from Rs.1,34,66,000/- to Rs.6,08,00,550/- with 6% interest p.a. from the date of complaint to the date of payment to the Claimant. The hospital was directed to pay the amount after deducting the amount fastened upon the doctors in this judgment.

viii) Citation:

IV (2013) CPJ 1 (SC); 2013(4) CPR 284 (SC); (2014) 1 SCC 384.

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3. Mrs. Kanta v. Tagore Heart Care & Research Centre Pvt. Ltd. & Anr.

i) Order appealed against:

From the order dated 27.05.2011 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Mrs. Kanta - Appellant

versus

Tagore Heart Care & Research Centre Pvt. Ltd. & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.6284 of 2014 [Arising out of Special Leave Petition (Civil) No.18367 of 2012].

Date of Judgment: 10.07.2014

iv) Case in Brief:

The Complainant/Appellant who suffered acute chest pain consulted Dr.Raman Chawla (Respondent No.2) attached to Tagore Heart Care & Research Centre Pvt. Ltd. (Respondent No.1) who performed angiography on the Complainant on 02.09.1999. It was the Complainant's case that she was allergic to almost all the antibiotics except few, that the angiography was not done at the scheduled time but was performed in the afternoon. During the procedure she felt severe pain in the abdomen but Dr.Chawla ignored the same and continued with the procedure. The angiogram showed LAD artery blockage to the extent of 95%. It was alleged that though the consent of her son was taken for performance of PTCA or angioplasty for removal of the blockage, yet it was given up midway after about 15-20 minutes on the pretext that she was allergic to many drugs. On 03.09.1999 another consultant, Dr.Suri, who examined her along with Dr.Chawla found that pulse of her right leg was practically absent and allegedly reprimanded Dr.Chawla. The Complainant was discharged from the Research Centre after which she was admitted in Escorts Heart Institute of Dr.Trehan on 13.09.1999. Another angiography was done followed by angioplasty on 18.10.1999. Dr.Trehan had opined that aorta dissection had taken place during the angiography procedure done by Dr.Chawla and that was iatrogenic in nature. The Complainant alleged medical negligence on the part of Dr.Chawla because of which she was forced to take further treatment and incur heavy expenditure at Escorts Heart Institute. She filed complaint before the State Commission praying for

compensation from Dr.Chawla and Respondent No.1. The State Commission came to the conclusion that aortic dissection occurred during the angiography conducted by Dr.Chawla when he forced the catheter through artery in a negligent manner and granted compensation of Rs.5 lakhs. On appeal by the Respondents, the National Commission set aside the finding of the State Commission. Aggrieved by the said order the present appeal had been filed. Appeal dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The National Commission had observed that undisputedly the Complainant had suffered aorta dissection as was confirmed by CT scan and MRI conducted on 03.09.1999. The question was whether it was the direct result of any negligent or rash act committed by Dr.Chawla while conducting the angiography. From the entries made in the discharge summary, the Commission did not find that there was any emergency to treat the aortic dissection. Aortic dissection came to be noticed beyond all reasonable doubt on 03.09.1999. The Complainant was not operated upon. The Commission observed that in case of acute aortic dissection, emergency open heart surgery is required. However, in case of sub-acute aortic dissection treatment with medication may be sufficient. The Commission found sufficient material to come the conclusion that the Complainant was found stable after third day of angiography and till the date of discharge on 08.09.1999. The Commission did not find anything on record to show that Dr.Chawla used any brutal force to push the catheter. The Commission found that the Complainant did not have a serious aorta dissection but was having sub-acute aorta dissection and that was the reason that she was subjected to clinical management. The Commission noted that Dr.Chawla is duly qualified and has good academic credentials. The Commission did not find his conduct to be below the normal standard of a reasonably competent practitioner in his field.

b) The Court agreed with the finding of the National Commission and held that the Complainant had not been able to prove medical

negligence on the part of Dr.Chawla. The appeal was accordingly dismissed as devoid of merit.

viii) Citation:

AIR 2014 SC 3355; III (2014) CPJ 3 (SC).

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4. Alfred Benddict & Anr. v. Manipal Hospital, Bangalore & Ors.

i) Order appealed against:

From the judgment and order dated 22.05.2013 of the National Consumer Disputes Redressal Commission in First Appeal No.275 of 2007.

ii) Parties:

Alfred Benddict & Anr. - Appellants/Respondents

versus

Manipal Hospital, Bangalore & Ors. - Respondents/Appellants

iii) Case No and Date of Judgment:

Civil Appeal Nos.7620-7621 of 2014.
Date of Judgment: 11.08.2014.

iv) Case in Brief:

The Complainants took their two year old daughter who was suffering from normal cold and cough to Dr.Arvind Shenoy, Consultant Pediatric, who after giving treatment for a few days, advised for her admission to M/s.Manipal Hospital, Bangalore. On admission she was taken to pediatric intensive care unit and diagnosed as suffering from cold and cough as well as from pneumonia. She was given intravenous fluids by inserting needle on the dorsal aspect of right wrist from August 26, 2002 to August 28, 2002. However the baby developed gangrene initially in the finger tips, which spread to the portion of the hand below wrist joint, due to blockage of blood supply. It was alleged by the Complainants that the doctors conducted angiogram and confirmed that there was complete blockage of blood supply to the right forearm and they conducted operation on the right forearm to restore blood supply but the same could not be restored and eventually the child had to lose her right forearm. It was alleged that the Complainants, thereafter, came to know that the needle was wrongly inserted into artery instead of vein due to which the blood supply was blocked. It was further alleged that though the Complainants/parents did not agree for the amputation of the child, the

Vascular Surgeon of the Hospital, Dr.Vasudeva Rao threatened them and forced them to give their consent for amputation of the child on the pretext that any delay would endanger the child. Alleging medical negligence, they filed complaint before the Karnataka State Consumer Disputes Redressal Commission praying for a compensation of Rs.1 crore. Allowing the complaint and recording a finding of negligence against the staff of the hospital, the State Commission awarded a compensation of Rs.5 lakhs. Aggrieved by the order, both the parties filed separate appeals before the National Commission. The National Commission affirmed the quantum of compensation and directed to pay a further sum of Rs.10,000/- to the Complainants towards the cost. Assailing the said order, the Appellant/Manipal Hospital in Civil Appeal arising out of SLP (C) CC.No.12025 of 2014 has filed the present appeal challenging the compensation of Rs.5 lakhs and the Complainants in Civil Appeal arising out of SLP (C) No.35632 of 2013 have filed the appeal for increase in compensation. The Civil Appeal filed by the Hospital was dismissed while the appeal filed by the Complainants was allowed by enhancing the compensation to Rs.20 lakhs.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *Jacob Mathew v. State of Punjab,* (2005)3 R.C.R Criminal 836:(2005)6 SCC 1. [Para 10]
2. *Indian Medical Association v. V.P. Shantha,* (1995) 6 SCC 651. [Para 10]

vii) Issues raised and decided:

a) The Court noted that the National Commission, on the basis of medical texts and reviews on the arterial annulation, had held that not maintaining proper records of invasive procedures, charts, graphs etc. is deficiency in medical treatment. Moreover the doctors from the Appellant hospital had not been able to explain how the gangrene of right hand occurred. It was therefore held that the instant case is case of *res ipsa loquitur* where medical negligence is clearly established and for which OPs are liable. The Court did not find any reason to differ with the finding of the National Commission.

b) However, taking into consideration the suffering of a girl child who is 13 years of age (in 2014), it was held that the compensation awarded

by the Commission was on the lower side. The Court observed that the girl will have to suffer throughout her life and live with an artificial limb. Not only she would have to face difficulty in her education but would have also to face problem in getting herself married. The Court observed that although the sufferings, agony and pain which the girl child will carry cannot be compensated in terms of money, in their Lordships' view, a compensation of Rs.20 lakhs would be just and reasonable in order to meet the problems being faced by her and also to meet future troubles that will arise in her life.

c) The appeal filed by the Complainants/Parents was therefore allowed by enhancing the compensation to Rs.20 lakhs which will carry simple interest of 9% p.a. from the date of the order. It was directed that out of the total compensation a sum of Rs.10 lakhs shall be deposited in a long term fixed deposit in a nationalized bank so that this amount, along with interest that may accrue, shall take care of her future needs. A sum of Rs.5 lakhs was to be spent on further medical treatment and the remaining sum of Rs.5 lakhs will be invested in a short term fixed deposit so that this amount with interest will take care of her needs in the near future.

d) The appeal filed by the hospital was dismissed.

viii) Citation:

I (2017) CPJ 8 (SC).

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5. V. Krishnakumar v. State of Tamil Nadu & Ors.

i) Order appealed against:

From the order dated 27.05.2009 in OP.No.57/1998 of the National Consumer Disputes Redressal Commission.

ii) Parties:

V. Krishnakumar - Appellant

versus

State of Tamil Nadu & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.8065 of 2009 with Civil Appeal No.5402 of 2010.
Date of Judgment: 01.07.2015.

iv) Case in Brief:

The Appellant's wife delivered a premature female baby in the 29th week of pregnancy at the Government Hospital for Women and Children, Egmore, Chennai. The baby weighed only 1250 gms. at birth and was placed in an incubator in intensive care unit for about 25 days. The baby was administered 90-100 percent oxygen at the time of birth and underwent blood exchange transfusion a week after birth. She was under the care of Dr.S.Gopaul, Neo-paediatrician (Respondent No.3) and Dr.Duraiswamy (Respondent No.4) of the Neo Natology unit. The mother and baby were discharged on 23.09.1996. They visited the hospital again on 30.10.1996 when the baby was 9 weeks old. The baby was under the care of Respondent No.4 who administered follow up treatment at home. Respondent No.3 checked up the baby at his private clinic when the baby was 14-15 weeks of age. Both the doctors had overlooked a well known medical phenomenon that a premature baby who was administered supplemental oxygen and had been given blood transfusion is prone to a higher risk of a disease known as the Retinopathy of Prematurity (ROP), which in the usual course of advancement through five stages makes the child blind at the terminal stage. In the present case ROP was discovered when the appellant took his daughter to a paediatrician in Mumbai who suspected ROP on an examination with naked eye even without knowing the baby's history. The appellant subsequently consulted several Ophthalmologists and on a reference from Dr.Badrinath of Shankar Netralaya took the child to US hoping for cure but to no avail since the child had reached stage five well before the appellant took her to US. A case of medical negligence was filed. The National Commission rendered a finding of medical negligence against the State of Tamil Nadu, its Government Hospital and two doctors and awarded sum of Rs.5 lakhs to the appellant. Civil Appeal No.8065 of 2009 was preferred by V.Krishnakumar for enhancement of compensation while Civil Appeal No.5402 of 2010 was preferred by the State of Tamil Nadu and another against the Judgment of NCDRC. Civil Appeal No.8065 of 2009 was allowed and Civil Appeal No.5402 of 2010 was dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 14(1)(d) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *Roe v. Minister of Health,* 1954(2) QB 66. (Relied) [Para 10]
2. *Balram Prasad v. Kunal Saha,* IV (2013) CPJ 1 (SC)=VIII (2013) SLT 513=IV (2013) ACC 378 (SC). (Relied) [Para 16]

3. *Nizam's Institute of Medical Sciences v. Prashant S. Dhananka and Others,* II (2009) CPJ 61 (SC)=III (2010) SLT 734. (Relied) [Para 16]
4. *Malay Kumar Ganguly v. Sukumar Mukherjee,* III (2009) CPJ 17 (SC)=VI (2009) SLT 164. (Relied) [Para 17]
5. *Spring Meadows Hospital and Another v. Harjol Ahluwalia,* I (1998) CPJ 1 (SC)=III (1998) SLT 684. (Relied) [Para 20]
6. *Wells v. Wells,* 1999 (1) AC 345. (Relied) [Para 22]
7. *Jones & Laughlin Steel Corporation v. Pfeifer,* (1983) 462 US 523. (Relied) [Para 24]
8. *O'Shea v. Riverway Towing Company,* (1982) 677 F(2d) 1194 (7th Cir.). (Relied) [Para 24]
9. *Taylor v. O'Connor,* 1971 AC 115. (Relied) [Para 24]
10. *Simon v. Helmot,* 2012 UKPC 5. (Relied) [Para 24]
11. *Savita Garg v. National Heart Institute,* IV (2004) CPJ 40 (SC)=VI (2004) SLT 385. (Relied) [Para 27]
12. *Achutrao Haribhau Khodwa v. State of Maharashtra,* IV (2006) CPJ 8 (SC)=1996 (SLT SOFT) 1000=I (1996) CLT 532 (SC). (Relied) [Para 27]

vii) Issues raised and decided:

a) The Supreme Court observed that there was ample medical literature on the subject of ROP and that applying either parameter, weight or gestational age, the child ought to have been screened since she was a high risk candidate for ROP. The main defence of the Respondents to the complaint of negligence was that at the time of delivery and management, no deformities were manifested and the Complainant was given proper advice which was not followed. The entries in the discharge summary "Mother confident; Informed about alarm signs: (1) to continue breast feeding (2) to attend post-natal O.P. on Tuesday" were cited by the Respondents as evidence that they had taken sufficient precautions. The Court noted that the above entries were in the nature of a scrawl in the corner of the discharge summary and agreed with the finding of NCRDC that the said remarks were only a hastily written warning and nothing more. The discharge summary neither disclosed the warning to the parents that the infant might develop ROP against which certain precautions must be taken nor any sign that the doctors were themselves cautious of the dangers of development of ROP.

b) The Court noted that NCDRC had called for and obtained a report from the All India Institute of Medical Sciences, New Delhi (AIIMS) regarding the case. AIIMS had constituted a medical board consisting of five members of which four were ophthalmological specialists. The report mentioned that ROP starts developing 2 to 4 weeks after birth when it is mandatory to do the first screening of the child.

c) The Court confirmed the finding of medical negligence and deficiency in service on the part of Respondents. The Court noted that Respondents 3 and 4 had not appealed against the Judgment of NCDRC and had thus accepted the finding of medical negligence against them.

d) The Court observed that the principle of awarding compensation that can be safely relied on is *restitutio in integrum* recognized in *Malay Kumar Ganguly v. Sukumar Mukherjee*, according to which the aggrieved person should get that sum of money which would put him in the same position if he had not sustained that wrong. It must necessarily result in compensating the aggrieved person for the financial loss suffered due to the event, the pain and suffering undergone and the liability that he/she would have to incur due to the disability caused by the event.

e) The Court computed that the past medical expenses came to Rs.42,87,921/- and directed that Respondents 1 and 2 should pay Rs.40 lakhs jointly along with interest at 6% p.a. from the date of filing before the NCDRC and Respondents 3 and 4 should pay Rs.2,87,921/- in equal proportion along with interest at 6% p.a.

f) The Court arrived at the future medical expenses, taking into account annual inflation, at Rs.1,38,00,000/- and directed that Respondents 1 and 2 should jointly and severally pay Rs.1,30,00,000/- and Respondents 3 and 4 should pay Rs.4 lakhs each to the appellant within three months from the date of Judgment.

g) Both the appeals were disposed of accordingly.

viii) Citation:

AIR 2015 SC 2836; (2015) 9 SCC 388; III (2015) CPJ 15 (SC);

2015(3) CPR 104 (SC); 2016(1) CPR 443 (SC).

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6. Sheela Hirba Naik Gaunekar v. Apollo Hospitals Ltd.

i) Order appealed against:

From the judgment and order dated 13.05.2005 in Original Petition No.103 of 1997 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Sheela Hirba Naik Gaunekar - Appellant/Respondent

versus

Apollo Hospitals Ltd. - Respondent/Appellant

iii) Case No and Date of Judgment:

Civil Appeal No.3625 of 2005 and Civil Appeal No.4408 of 2005.
Date of Judgment: 05.10.2016.

iv) Case in Brief:

Complainant's husband, Mr.Gaunekar, underwent angioplasty treatment in the Apollo Hospital Limited, Chennai on 14.05.1996. He died of a heart attack on 18.05.1996. The Complainant filed a claim petition before the National Commission alleging medical negligence on the part of the hospital and its doctors and claimed a compensation of Rs.70 lakhs. The Commission, after examining the evidence and going through the records, came to the conclusion that there was negligence on the part of the Respondent Hospital and awarded an amount of Rs.2 lakhs along with interest at 6% p.a. as compensation. Both the parties have filed Civil Appeals before the Apex Court, the Hospital challenging the finding of negligence and the award of compensation and the Complainant seeking enhancement of compensation. Civil Appeal No.3625 of 2005 filed by the Complainant-wife was allowed and Civil Appeal No.4408 of 2005 filed by the Hospital was dismissed. The compensation payable by the hospital was enhanced to Rs.50 lakhs with interest at 9% p.a. of which Rs.10 lakhs was ordered to be paid by the doctor who performed the surgery.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 14(1)(d) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *Sarla Verma (Smt) & Ors. v. Delhi Transport Corporation & Anr.,* 162 (2009) DLT 278 (SC)=VI (2009) SLT 663 =III (2009) ACC 708 (SC). (Relied) [Para 7]

2. *Balram Prasad v. Kunal Saha & Ors.,* IV (2013) ACC 378 (SC) =VIII (2013) SLT 513=IV (2013) CPJ 1 (SC). (Relied) [Para 7]

3. *Municipal Corporation of Delhi v. Uphaar Tragedy Victims Association & Ors.,* VII (2011) SLT 757=IV (2011) ACC 382 (SC) =IV (2011) CPJ 74 (SC)=IV (2011) CLT 204 (SC). (Relied) [Para 8]

vii) Issues raised and decided:

a) The Court, after going through the impugned order and judgment as well as the evidence on record including the cross-examination of Dr.Mathews Samuel Kalarickal, who performed the surgery, held that the finding recorded by the National Commission that there was medical negligence on the part of the hospital in not taking proper post-operative care of the deceased, is based on legal and substantive evidence on record. The Court did not find any error, much less any perversity, in the findings recorded by the Commission so as to interfere with the impugned order in exercise of the appellate jurisdiction of the Court under Article 136 of the Constitution of India. Therefore, Civil Appeal No.4408 of 2005 filed by the Apollo Hospital was held to be liable to be dismissed and was accordingly dismissed.

b) The Court noted that according to the income tax return filed by the deceased during the financial year in which the death had occurred, the annual income of the deceased was Rs.5 lakhs p.a. Deducting one third of that amount towards personal expenses of the deceased, the balance comes to Rs.3,33,000/- (approximately). As on the date of death, the deceased was aged 60 years. In terms of Motor Vehicles Act, 1988 and the decision of the Court in *Sarla Verma (Smt) v. Delhi Transport Corporation and Anr,* the appropriate multiplier in the instant case is 9. Thus, the annual loss of dependency comes to Rs.29,70,000/-. Having regard to the fact that the incident occurred in the year 1996 and litigation had been going on for nearly 20 years, it was held that the ends of justice would be met if Rs.40 lakhs is awarded as compensation. Having further regard to the suffering of the Complainant on account of mental agony, loss of head of the family, loss of consortium and loss of love and affection, the Court deemed it fit to award a further consolidated amount of Rs.10 lakhs under the above mentioned heads, in accordance with the principles laid down in the case of *Balram Prasad v. Kunal Saha and Ors.* Thus, the total compensation awarded amounted to Rs.50 lakhs.

c) The Court further held that interest has to be awarded at 9% p.a. instead of 6% p.a., from the date of the institution of the complaint till the date of payment, applying the principle laid down by the Apex Court in the case of *Municipal Corporation of Delhi v. Uphaar Tragedy Victims Association and Ors.*

d) The Court further held that Dr.Mathews, who performed the surgery which ultimately resulted in the death of Mr.Gaunekar, was liable to pay compensation along with the Apollo Hospital. Applying the principle laid down in the case of *Balram Prasad* (supra), it was considered just and proper to direct Dr.Mathews to pay Rs.10 lakhs with proportionate interest to the Complainant out of total of Rs.50 lakhs awarded by the Court. The Court further directed that in case Dr.Mathews does not deposit the amount within 4 weeks, the same shall be paid to the Appellant/Complainant by the Respondent Hospital and recovered from him.

e) The appeal was allowed on the above lines.

viii) Citation:

I (2017) CPJ 1 (SC); 2017(1) CPR 297 (SC).

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(p) MEDICAL NEGLIGENCE / *res ipsa loquitur*

1. Ashish Kumar Mazumdar v. Aishi Ram Batra Charitable Hospital Trust & Ors.

i) Order appealed against:

From the judgment and order dated 23.12.2009 of the High Court of Delhi in RFA (OS) No.7/2009.

ii) Parties:

Ashish Kumar Mazumdar - Appellant

versus

Aishi Ram Batra Charitable Hospital Trust & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeals No.4010 of 2010 with Nos.4011-12 of 2010.

Date of Judgment: 22.04.2014.

iv) Case in Brief:

The Appellant-Plaintiff who was admitted as an indoor patient in the Respondent Hospital on 27.10.1988 and lodged in Room No.305 on the 3rd floor was running high fever and was in a delirious state. In the night intervening 31.10.1988 and 01.11.1988, at about 2.20 am, the Plaintiff's sister noticed the absence of the Plaintiff from the room and informed the staff nurse on duty. A search was made and the security guard found the Plaintiff lying on the ground floor in the oncology gallery of the hospital at a distance of 50 yard from the point immediately below the window of Plaintiff's room. The Plaintiff suffered multiple fractures of lumbar vertebrae with complete dislocation of the spinal cord and despite treatment, he became a paraplegic i.e. 100% disabled below the waist. The suit filed by the Plaintiff for compensation was decreed by a single judge of High Court awarding a sum of Rs.7 lakhs with interest at 12% p.a. The said judgment was challenged in appeal before the Division Bench by both the parties. The Division Bench, by the impugned common order, dismissed the appeal filed by the defendant Trust and allowed the appeal filed by the Plaintiff enhancing the amount of damages from Rs.7 lakhs to Rs.11 lakhs along with interest at 12% p.a. Not satisfied, the Plaintiff filed Civil Appeal No.4010 of 2010 whereas, aggrieved by the dismissal of its appeal, the defendant trust filed the connected appeals (Civil Appeals Nos.4011-12 of 2010). Both the sets of appeals were dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *Ashish Kumar Mazumdar v. Aishi Ram Batra Charitable Hospital Trust & Ors.,* RFA (OS) No.7 of 2009 dated 23.12.2009.
2. *Ashish Kumar Mazumdar v. Aishi Ram Batra Charitable Hospital Trust & Ors.,* CS (OS) No.3413 of 1991 decided on 02.12.2008.
3. *Shyam Sunder vs. State of Rajasthan,* (1974) 1 SCC 690.
4. *Scott v. London & St. Katherine Docks Co.,* (1865) 3 H & C 596 : 159 ER 665.

vii) Issues raised and decided:

a) Having regard to the precarious health condition of the Plaintiff on the day of incident, it was held that the Courts below had rightly rejected the contention of the defendant hospital that the Plaintiff himself had jumped out the window resulting in injuries and rightly came to the conclusion that the facts established by the evidence on record attracted

the principle of *res ipsa loquitur* and therefore it was for the defendant to prove the absence of any negligence and due care and attention on its part. It was further held that the duty of the hospital is not limited to diagnosis and treatment but extends to looking after the safety and security of the patients, particularly those who are sick or under medication and therefore can become delirious and incoherent. It was observed that the courts below had rightly held that the defendant hospital should be held liable for not maintaining the necessary vigil in the hospital premises. Due to the absence of such vigil, the Plaintiff despite his poor health was able to walk around and in the process had sustained the injuries in question.

b) It was held that the maxim *res ipsa loquitur* applies to a case in which certain facts proved by the Plaintiff, by themselves, would call for an explanation from the defendant without the Plaintiff having to allege and prove any specific act or omission of the defendant. The principal function of the maxim is to prevent injustice which would result if the Plaintiff was invariably required to prove the precise cause of the accident when the relevant facts are unknown to him but are within the knowledge of the defendant. The maxim would apply to a situation when the mere happening of the accident is more consistent with the negligence of the defendant than other causes.

c) The Court held that the Courts below have correctly applied the principle of *res ipsa loquitur* to the present case to cast the burden of proving that there was no negligence on the defendant hospital and had held the defendant liable for negligence and failure to take due care of the Plaintiff who was an indoor patient in the hospital, on an elaborate consideration of the evidence and materials on record and after a detailed discussion of the stand of the rival parties.

d) It was held that the award under three broad heads namely (i) loss of future prospects in employment Rs.4 lakhs; (ii) for attendant Rs.4 lakhs; (iii) for non-pecuniary loss including pain and suffering, loss of limb etc., Rs.3 lakhs was sufficiently representative of the claim of Plaintiff. It was held that precise quantum of compensation cannot and in fact need not be determined with mathematical exactitude or arithmetical precision. It was further held that so long compensation awarded broadly represents entitlement of a claimant in any given case, discretion vested in Trial Court and regular First Appellate Court ought not to be lightly interfered.

e) Consequently in the light of the foregoing both the sets of appeals were dismissed.

viii) Citation:

(2014) 9 SCC 256; II (2014) CPJ 5 (SC).

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(q) PAYMENT OF EXCISE DUTY

1. Ravinder Raj v. Competent Motors Co. Pvt. Ltd. & Anr.

i) Order appealed against:

i. From the judgment and order dated 19.07.2005 in Revision Petition No.1485 of 2005 of the National Consumer Disputes Redressal Commission.

ii. From the judgment and order dated 07.08.2008 in Revision Petition No.2974 of 2005 of the National Consumer Disputes Redressal Commission and M.A. No.599 of 2006 in Revision Petition No.1533 of 2005.

ii) Parties:

Ravinder Raj - Petitioner

versus

Competent Motors Co. Pvt. Ltd. & Anr. - Respondents

iii) Case No and Date of Judgment:

Special Leave Petition (Civil) No.10364 of 2006 with SLP(C) Nos.9739-9740 of 2009.

Date of Judgment: 10.02.2011.

iv) Case in Brief:

The Petitioner booked a Maruti Car 800 and deposited a sum of Rs.10,000/- as advance. On 15.07.1988, Respondent No.2 informed the Petitioner that his car allotment had matured for delivery and requested the Petitioner to make payment of the full amount of the price of the car. Petitioner paid the total amount of Rs.78,351.05 on 16.02.1989 which covered the price of the vehicle, insurance charges and other minor charges including registration charges. On 01.03.1989 there was an increase in the excise duty payable causing a price hike of about Rs.6,710.61. The Petitioner was asked to deposit the excess amount payable as excise duty which he did under protest. The official billing in respect of the car was done on 05.04.1989. The Petitioner filed a complaint before the District Forum seeking a direction to the Respondent to bear the increase in excise duty which was rejected by the District Forum. The Petitioner's appeal to the State Commission was allowed. The Respondents

challenged the order before the National Commission which reversed the order passed by the State Commission. Aggrieved by the said order the present SLP had been filed. Petition dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986; Section 64-A(1)(a) of the Sale of Goods Act, 1980.

vi) Cases referred:

1. *Omprakash v. Asst. Engineer, Haryana Agro Industries Corporation Ltd.,* II (1994) CPJ 1 (SC). (Not Applicable) [Para 12]
2. *Mohinder Pratap Dass v. Modern Automobiles & Anr.,* 1995 (3) SCC 581. (Not Applicable) [Para 12]

vii) Issues raised and decided:

a) The Petitioner's argument was that he should not be made to bear the increase in price since the documents submitted by him were in order, the vehicle of the colour chosen by him was available with the Respondents and that he was not responsible for the delay.

b) The Court referred to the letter of 15.07.1988 written on behalf of the Respondent No.2 to the Petitioner in which the Petitioner was requested to complete the modalities for effecting delivery of the car. It had been categorically indicated that delivery would be effected in the sequence of priority. Moreover in the proforma invoice dated 15.07.1988 it was indicated that the price prevailing at the time of billing would be applicable, despite the fact that the details of the price of the vehicle were set out in the said invoice.

c) In this case the billing was done on 05.04.1989. In the absence of any evidence of any deliberate intention on the part of the Respondents to delay delivery of the vehicle, the Court held that the increase in price has to be borne by the Petitioner.

d) The Court held that having regard to the provisions of Section 64-A(1)(a) of the Sale of Goods Act, 1980, it is the liability of the Petitioner to pay the extra price when the excise duty had been enhanced prior to the delivery of the vehicle.

e) In the circumstances the Special Leave Petition was dismissed.

viii) Citation:

II (2011) CPJ 1 (SC).

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(r) PAYMENT OF INTEREST

1. Kerala State Housing Board & Ors. v. Kerala State Housing Board, Nellikode Housing Colony Allottees Association & Ors.

i) Order appealed against:

From the judgment and order dated 28.02.2016 of the High Court of Kerala at Ernakulam in W.A.No.1760/2004.

ii) Parties:

Kerala State Housing Board & Ors. - Appellants

versus

Kerala State Housing Board, Nellikode Housing Colony Allottees Association & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal Nos.7835 of 2011 (Arising out of SLP(C) No.10580 of 2006) with Nos.7836 of 2011 and 7837 of 2011 (Arising out of SLP(C) Nos.21478 and 21817 of 2008 respectively).

Date of Judgment: 14.09.2011.

iv) Case in Brief:

The Appellants acquired land in 1984 and 1985 for allotment of plots under the Chevayur Housing Scheme and the Nellikode Housing Scheme respectively. The landowners did not accept the compensation offered for the acquired land and while that dispute was pending, the Board entered into agreements of sale with allottees during the years 1988-1990 with a provision that the Board shall be entitled to re-fix the final price once the compensation amount is decided by the Courts. It was also agreed that after finalization of the price of the property, the allottee shall pay to the Board together with interest at the rate of 15% p.a., the difference between the tentative price fixed and the price finally fixed for the property by the Board within 30 days of issuing a notice. Though the case was finalized in the year 1997 and the enhanced compensation was deposited by the Board with interest, the demand notices fixing the final price was sent to the allottess only in the year 1999 asking them to pay the difference between the tentative price and final price with 15% interest. The allottees filed Writ Petitions before the High Court. The Single Judge passed orders that the Board was not entitled to any interest on the differential amount from the allottees for the period from 1997 till the date of service of individual account statements of allottees. The appeal filed by the

Board against the said order was dismissed by the Division Bench of the Kerala High Court vide impugned judgments and orders. Aggrieved, the Board had filed the present civil appeals. Appeals partly allowed. The Court held that the Board was entitled to interest at reasonable rate of 8% p.a. on differential amount between tentative price and final price from the date of deposit or payment of enhanced compensation by Board in 1997 till payment of differential amount by allottees.

v) Acts and Sections referred:

Sections 2(1) (g) and (o) of the Consumer Protection Act, 1986; Section 34 of Land Acquisition Act, 1894.

vi) Cases referred:

1. *Kerala State Housing Board v. Kerala State Housing Board, Nellikode Housing Colony Allottees Association,* Writ Appeal No.1760 of 2004 decided on 28.02.2006. (Ker)
2. *Chandigarh Housing Board v. K.K. Kalsi,* (2003) 12 SCC 734.

vii) Issues raised and decided:

a) The Court observed that the reason why a clause in the agreements of sale executed by the Board and the allottees for payment of interest at 15% p.a. on the differential amount was inserted, was that in the proviso to Section 34 of the Land Acquisition Act, 1894, it is provided that if the compensation for the acquired land or any part thereof is not paid within a period of one year from the date on which possession was taken, interest at the rate of 15% p.a. shall be payable from the date of expiry of the period of one year.

b) The Court held that once the compensation was finalized by the Court and enhanced compensation was paid or deposited in the year 1997, the Board was not liable for any interest under the proviso to Section 34 of the Act from the date of such payment or deposit. Since the purpose of stipulating the rate of interest at 15% p.a. was to take care of the liability on the enhanced compensation provided in the Land Acquisition Act and not to enrich the Board by recovery of a high rate of interest from the allottees, the Court agreed with the view taken by the High Court that the Board was not entitled to interest at the rate of 15% p.a. on the differential amount after the payment or deposit of enhanced compensation by the Board in the year 1997.

c) The Court observed however that between the period the enhanced amount was paid by the Board in 1997 and the time the notice was received in 1999, the allottees retained the differential amount and used the same and the Board lost the opportunity to utilize the amount for its activities. The Board would be entitled to interest on the differential amount at a reasonable rate as has been held in *Chandigarh Housing Board v. K.K. Kalsi*. It was held that interest at 8% p.a. on such differential amount between the tentative price and the final price would be reasonable, which the allottees must pay to the Board.

d) The Court accordingly set aside the impugned orders and directed the Respondents to pay interest with the Appellant Board at 8% p.a. from the date of deposit or payment of the enhanced compensation by the Board in 1997 till payment of the differential amount by the allottees. The appeals were allowed to the extent indicated above.

viii) Citation:

(2011) 9 SCC 653.

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2. K.A. Nagamani v. Housing Commissioner, Karnataka Housing Board

i) Order appealed against:

From the judgment and order dated 04.08.2011 in Revision Petition read with execution order dated 14.10.2011 of the National Consumer Disputes Redressal Commission.

ii) Parties:

K.A. Nagamani - Appellant

versus

Housing Commissioner, Karnataka Housing Board - Respondents

iii) Case No and Date of Judgment:

Civil Appeal Nos.6730-6731 of 2012.
Date of Judgment: 19.09.2012

iv) Case in Brief:

The Complainant applied to the Housing Board for allotment of HIG-B flat under Self Financing Housing Scheme (SFS) at Bangalore. The Respondent vide letter 25.03.1992 allotted Flat No.116, Type-B, First Floor at Kengeri under SFS at a cost of Rs.3,15,000/-. The Complainant availed a loan of

Rs.2,56,725/- from her employer, the Indian Airlines and paid total sum of Rs.2,67,750/- between 12.05.1991 and 04.12.1992. The grievance of the Complainant was that even two and half years after the payment of the installments, the flat was not handed over to her. By letter dated 24.06.1995, the Respondent informed her that her allotment had been changed and that she had been allotted Flat No.64, HIG-B-5 in Block No.61 in lieu of the previous allotment and that the cost of the flat is much higher at Rs.5,90,000/-. The Complainant informed the Respondent that she was not in position in pay the higher amount and requested the original allotment to be restored. But she was informed that the Flat No.116, Type-B could not be constructed due to the dispute raised by the land owners and the matter was pending in the Court. The Complainant requested the Respondent to return the amount she had paid to the Board. After much persuasion and 14 years after taking of the loan from the employer, the Respondent refunded the amount after deducting Rs.3,937/-. Complainant's repeated pleas to refund the balance Rs.3,937/- along with interest at 27% p.a. on the deposited amount of Rs.2,67,750/- did not yield any result. She filed complaint before the District Forum, Bangalore which was allowed directing the Respondent to pay interest of 12% p.a. on Rs.2,67,750/- from the date of its respective deposits till the date of realization with further direction to refund an amount of Rs.3,937/- to the Complainant. Complainant filed an appeal against the said order before the State Commission pleading that she suffered losses, injury, harassment, mental agony and permanent loss of opportunity to have her own flat. The State Commission dismissed the appeal. Aggrieved by the order she filed Revision Petition before the National Commission which was also dismissed with cost of Rs.10,000/-. Hence the present appeals challenging the order of the National Commission. Appeals allowed.

v) Acts and Sections referred:

Sections 2(1) (g), 14(1)(d) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Ghaziabad Development Authority v. Balbir Singh,
II (2004) CPJ 12 (SC)=III (2004) SLT 161. (Relied) [Para 24]

vii) Issues raised and decided:

a) The Court noted that the finding of the District Forum relating to deficiency in service on the part of the Respondent was affirmed by the State Commission as well as by the National Commission. But the Consumer Fora had allowed only 12% interest and no amount was

allowed towards compensation. It was observed that though the State Commission failed to exercise its jurisdiction and proceeded with material irregularity, the National Commission erred in holding that the petition was not maintainable and wrongly imposed cost on the Complainant.

b) The Court observed that a similar case fell for consideration in *Ghaziabad Development Authority v. Balbir Singh* (supra). The issue there was whether the grant of interest at the rate of 18% p.a. by the Consumer Forums in all cases under consideration was justifiable or not. It was observed therein that "the power and duty to award compensation does not mean that irrespective of facts of the case compensation can be awarded in all matters at 18% p.a. As seen above what is being awarded is compensation i.e. a recompense for the loss or injury. It therefore necessarily has to be based on a finding of loss or injury and has to correlate with the amount of loss or injury". In the present case also the amount was simply returned and the Complainant was suffering a loss inasmuch as she had deposited the money in the hope of getting a flat and thereby deprived of the benefit of escalation of price of that flat. Therefore, it was held that the compensation in this case would necessarily have to be higher.

c) For the reasons aforesaid the Court allowed the appeals directing the Respondent (i) to pay the Appellant/Complainant interest at the rate of 18% p.a. on Rs.2,67,750/- from the date of its respective deposit till the date of realization with further direction to refund the amount of Rs.3,937/- to her as directed by the Consumer Forum (ii) to pay a further sum of Rs.50,000/- as compensation for deficiency in service on their part and (iii) to pay a sum of Rs.20,000/- towards cost of litigation incurred by her.

d) The orders passed by the National Commission and the State Commission were set aside and the order passed by the District Forum was modified to the extent indicated above.

viii) Citation:

III (2016) CPJ 16 (SC).

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(s) PENSION

1. All India Oriental Bank of Commerce Employees' Welfare Society v. J.S.Rekhi & Ors.

i) Order appealed against:

From the judgment and order of the National Consumer Disputes Redressal Commission.

ii) Parties:

All India Oriental Bank of Commerce
Employees' Welfare Society - Appellant

versus

J.S.Rekhi & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.3821 of 2014 with Civil Appeal Nos.3822-3825 of 2014 and Civil Appeal No.3826 of 2014.

Date of Judgment: 12.03.2014.

iv) Case in Brief:

The Appellant society was established to work for the social, cultural and economic welfare of its members (who are employees of the Oriental Bank of Commerce) and to provide social security to their dependants in case of death of a member. The society floated a pension scheme for kith and kin of those members dying in harness according to which the members were to contribute a sum of Rs.30/- per month for a period of 25 years and on retirement such a member was to receive a sum of Rs.30,000/- from the society. Some of the employees of the Bank who were members of the society took voluntary retirement under a scheme much before the date of their actual superannuation. They requested the society to pay a sum of Rs.30,000/- to each of them on the ground that they had retired from service and were therefore, entitled for the aforesaid amount. It was admitted that they had not made contribution for 25 years. The society rejected their request on the ground that they were entitled to receive the aforesaid sum only on retirement after attaining the age of superannuation and after paying their subscription as per rules. The society placed reliance on a circular dated 02.02.2001 in support of their contention. The aggrieved members filed a complaint before the District Forum contending that there is no distinction between retirement on attaining the age of superannuation and voluntary retirement. The District Forum allowed the complaint which was also confirmed by the State

Commission as well as the National Commission. Aggrieved by the said orders, the Petitioners had preferred the Special Leave Petitions. Appeals allowed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court noted that the scheme provided for a total period of contribution for each member which read as follows:

"Total period of contribution by each member:-

Under the existing scheme every member is to subscribe for a period of 25 years from 1st July 1982 or the date of their becoming member whichever is later. In case of retirement, before completion of 25 years period of contribution, the subscription dues to the society for the remaining year would be adjusted from the amount of monthly pension payable by the society".

b) The Court observed that though there may not be any distinction between retirement under the voluntary retirement scheme for the purpose of service benefits under the rules from the employer i.e. the Bank, that principle cannot be applied *stricto sensu* in case of the scheme in question. Under the scheme the members were expected to make contributions and those contributions were to be invested so as to earn interest and make the scheme viable. Under the scheme, a member, in fact, pays a sum of Rs.9,000/- but he receives a sum of Rs.30,000/- on attaining the age of superannuation. It shall be possible only when the contributions made by the members are usefully invested and from its earning, the amount is paid to them. It was held that any other view will seriously jeopardize the scheme itself. In that view of the matter the Court held that retirement under the scheme would mean retirement on attaining the age of superannuation.

c) The Court accordingly set aside the orders passed by the National Commission and the fora below. The Court further held that the members would be entitled to the benefit under the scheme if they satisfy the other contingencies provided under the scheme.

viii) Citation:

IV (2014) CPJ 15 (SC).

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(t) PHONE MONITORING

1. Amar Singh v. Union of India & Ors.

i) Order appealed against:

Nil.

ii) Parties:

Amar Singh - Petitioner

versus

Union of India & Ors. - Respondents

iii) Case No and Date of Judgment:

Writ Petition (Civil) No.39 of 2006.
Date of Judgment:11.05.2011.

iv) Case in Brief:

The Petitioner, Amar Singh, has filed this Writ Petition under Article 32 seeking to protect his fundamental right to privacy under Article 21 of the Constitution of India. The Petitioner's case is that he had learnt from various sources that the Government of India and the Government of National Capital Region of Delhi (NCR), being pressurized by Respondent No.7 (Indian National Congress) had been intercepting the Petitioner's conversation on phone, monitoring them and recording them. The Petitioner had been availing of the telephone services of M/s. Reliance Infocom Limited, impleaded herein as Respondent No.8. In support of his contention he enclosed a letter dated 22.10.2005 purported to be issued by the Joint Commissioner of Police (Crime) New Delhi and the order dated 09.11.2005 issued by the Principal Secretary (Home), Government of NCR, Delhi. The Petitioner alleged that there were similar cases of interception of phone conversation of other people, including some leading political figures who were using the services of M/s. Reliance Infocom Limited. The Petitioner further alleged that such interception of conversation amounts to intrusion on the privacy of the affected people and is motivated by political ill will. He prayed that the Court may declare the interception unconstitutional, initiate a judicial enquiry into the issuance and execution of the orders and prayed that damages be awarded to him. The Court issued an interim order directing the electronic and print media not to publish any part of the said conversation. The interim order was based on the interlocutory application (no.2 of 2006) filed by the Petitioner. After going through the affidavits filed by the parties and a detailed hearing of the case

the Court held that the documents produced by the Petitioner had been forged by persons against whom investigation was being held by the Delhi Police. The Court noted that the Petitioner had himself withdrawn the allegations against the Respondent No.7 and expressed his satisfaction with the investigation of police in connection with the aforesaid case of forgery. The Court dismissed the Writ Petition as frivolous and speculative in character, giving liberty to the Petitioner to proceed against the service provider, Respondent No.8, if so advised, before the appropriate forum in accordance with law.

v) Acts and Sections referred:

Article 21 and 32 of the Constitution of India; Sections 2(1) (g) and (o) of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *People's Union for Civil Liberties (PUCL) v. Union of India & Anr.,* (1997) I SCC 301. (Relied) [Para 1]
2. *Padmabati Dasi v. Rasik Lal Dhar,* (1910) Indian Law Reporter 37 Calcutta 259. (Relied) [Para 15]
3. *State of Bombay v. Purushottam Jog Naik,* AIR 1952 SC 317. (Relied) [Para 16]
4. *Hari Narain v. Badri Das,* AIR 1963 SC 1558. (Relied)
5. *Welcome Hotel & Ors. v. State A.P. & Ors.,* (1983) 4 SCC 575. (Relied)
6. *G.Narayanaswamy Reddy (Dead) by LRs & Anr. v. Govt. of Karnataka & Anr.* JT 1991 (3) SC 12 : (1991) 3 SCC 261. (Relied)
7. *S.P. Chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by LRs & Ors.,* JT 1993 (6) SC 331 : (1994) 1 SCC 1. (Relied)
8. *A.V.Papayya Sastry & Ors. v. Govt. of A.P. & Ors.,* JT 2007 (4) SC 186 : (2007) 4 SCC 221. (Relied)
9. *Prestige Lights Ltd. v. SBI.,* JT 2007 (10) SC 218 : (2007) 8 SCC 449. (Relied)
10. *Sunil Poddar & Ors. v. Union Bank of India.,* JT 2008 (1) SC 308 : (2008) 2 SCC 326. (Relied)
11. *K.D.Sharma v. SAIL & Ors.,* JT 2008 (8) SC 57 : (2008) 12 SCC 481. (Relied)
12. *G.Jayashree & Ors. v. Bhagwandas S.Patel & Ors.,* JT 2009 (2) SC 71 : (2009) 3 SCC 141. (Relied)

13. *Dalip Singh v. State of U.P. & Ors.,*
JT 2009 (15) SC 201 : (2010) 2 SCC 114. (Relied)

vii) Issues raised and decided:

a) The Court took serious exception to the manner in which the affidavit was filed by the Petitioner which was perfunctory, defective and not in accordance with the mandate of law. The Court noted from the subsequent detailed affidavit filed by the Petitioner that the main documents on which the Writ Petition was based, namely Annexures-A and B, the orders dated 22.10.2005 and 09.11.2005, were obtained by him from Anurag Singh, who is one of the accused and was arrested in a criminal case relating to forgery of the above documents. The Court further observed that the information relating to averments in their Writ Petition was also obtained from the same Anurag Singh.

b) The Court noted that the impugned communication dated 09.11.2005 is full of gross mistakes and that the service provider while immediately acting upon the same, should have simultaneously verified the authenticity of the same from the author of the document. The Court observed that the service provider has to act as a responsible agency and cannot act on any communication. Sanctity and regularity in official communication in such matters must be maintained especially when the service provider is taking the serious step of intercepting the telephone conversation of a person and by doing so is invading the privacy right of the person concerned which is a fundamental right protected under the constitution. The Court did not accept the explanation of the service provider and observed that the service provider had failed to act carefully and with a sense of responsibility.

c) The Court observed that the Petitioner filed an additional affidavit in February 2011 towards the closing of the hearing stating that he was withdrawing all the averments, allegations and contentions against Respondent No.7. He had further stated that he was satisfied with the investigation of Delhi Police in the case of forgery against Anurag Singh. The Court observed that the additional affidavit knocked the bottom out of the Petitioner's case.

d) The Court further observed that the Petitioner had suppressed the fact that he gave a statement under Section 161 of Cr.P.C in connection with the investigation arising out of FIR lodged on 30.12.2005 and viewed the matter seriously.

e) The Court dismissed the Writ Petition as being frivolous and speculative in character and observed that the legal questions on tapping of telephone cannot be gone into on the basis of a petition so weak in its foundation. The Court however gave liberty to the Petitioner to proceed against Respondent No.8, the service provider, if so advised, in an appropriate forum in accordance with law.

viii) Citation:

2013(4) CPR 381 (SC).

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(u) POSTAL SERVICES

1. Arulmighu Dhandayudhapaniswamy Thirukoil, Palani, Tamil Nadu through its Joint Commissioner v. Director General of Post Offices, Dept. of Posts & Ors.

i) Order appealed against:

From the judgment and order dated 31.05.2006 in First Appeal No.411 of 1997 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Arulmighu Dhandayudhapaniswamy Thirukoil,
Palani, Tamil Nadu through its Joint Commissioner - Appellant

versus

Director General of Post Offices, Dept. of Posts & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.4995 of 2006.
Date of Judgment: 13.07.2011.

iv) Case in Brief:

The Appellant had deposited a sum of Rs.1,40,64,300/- with Post Master, Palani between 05.05.1995 and 16.08.1995 for a period of 5 years under the Post Office Time Deposit Scheme. On 01.12.1995 the temple received a letter from the Post Master, Palani (3rd Respondent herein) informing that this scheme had been discontinued for investment by institutions from 01.04.1995 and therefore all such accounts should be closed without interest. The amount deposited by the temple was refunded only on 03.01.1996 without interest. The Appellant sent a legal notice to the Respondents calling upon them to pay

a sum of Rs.9,13,951/- within a period of 7 days being the interest at 12% p.a. on the sum deposited from the dates of deposit till the dates of withdrawal. Since nothing was forthcoming from the Respondents, the Appellant preferred a complaint before the State Consumer Disputes Redressal Commission which dismissed the complaint by a majority decision. The appeal preferred by the Appellant was also dismissed by the National Commission vide impugned order. Challenging the said order the present appeal by way of Special Leave had been filed. Appeal dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986; Section 15 of Government Savings Banks Act (5 of 1873); Rule 17 of Post Office Savings Bank General Rules, 1981.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court noted that the Central Government, in exercise of the powers conferred by Section 15 of the Government Savings Bank Act, 1973 framed the Post Office Savings Bank General Rules, 1981. The Central Government had issued a notification being Nos.G & SR 118(E), 119(E), 120(E) as per which no time deposit shall be made or accepted on behalf of any institution with effect from 01.04.1995. Though the Appellant had deposited a huge sum of money amounting to Rs.1,40,64,300/- with the Post Master from 05.05.1995 to 16.08.1995 and the 3rd Respondent accepted the amount, it was found that the deposits made on and from 01.04.1995 were against the said notification which amounted to contravention of the Post Office Savings Bank General Rules, 1981. The Rules were applicable to the following accounts in Post Office Savings Bank viz. (a) Savings Account (b) Cumulative Time Deposit Account (c) Recurring Deposit Account (d) Time Deposit Account and it came into force with effect from 01.04.1982. As per Rule 17 of the said Rules, 'where an account is opened in contravention of any relevant Rule for the time being in force in the Post Office Savings Bank, the relevant Head Savings Bank may, at any time, cause the account to be closed and the deposit made in the account refunded to the depositor without interest'. In the present case the deposit accounts have been caused to be closed and the amounts deposited have been returned to the depositor without interest.

b) The Court held that though the Appellant claimed interest and insisted for the same on the ground of deficiency in service on the part of the Post Master, Palani, in view of Rule 17, the Respondents are justified in declining to pay interest for the deposited amount since the same was not permissible. The Court observed that both the State and National Commission had concluded that the 3rd Respondent was ignorant of any notification and because of this ignorance the Appellant did not get any interest for the substantial amount. The Court agreed with the factual finding arrived at by the State and National Commission and in view of the circumstances, it was held that the Respondents cannot be fastened for deficiency in service in terms of law or contract and the present appeal was liable to be dismissed.

c) The appeal was accordingly dismissed.

viii) Citation:

AIR 2011 SC 2604; III (2011) CPJ 25 (SC); 2011(3) CPR 362 (SC).

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2. M/s. Bhagwati Vanaspati Traders v. Senior Superintendent of Post Offices, Meerut

i) Order appealed against:

From the order dated 04.09.2008 in Revision Petition No.1456/2008 of the National Consumer Disputes Redressal Commission.

ii) Parties:

M/s. Bhagwati Vanaspati Traders - Appellant

versus

Senior Superintendent of Post Offices, Meerut - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.4854 of 2009.
Date of Judgment: 10.10.2014.

iv) Case in Brief:

M/s. Bhagwati Vanaspati Traders is a proprietorship concern with Mr.B.K.Garg as the sole proprietor. On 28.04.1995 M/s. Bhagwati Vanaspati Traders purchased one six years' National Savings Certificate (NSC) by investing a sum of Rs.5,000/-. The above NSC was to mature on 28.04.2001. The maturity amount payable was Rs.10,075/-. The amount was not paid to Mr.Garg in spite of his repeated visits to the local post office where he was

informed that an NSC could only be issued in the name of an individual and that the NSC taken in the name of M/s. Bhagwati Vanaspati Traders was not valid. He visited the office of Post Master General, Bareilly, where he was informed that the matter had been referred to the Director General (Post). After a long wait he filed a complaint before the District Consumer Redressal Forum, Meerut. The complaint was allowed and the Respondent was directed to pay the maturity amount of Rs.10,075/- with 12% interest from the date of maturity till the date of payment. Rs.5,000/- towards compensation and Rs.2,000/- towards costs were also awarded to the Appellant concern. The Respondent's appeal against the Forum's order was allowed by the State Commission. The Appellant approached the National Commission by filing Revision Petition No.1456 of 2008 which was dismissed vide impugned order against which the present appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986; Rule 17 of the Post Office Savings Bank General Rules, 1981.

vi) Cases referred:

1. *Post Master, Dargamitta HPO, Nellore v. Raja Prameelamma,* (1998) 9 SCC 706 – Referred. [Para 4]
2. *Arulmighu Dhandayudhapaniswamy Thirukoil, Palani, Tamil Nadu v. Director General of Post Offices,* (2011) 13 SCC 220 : 2011 (8-9) SBR 451:2011 (5) Supreme 214:2011(3) CCC 119 – Referred. [Para 4]
3. *Tata Iron and Steel Co. Ltd. v. Union of India & Ors.,* (2001) 2 SCC 41 – Referred. [Para 6]
4. *Moorgate Mercantile Co. Ltd. v. Twitchings,* (1977) AC 890 – Relied. [Para 7]
5. *Ashok Transport Agency v. Awadhesh Kumar & Anr.,* (1998) 5 SCC 567 – Referred. [Para 8]

vii) Issues raised and decided:

a) The Court observed that the Respondent had relied on Rule 17 of the Post Office Savings Bank General Rules, 1981 which stated as follows:

> "17. Account opened in contravention of rules:-
>
> Subject to the provision of rule 16, where an account is found to have been opened in contravention of any relevant rule for the

time being in force and applicable to the account kept in the Post Office Savings Bank, the relevant Head Savings Bank may, at any time, cause the account to be closed and the deposits made in the account refunded to the depositor without interest."

In addition to the above the Respondent had also placed reliance on the decision rendered by the Court in *Post Master, Dargamitta HPO, Nellore v. Raja Prameelamma* and *Arulmighu Dhandayudhapaniswamy Thirukoil, Palani, Tamil Nadu v. Director General of Post Offices*.

b) The Appellant on the other hand relied on a decision rendered by the Court in *Tata Iron and Steel Co. Ltd. v. Union of India & Ors.* and also contended that the name of sole proprietorship concern can be substituted with the name of the sole proprietor as was done in the present case. It was further contended that if the Respondent was not agreeable in accepting the trade name, the Respondent ought to have corrected the NSC by substituting the name of M/s. Bhagwati Vanaspati Traders with that of the sole proprietor, namely, B.K.Garg.

c) The Court found merit in the contention of the Appellant and held that the irregularity committed while issuing the NSC in the name of M/s.Bhagwati Vanaspati Traders could easily have been corrected by substituting the same with that of B.K.Garg. The Court observed that in a sole proprietorship concern, an individual uses a fictional trade name in place of its own name and that the rigidity adopted by the authorities was clearly ununderstandable. The Postal Authorities having permitted M/s. Bhagwati Vanapati Traders to purchase the NSC in the year 1995 could not have legitimately raised a challenge of irregularity after the maturity thereof in the year 2001, especially when the irregularity was curable. The Court further held that when the authorities had issued a certificate which they could not have issued, they cannot be allowed to enrich themselves by retaining the deposit made.

d) The Court further held that in neither of judgments cited by the Respondents the amendment of NSC was sought. The instant proposition of law was also not projected on behalf of the certificate holders.

e) The Court considered it just and appropriate to exercise the jurisdiction under Article 142 of the Constitution of India and direct the Senior Superintendent of Post Offices, Meerut to correct the NSC issued in the name of M/s. Bhagwati Vanaspati Traders by substituting the

Appellant's name with that of B.K.Garg. The Court also directed the Respondent to pay to B.K.Garg the maturity amount of Rs.10,075/- with 12% interest from the date of maturity till the date of payment. It was also held that B.K.Garg was entitled to a compensation of Rs.5,000/- as was awarded by the District Forum and litigation cost of Rs.10,000/-.

f) The Appeal was allowed on the above lines.

viii) Citation:

2014(4) CPR 63 (SC); 2015(2) CPR 405 (SC).

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(v) SUPPLY OF SEEDS

1. M/s. National Seeds Corporation v. Madhusudhan Reddy & Anr.

i) Order appealed against:

From the judgment and order of the National Consumer Disputes Redressal Commission.

ii) Parties:

M/s. National Seeds Corporation - Appellant

versus

Madhusudhan Reddy & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.7543 of 2004 with Civil Appeal Nos.622 and 623 of 2012, 7542 of 2004, 3498, 3499, 3596, 3598, 4509-4522, 4704, 4798, 4824, 4962, 4964, 4954, 4955, 4957, 4959, 4963 and 4967 of 2009.

Date of Judgment: 16.01.2012.

iv) Case in Brief:

The Respondents own lands in different districts of Andhra Pradesh and are engaged in agriculture/seed production. The factual matrix of their cases is substantially similar except that the Respondents purchased different seeds like sunflower, bitter gourd, castor, chilli seeds etc. for growing different crops. They filed complaints against the Appellant Corporation alleging that they had suffered loss due to failure of the crops/less yield because the seeds sold/ supplied by the Appellant were defective. The District Fora in the districts of Kurnool, Mehboob Nagar, Guntur, Khammam and Kakinada allowed the

complaints and awarded compensation to the Respondents. In a number of cases the District Forums appointed Commissioner or referred the matter to the officers of the Agriculture Department for their opinion about the quality of seeds before passing orders. The appeals and revisions filed by the Appellant were dismissed by the Andhra Pradesh State Consumer Disputes Redressal Commission and the National Commission respectively. Aggrieved by the orders of the National Commission the present appeals had been filed. Appeals dismissed with costs.

v) Acts and Sections referred:

Sections 2(1)(d), 3, 13(1)(c) and 23 of the Consumer Protection Act, 1986; Sections 6,7, 9, 10, 11, 14(1)(a) and (b), 16, 19, 20 and 21 of Seeds Act, 1966; Sections 8 and 34 of Arbitration and Conciliation Act, 1996.

vi) Cases referred:

1. *Fair Air Engineers (P) Ltd. v. N.K. Modi,* (1996) 6 SCC 385. [Para 6.6]
2. *State of Karnataka v. Vishwabharathi House Building Coop. Society,* (2003) 2 SCC 412. [Para 6.6]
3. *CCI Chambers Housing Coop. Society Ltd. v. Development Credit Bank Ltd.,* (2003) 7 SCC 233. [Para 6.6]
4. *Indochem Electronic v. Additional Collector of Customs,* (2006) 3 SCC 721. [Para 6.6]
5. *Lucknow Development Authority v. M.K. Gupta,* (1994) 1 SCC 243. [Para 22]
6. *Skypay Couriers Limited v. Tata Chemicals Ltd.,* (2000) 5 SCC 294. [Para 22]
7. *Secretary, Thirumurugan Coop. Agricultural Credit Society v. M. Lalitha,* (2004) 1 SCC 305. [Para 22]
8. *H.N. Shankara Shastry v. Asst. Director of Agriculture, Karnataka,* (2004) 6 SCC 230. [Para 22]
9. *Kishore Lal v. Chairman Employees' State Insurance Corporation,* (2007) 4 SCC 579. [Para 24]
10. *Spring Meadows Hospital v. Harjol Ahluwalia,* (1998) 4 SCC 39. [Para 24]
11. *Maharashtra Hybrid Seeds Co. Ltd. v. Alavalapati Chandra Reddy,* (1998) 6 SCC 738. [Para 37]

12. *National Commission in N.S.C. Ltd. v. Guruswamy,* (2002) CPJ 13. [Para 38]

13. *E.I.D. Parry (I) Ltd. v. Gourishankar,* (2006) CPJ 178. [Para 38]

vii) Issues raised and decided:

a) The Court observed that the Appellant had filed the present appeals mainly on the following grounds: (i) the District Forums did not have the jurisdiction to entertain complaints filed by the Respondents because the issues relating to the quality of seeds are governed by the provisions contained in the Seeds Act, 1966 and any complaint about the sale or supply of defective seeds can be filed only under the Seeds Act and not under the Consumer Protection Act (ii) the District Forums could not have adjudicated upon the complaints filed by the Respondents and awarded compensation to them without following the procedure prescribed under Section 13(1)(c) of the Consumer Protection Act and (iii) the growers of seeds, who had entered into agreements with it, are not covered by the definition of "Consumer" under Section 2(1)(d) of the Consumer Protection Act because they had purchased the seeds for commercial purpose.

b) After analyzing in detail the background to the enactment of Consumer Protection Act, 1986, its preamble, the definition of the terms "Consumer", the scope of Sections 3 and 13 of the Act and the various provisions of Seeds Act, 1966, the Court answered the three issues raised above on the following lines:

   (i) Though Seeds Act is a special legislation enacted for ensuring that there is no compromise with quality of seeds sold to farmers and others and provisions have been made for imposition of substantive punishment on a person found guilty of seeds, legislation has not put in place any adjudicatory mechanism for compensating farmers/growers of seeds and other similarly situated persons who may suffer loss of crop or who may get insufficient yield due to use of defective seeds sold/supplied by Appellant or any other authorized person. Seeds Act is totally silent on issue of payment of compensation for loss of crop on account of use of defective seeds. There is nothing in Seeds Act and Rules which may give indication that provisions of Consumer Protection Act are not available for farmers who are otherwise covered by the wide definition of "Consumer" under Section 2(1)(d) of the Consumer Protection Act.

(ii) Reports of agricultural experts produced before the District Forums unmistakably revealed that crops had failed because of defective seeds. After examining the reports the District Forums felt satisfied that seeds were defective and this is the reason why complainants were not called upon to provide samples of seeds for getting the same analyzed/tested in an appropriate laboratory. The procedure adopted by the District Forum was in no way contrary to Section 13(1)(c) of Consumer Act and Appellant cannot seek annulment of well reasoned orders passed by the three Consumer Forums on the specious ground that procedure prescribed under Section 13(1)(c) of Consumer Act had not been followed.

(iii) Since farmers/growers purchased seeds by paying price to the Appellant, they would certainly fall within the ambit of Section 2(1)(d)(i) of the Consumer Act and there is no reason to deny them remedies which are available to other consumers of goods and services. Any attempt to exclude farmers from the ambit of Consumer Act will make that Act vulnerable to attack of unconstitutionality on ground of discrimination and there is no reason why provisions of Consumer Act should be so interpreted.

c) With reference to the argument that the Respondents should have sought remedy under the Arbitration and Conciliation Act, 1996, the Court held that remedy of arbitration is not the only remedy available to a grower. It is an optional remedy. He can either seek reference to Arbitrator or file complaint under Consumer Act. If a grower opts for remedy of arbitration, then it may be possible to say that he cannot subsequently file complaint under Consumer Protection Act. However, if he chooses to file complaint in the first instance before a competent Consumer Forum, then he cannot be denied relief by invoking Section 8 of Arbitration and Conciliation Act of 1996. Though District Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of Arbitration Act, it would be appropriate that these fora created are at liberty to proceed with matters in accordance with provisions of the Act rather than relegating parties to arbitration proceedings.

d) Holding that the proposition laid down by the National Commission in the cases represent the correct legal position, the Court dismissed the appeals and directed the Appellant to pay cost of Rs.25,000/- to each of the Respondents within 60 days.

viii) Citation:

AIR 2012 SC 1160; I (2012) CPJ 1 (SC); 2013(3) CPR 589 (SC); 2013(4) CPR 345 (SC); 2014(3) CPR 574 (SC).

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(w) VEHICLE INSURANCE

1. Narinder Singh v. New India Assurance Co. Ltd. & Ors.

i) Order appealed against:

From the Judgment and order dated 12.04.2013 in Revision Petition No.4951/ 2012 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Narinder Singh - Appellant

versus

New India Assurance Co. Ltd. & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.8463 of 2014.
Date of Judgment: 04.09.2014.

iv) Case in Brief:

Petitioner/Complainant purchased a Mahindra vehicle and got it insured for an amount of Rs.4,30,037/- with Respondent No.1 for the period 12.12.2005 to 11.12.2006. The vehicle was temporarily registered for one month period which expired on 11.01.2006. On 02.02.2006 the vehicle met with an accident and got damaged. The Complainant lodged FIR and informed the Respondent company which appointed a Surveyor and assessed the loss at Rs.2,60,845/- on repair basis. The claim was however repudiated by the insurance company on the ground that the person who was driving the vehicle at the time of the accident, Rajiv Hetta, did not possess a valid and effective driving licence and also the vehicle had not been registered after the expiry of temporary registration. Appellant filed a complaint before the District Forum which allowed the same and directed the Respondent Company to indemnify the Complainant to the extent of 75% of the insured amount along with interest at the rate of 9% p.a. Both the Respondent Company and the Appellant appealed against the order before the State Commission. The State Commission allowed appeal of the company and dismissed the complaint of the Complainant due to which his appeal became infructuous. The Complainant

preferred Revision Petition before the National Commission which was also dismissed. Aggrieved by the order of the National Commission, the present appeal had been filed. Appeal dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986; Section 39, 43 and 192 of Motor Vehicles Act, 1988.

vi) Cases referred:

1. *Narinder Singh v. New India Assurance Co. Ltd.,* 2013 SCC OnLine NCDRC 354. (Affirmed)
2. *Amalendu Sahoo v. Oriental Insurance Co. Ltd.,* (2010) 4 SCC 536 : (2010) 2 SCC (Civ) 224. (Referred to)

vii) Issues raised and decided:

a) The Appellant contended that when the driver of a vehicle is holding improper licence contrary to requirement under Section 3 of the Act, claims are required to be dealt with on non-standard basis by the insurance companies and similar yardstick had to be taken into account in case of improper registration of vehicle contrary to the requirement under Section 39 of the Act. The decision of the Apex Court in *Amalendu Sahoo v. Oriental Insurance Co. Ltd.,* (supra) was cited to claim that in case of any variation from the policy document/any breach of the policy document, the insurance company cannot repudiate the claim in toto. It was further contended that the main purpose of registration is to have identification of the vehicle in the Government records and in the instant case there was a temporary registration number (although its date expired) affixed on the vehicle which would lead to the owner and other details as required in law.

b) The Respondent on the other hand argued that the vehicle was being driven without registration which is in contravention to Section 192 of the Act. Further there was no endorsement on the driving licence of Rajiv Hetta which was valid upto 20.04.2002 and as such there was violation of the terms and conditions of the policy.

c) The Court after examining the provisions of Sections 39 and 43 of the Motor Vehicles Act observed that a bare perusal of Section 39 shows that no person shall drive the motor vehicle in any public place without any valid registration granted by the registering authority in accordance with the provisions of the Act. However according to Section 43 the owner may apply to the registering authority for temporary registration

but the same, if granted, shall be valid only for a period not exceeding one month. In the instant case the temporary registration had expired on 11.01.2006 and the alleged accident took place on 02.02.2006 when the vehicle was without any registration. The Court observed that nothing had been brought on record by the Appellant to show that before or after 11.01.2006, when the period of temporary registration expired, the Appellant, owner of the vehicle, either applied for permanent registration as contemplated under Section 39 of the Act or made any application for extension of period as temporary registration on the ground of some special reasons. The Court held that using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract.

d) Consequently the Court did not find any infirmity in the orders passed by the State Commission and the National Commission and dismissed the appeal as devoid of merit.

viii) Citation:

(2014) 9 SCC 324; IV (2014) CPJ 11 (SC); 2014(3) CPR 609 (SC).

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2. Lakhmi Chand v. Reliance General Insurance

i) Order appealed against:

From the judgment and order dated 26.04.2013 in Revision Petition No.2032/ 2012 and order dated 23.07.2013 in Review Petition No.253/2013 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Lakhmi Chand - Appellant

versus

Reliance General Insurance - Respondents

iii) Case No and Date of Judgment:

Civil Appeal Nos.49-50 of 2016.
Date of Judgment: 07.01.2016.

iv) Case in Brief:

The Appellant was the owner of a Tata Motors goods carrying vehicle bearing registration No.HR 67-7492. The vehicle was insured with the Respondent

Company for the period 31.07.2009 to 30.07.2010 and the risk covered was to the tune of Rs.2,21,153/-. The said vehicle met with an accident on 11.02.2010 on account of rash and negligent driving of the offending vehicle bearing registration No.UP-75 J 9860. An FIR was registered with the jurisdictional police station. The Appellant incurred expenses amounting to Rs.1,64,033/- for the repair of his vehicle and informed the Respondent Company about the accident and the damage. Respondent Company appointed a Surveyor who assessed the damage caused to the vehicle at Rs.90,000/- as against the Appellant's claim for Rs.1,64,033/-. The Respondent Company also appointed an investigator who in his report had stated that as against the seating capacity of 1+1, five passengers were travelling in the goods carrying vehicle. The insurance company repudiated the claim of the Appellant on the ground that the loss did not fall within this scope and purview of the policy. The Appellant filed a complaint before the District Forum, which relying on the decision of the National Commission in the case of *National Insurance Co. Ltd. v. Pravinbhai D. Prajapati,* allowed the complaint and directed the Respondent Company to settle the claim of the Appellant on non-standard basis upto 75% of the amount spent for carrying out repairs. The Forum also allowed payment of interest at the rate of 9% p.a. from the date of lodging of claim by the Appellant with the Respondent Company. A sum of Rs.2,000/- was also awarded for causing mental agony and towards litigation expenses. The Respondent Company filed an appeal before the State Commission which accepted the appeal, dismissed the complaint and set aside the order of the District Forum. The State Commission's order was upheld by the National Commission in the Revision Petition filed by the Appellant. The Review Petition filed by the Appellant was also dismissed. Aggrieved by the orders of the National Commission in the Revision Petition and Review Petition the present appeals had been filed. Appeals allowed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 14(1)(d) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *National Insurance Co. Ltd. v. Pravinbhai D. Prajapati,*
   IV (2010) CPJ 315 (NC). (Relied) [Para 8]

2. *Suraj Mal Ram Niwas Oil Mills (P) Ltd. v. United India Insurance Co. Ltd. & Anr.,*
   VIII (2010) SLT 375=IV (2010) ACC 653 (SC)=IV (2010) CPJ 38 (SC). (Relied) [Para 9]

3. *B.V. Nagaraju v. Oriental Insurance Co. Ltd. Divisional Officer, Hassan,* I (1997) ACC 123 (SC)=II (1996) CPJ 28 (SC). (Relied) [Para 15]

4. *National Insurance Company Ltd. v. Swaran Singh & Ors.,* 109 (2004) DLT 304 (SC)=I (2004) ACC 1 (SC)=I (2004) SLT 345. (Relied) [Para 16]

5. *Oriental Insurance Company Ltd. v. Meena Variyal,* IV (2007) ACC 335 (SC)=IX (2007) SLT 251. (Relied) [Para 17]

vii) Issues raised and decided:

a) The Court held that National Commission did not consider the judgment of the Supreme Court in *B.V. Nagaraju v. Oriental Insurance Co. Ltd. Divisional Officer, Hassan*, wherein it was held that the mere factum of carrying more passengers than the permitted seating capacity in the goods carrying vehicle by the insured does not amount to a fundamental breach of the terms and conditions of the policy so as to allow the insurer to eschew its liability towards the damage caused to the vehicle.

b) The Court observed that in the case of *National Insurance Company Ltd. v. Swaran Singh & Ors.,* it had been held that the person who alleges breach must prove the same. In the event the insurance company fails to prove that there has been breach of conditions of policy on the part of the insured, the insurance company cannot be absolved of its liability. This judgment was followed subsequently in the case of *Oriental Insurance Company Ltd. v. Meena Variyal.*

c) The Court held that the instant case, the Respondent Company has not produced any evidence on record to prove that the accident occurred on account of the overloading of passengers in the goods carrying vehicle. The breach of the policy must be so fundamental in nature that it brings the contract to an end, as was held in *B.V. Nagaraju* (supra). In the instant case it is undisputed that the accident was in fact caused on account of rash and negligent driving of the offending vehicle by its driver against whom a criminal case had been registered for offences under IPC. The Court held that these facts had not been taken into consideration by the State Commission as well as the National Commission.

d) The Court set aside the orders of the National Commission in Revision Petition No.2032 of 2012 as the findings therein were erroneous in law and restored the order of the District Forum. The appeals were allowed and a sum of Rs.25,000/- was allowed towards the cost of litigation payable by the Respondent Company to the Appellant.

viii) Citation:

AIR 2016 SC 315; II (2016) CPJ 3 (SC);

2016 (2) CPR 411 (SC); 2017(1) CPR 57 (SC).

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VII. DELEGATION OF LEGISLATIVE FUNCTION / POWER

1. Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Limited & Ors.

i) Order appealed against:

From the order dated 01.06.2012 in W.P.(C).No.2034/2012 of the High Court of Delhi.

ii) Parties:

Petroleum and Natural Gas Regulatory Board - Appellant

versus

Indraprastha Gas Limited & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.4910 of 2015 [Arising out o SLP (Civil) No.22273 of 2012]. Date of Judgment: 01.07.2015.

iv) Case in Brief:

The Respondent invoked the jurisdiction under Article 226 of the Constitution and assailed order dated 09.04.2012 of the Petroleum and Natural Gas Regulatory Board under Section 22 of the Act determining the network tariff and compression charges for CNG in respect of Delhi City Gas Distribution (CGD) network of the petitioner at Rs.38.58 per MMBtu and Rs.2.75 per kg. respectively w.e.f. 01.04.2008 and directing the petitioner therein to recover the said network tariff and compression charges for CNG separately through an invoice, without any premium or discount on a non-discriminatory basis and to appropriately reduce the selling price of CNG from the date of issuance of the order. The principal contention was that the Board does not have the power to direct the Writ Petitioner, Respondent No.1 herein while charging its consumers, to disclose the network tariff and the compression charges and also to fix the network tariff and compression charges in any particular manner. The High Court held that the Board is not empowered to fix or regulate the maximum retail price at which gas is to be sold by entities such as the petitioner to the consumers and also the Board is not empowered to fix any component of network tariff or compression charges for an entity such as the petitioner having its own distribution network. The High Court accordingly struck down the order dated 09.04.2012 to the extent of fixing the maximum retail price or requiring the petitioner to disclose the network tariff and

compression charges to its consumers. Aggrieved by the said order the present appeal had been filed by the Board. Appeal dismissed.

v) Acts and Sections referred:

Sections 2(j), (i) and (m), Section 11(e)(ii) and Section 22 of the Petroleum and Natural Gas Regulatory Board Act, 2006; Regulations 3 and 4 of the Petroleum and Natural Gas Regulatory Board (Determination of Network Tariff for City or Local Natural Gas Distribution Networks and Compression Charge for CNG) Regulations, 2008.

vi) Cases referred:

1. *Sarah Mathew v. Institute of Cardio Vascular Diseases,* (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721.
2. *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.,* (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810.
3. *Union of India v. S.Srinivasan,* (2012) 7 SCC 683 : (2012) 2 SCC (L&S) 433.
4. *Indraprastha Gas Ltd. v. Petroleum and Natural Gas Regulatory Board,* 2012 SCC OnLine Del 3215.
5. *Academy of Nutrition Improvement v. Union of India,* (2011) 8 SCC 274.
6. *Tata Power Co. Ltd. v. Reliance Energy Ltd.,* (2009) 16 SCC 659.
7. *State of T.N. v. P.Krishnamurthy,* (2006) 4 SCC 517.
8. *Ashok Leyland Ltd. v. State of T.N.* (2004) 3 SCC 1.
9. *Shiv Shakti Coop. Housing Society v. Swaraj Developers,* (2003) 6 SCC 659.
10. *St. Johns Teachers Training Institute v. NCTE,* (2003) 3 SCC 321 : 5 SCEC 391.
11. *Kunj Behari Lal Butail v. State of H.P.,* (2000) 3 SCC 40.
12. *Surjit Singh Kalra v. Union of India,* (1991) 2 SCC 87.
13. *Hameedia Hardware Stores v. B.Mohan Lal Sowcar,* (1988) 2 SCC 513.

14. *General Officer Commanding-in-Chief v. Subhash Chandra Yadav,*
(1988) 2 SCC 351 : 1988 SCC (L&S) 542 : (1988) 7 ATC 296.

15. *State of Karnataka v. H.Ganesh Kamath,*
(1983) 2 SCC 402 : 1983 SCC (Cri) 514.

16. *S.P. Gupta v. Union of India,*
1981 Supp SCC 87.

17. *CIT v. National Taj Traders,*
(1980) 1 SCC 370 : 1980 SCC (Tax) 124.

18. *Duport Steels Ltd. v. Sirs,*
(1980) 1 WLR 142 : (1980) 1 All ER 529 (HL).

19. *Board of Muslim Wakfs v. Radha Kishan,*
(1979) 2 SCC 468.

20. *CWT v. Trustees of H.E.H. Nizam's Family,*
(1977) 3 SCC 362 : 1977 SCC (Tax) 457.

21. *CST v. Parson Tools and Plants,*
(1975) 4 SCC 22 : 1975 SCC (Tax) 185.

22. *Sukhdev Singh v. Bhagatram Sardar Singh Radhuvanshi,*
(1975) 1 SCC 421 : 1975 SCC (L&S) 101.

23. *B.S. Vadera v. Union of India,*
AIR 1969 SC 118.

24. *Artemiou v. Procopiou,*
(1966) 1 QB 878 : (1965) 3 WLR 1011 : (1965) 3 All ER 539 (CA).

25. *Utah Construction and Engg. (P) Ltd. v. Pataky,*
1966 AC 629 : (1966) 2 WLR 197 : (1965) 3 All ER 650 (PC).

26. *South India Corporation (P) Ltd. v. Board of Revenue,*
AIR 1964 SC 207.

27. *Indramani Pyarelal Gupta v. W.R. Natu,*
AIR 1963 SC 274.

28. *Prem Nath L. Ganesh Dass v. Prem Nath L. Ram Nath,*
AIR 1963 Punj 62 : 64 Punj LR 975.

29. *Luke v. IRC,*
1963 AC 557 : (1963) 2 WLR 559 : (1963) 1 All ER 655 (HL).

30. *K.R.C.S Balakrishna Chetty & Sons and Co. v. State of Madras,*
AIR 1961 SC 1152.

31. *Siraj-ul-Huq Khan v. Sunni Central Board of Waqf,* AIR 1959 SC 198 : 1959 SCR 1287.

32. *Shanahan v. Scott,* (1957) 96 CLR 245.

33. *Nalinakhya Bysack v. Shyam Sunder Haldar,* AIR 1953 SC 148.

34. *Hansraj Gupta v. Official Liquidators,* (1932-33) 60 IA 13 : (1933) 37 LW 445 : AIR 1933 PC 63.

35. *Canada Sugar Refining Co. Ltd. v. R.,* 1898 AC 735 (PC).

36. *Commissioners for Special Purposes of Income Tax v. Pemsel,* 1891 AC 531 (HL).

37. *Crawford v. Spooner,* (1846-49) 6 Moo PC 1 : 13 ER 582 : 4 Moo IA 179 : 18 ER 667.

vii) Issues raised and decided:

The Court held that in the present case, the Board has not been conferred with power to determine network tariff for city or local gas distribution network and compression charge for CNG as per Section 11 of the Act. That is the legislative intent. Section 61 of the Act enabled the Board to frame Regulations to carry out the purposes of the Act and certain specific aspects have been mentioned therein. It was held that Section 61 has to be read in the context of the statutory scheme. The Regulatory provisions are to be read and applied keeping in view the nature and textual context of the enactment as that is the source of power. On a scanning of the entire Act and applying various principles, the Court held that the Act does not confer any such power on the Board and the expression "subject to" used in Section 22 makes it a conditional one. It has to yield to other provisions of the Act. It was further held that the power to fix tariff of consumers has not been given to the Board and therefore the Board cannot frame Regulations which will cover the area pertaining to determination of network tariff for city or local gas distribution network and compression charge for CNG for consumers. As the entire Regulations centered around the said subject, the said Regulations were declared as ultra virus the 2006 Act. The appeal was accordingly dismissed.

viii) Citation:

(2015) 9 SCC 209.

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VIII. EX-PARTE ORDER

1. Kanpur Development Authority v. Sheo Prakash Gupta & Anr.

i) Order appealed against:

From the judgment and order dated 29.05.2012 in First Appeal No.42 of 2012 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Kanpur Development Authority - Appellant

versus

Sheo Prakash Gupta & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.6017 of 2012 (Arising out of SLP(C) No.23892 of 2012)
Date of Judgment: 24.08.2012.

iv) Case in Brief:

The Respondents participated in an auction conducted by the Appellant Authority in the year 2005 for sale of various plots. The Respondents were interested in plot No.6 in Block-M admeasuring 1364.15 sq. mtr. The price of the plot was fixed by the authority at Rs.8,000/- per sq. mtr. with a condition precedent to deposit Rs.11 lakhs as registration fee. The Respondents also filed an affidavit before the Appellant Authority on 18.08.2005 that in case there is delay in land acquisition and consequently in giving possession of the allotted plot, they will not claim damages. They also filed an affidavit agreeing to other terms and conditions. The Respondents, being the highest bidder were allotted the plot vide letter dated 20.08.2005. The premium of the said plot was fixed Rs.11,700/- per sq. mtr. The Respondents were informed that the first installment of Rs.32,76,623/- was payable on 01.10.2005 while the remaining 3/4th premium was to be paid in 4 quarterly installments along with 15% interest. Before giving possession of plot to the Respondents, the Civil Court, Kanpur had issued a temporary injunction in a Civil Proceeding as a result of which the allotment orders were cancelled and the Respondents duly informed. The Appellant Authority refunded the entire deposited amount of Rs.1,53,62,528/- vide cheque dated 28.10.2006 as per the rules and in absence of any rule or guideline, no damage was paid. After receiving the amount, Respondents filed a complaint before the State Consumer Disputes Redressal Commission, Lucknow seeking interest, damages and costs. The State

Commission, by an ex parte order dated 14.10.2011, allowed the application and directed the Appellant Authority to pay interest of Rs.32,49,175/- along with an interest at 18% p.a. for the period of pendency of the complaint till the actual realization of the amount. A sum of Rs.50,000/- towards mental harassment and Rs.10,000/- towards costs were also awarded. The Appellant Authority preferred First Appeal No.42 of 2012 before the National Commission which confirmed the decision of the State Commission and dismissed the appeal vide impugned order. Aggrieved by the State Commission's order, the present appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Section 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court observed, from the perusal of Complaint No.25 of 2007, that the Respondents, before filing the complaint, gave a notice of demand to the Appellant Authority on 20.12.2006 and it was stated to be served personally on 21.12.2006 and lastly on 21.01.2007.

b) The Court further observed that the order of the State Commission dated 24.10.2011 suggested that a notice was issued to the Appellant Authority but nobody appeared on its behalf. However, there was nothing on record to suggest that the notice issued by the State Commission was served on the Appellant Authority.

c) The Court held that while the Appellant Authority specifically pleaded that no notice was served by the State Commission on it, the National Commission failed to appreciate the submission and erred in holding that a notice was served on 21.12.2006, though the Complaint No.25 of 2007 was filed before the State Commission much thereafter on 03.05.2007.

d) In the result the appeal was allowed. The impugned order was set aside and the matter remitted back to the National Commission for deciding whether the notice issued by the State Commission was properly served on the Appellant Authority and to decide First Appeal No.42 of 2012 on merits.

viii) Citation:

IV (2012) CPJ 13 (SC).

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IX. FUNCTIONING OF CONSUMER FORA

1. State of U.P & Ors. v. All UP Consumer Protection Bar Association

i) Order appealed against:

From the order of the National Consumer Disputes Redressal Commission.

ii) Parties:

State of U.P & Ors. - Appellant

versus

All UP Consumer Protection Bar Association - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.2740 of 2007 with Writ Petition (C) No.164 of 2002.
Date of Judgment: 21.11.2016.

iv) Case in Brief:

On 14.01.2016 the Supreme Court constituted a Committee presided over by Mr. Justice Arijit Pasayat, a former Judge to make an assessment of the functioning and requirements of the Consumer Forums at different levels. The Committee, in its interim report submitted in October 2016, observed that the fora constituted under the Consumer Protection Act do not function as effectively as expected due to poor organizational set up, grossly inadequate infrastructure, absence of adequate and trained manpower and lack of qualified members in the adjudicating bodies. The Committee also observed that branches of the State and District Fora sit, in many cases for barely two or three hours every day and remain non-functional for months due to a lack of coram, that orders are not enforced like orders passed by Civil Courts and that State Governments have failed to respond to the suggestions of the Committee for streamlining the state of affairs. The Committee further observed that the quality of presiding members, especially non-judicial members at the State and District levels is poor. According to the Committee the problem lies in (i) absence of proper remuneration (ii) appointment of former judicial officers who lack motivation and zeal (iii) appointment of practicing lawyers as presiding officers of District Fora and (iv)political and bureaucratic interference in appointments. The Committee also observed that many of the non-judicial members attend to the place of work only to sign orders which have been drafted by the presiding officers. After examining the recommendations of the Committee the Court issued orders for implementation by the Union Government and the State Governments.

v) Acts and Sections referred:

Sections 10(1)(b), 10(3), 16(1)(b), 16(2), 20(1)(b), 23, 24(B)(1)(iii), 24(B)(2) and 30 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court held that the difficulties which have been encountered in the proper functioning of the District Fora and the State Commissions can be obviated in a large measure once the true ambit of Section 24B is construed, by vesting full powers of an administrative nature in the National Commission (in relation to the State Commissions) and in the State Commissions (in relation to the District Fora). In the National Commission, the exercise of administrative authority over the State Commissions shall be vested in the President. Similarly in the State Commission the exercise of administrative control over the District Fora shall be vested in the President.

b) The Court issued the following further directions:

"(i) The Union Government shall, for the purpose of ensuring uniformity in the exercise of the rule making power under Section 10(3) and 16(2) of the Consumer Protection Act, 1986 frame model rules for adoption by the State Governments. The model rules shall be framed within four months and shall be submitted to this Court for its approval;

(ii) The Union Government shall also frame within four months model rules prescribing objective norms for implementing the provisions of Section 10(1)(b), Section 16(1)(b) and Section 20(1)(b) in regard to the appointment of members respectively of the District Fora, State Commissions and National Commission;

(iii) The Union Government shall while framing the model rules have due regard to the formulation of objective norms for the assessment of the ability, knowledge and experience required to be possessed by the members of the respective fora in the domain areas referred to in the statutory provisions mentioned above. The model rules shall provide for the payment of salary, allowances and for the conditions of service of the members of Consumer Fora commensurate with the nature of judiciary

duties and need to attract suitable talent to the adjudicating bodies. These rules shall be finalized upon due consultation with the President of the National Consumer Disputes Redressal Commission, within the period stipulated above;

(iv) Upon the approval of the model rules by this Court, the State Governments shall proceed to adopt the model rules by framing appropriate rules in the exercise of the rule making powers under Section 30 of the Consumer Protection Act, 1986;

(v) The National Consumer Disputes Redressal Commission is requested to formulate regulations under Section 30A with the previous approval of the Central Government within a period of three months from today in order to effectuate the power of administrative control vested in the National Commission over the State Commissions under Section 24(B)(1)(iii) and in respect of administrative control of the State Commissions over the District Fora in terms of Section 24(B)(2) as explained in the judgment to effectively implement the objects and purposes of the Consumer Protection Act, 1986.

viii) Citation:

IV (2016) CPJ 15 (SC); 2016(4) CPR 528 (SC); (2017) 1 SCC 444.

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X. JURISDICTION OF CONSUMER FORA

1. Superintendent, Foreign Post Office v. Indo Lhasa Curious

i) Order appealed against:

From the judgment and order of the High Court.

ii) Parties:

Superintendent, Foreign Post Office - Appellant

versus

Indo Lhasa Curious - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.6121 of 2001.
Date of Judgment: 07.06.2011.

iv) Case in Brief:

This appeal had been filed against the order of the High Court. The Appellant contended before the Supreme Court that the J&K State Consumer Dispute Redressal Commission had no jurisdiction to entertain and decide the disputes inasmuch as the cause of action had arisen entirely in Delhi as the parcel for onward transmission to Malaysia was booked at Delhi and no part of the transaction took place within the jurisdiction of the Commission at Srinagar. Appeal dismissed.

v) Acts and Sections referred:

Sections 17, 21 and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court held that the issue raised by the Appellant was a question of fact and law which was never raised before the High Court. The Court observed that it cannot permit a question of fact to be raised before the Supreme Court for the first time. It was held that even in the grounds of appeal it had not been averred that the issue of jurisdiction was raised before the High Court and that the High Court had not considered the same on merits.

b) The appeal was accordingly dismissed.

viii) Citation:

III (2011) CPJ 19 (SC).

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2. Trans Mediterranean Airways v. Universal Exports & Anr.

i) Order appealed against:

From the judgment and order dated 15.01.2004 of the National Consumer Disputes Redressal Commission in Original Petition No.161 of 1994.

ii) Parties:

Trans Mediterranean Airways - Appellant

versus

Universal Exports & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.1919 of 2004.

Date of Judgment: 15.09.2011.

iv) Case in Brief:

The Appellant is an international cargo carrier with its principal place of business at Beirut, Lebanon. Respondent No.1 (Consignor) is a garment exporter and Respondent No.2 (Agent) is an accredited International Air Transport Association Agent. The agent made out three airway bills dated 25.08.1992 for shipping of garments to Spain on behalf of the consignor through the Appellant carrier. The consignment reached Amsterdam on 30.08.1992 and from there it reached Madrid by road on 03.09.1992. It was cleared by the customs authorities. The Appellant carrier delivered the consignment to M/s. Liwe Espanola, as according to them, that was the only recognizable address available from the documents furnished by the consignor. After nine months from the date of shipment, the agent made enquiry regarding two of the three airway bills. Another enquiry was made after another four months. The Appellant carrier informed the consignor that on finding the full name and complete postal address of the consignee as M/s. Liwe Espanola, the goods were delivered to it. The consignor claimed that the consignee of the said consignment was Barclays Bank, Madrid which had only one branch in Madrid and since the Appellant had wrongly delivered the consignment to the address mentioned in the block column instead of routing it through Barclays Bank, there was deficiency in service. The consignor instituted a complaint before the National Commission, *inter alia*,

claiming compensation for the alleged deficiency in service by the Appellant carrier and the agent for not delivering the consignment to the consignee. The National Commission, after considering the entire evidence on record, allowed the complaint and awarded compensation equivalent to US$ 71,615.75 with 5% interest from the date of the complaint till its realization and imposed cost of Rs.1,00,000/-. Challenging the said order the present appeal had been filed. Appeal dismissed.

v) Acts and Sections referred:

Sections 2(h), (k), (p), 3, 9, 11, 17, 21 and 23 of the Consumer Protection Act, 1986; Sections 2, 3, 7, Sch.I R.28 Sch.II R.28, Sch.II R.30 and Sch.III R.33 of Carriage by Air Act, 1972; Warsaw Convention, 1929; Sections 2, 9 and 96 of Civil Procedure Code, 1908; Section 28 of Contract Act, 1972.

vi) Cases referred:

1. *Ethiopian Airlines v. Ganesh Narain Saboo,* (2011) 8 SCC 539.
2. *Union of India v. Madras Bar Association,* (2010) 11 SCC 1.
3. *Kishore Lal v. ESI Corporation,* (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1.
4. *Thirumurugan Coop. Agri. Credit Society v. M.Lalitha,* (2004) 1 SCC 305.
5. *State of Karnataka v. Vishwabharathi House Building Coop. Society,* (2003) 2 SCC 412.
6. *Charan Singh v. Healing Touch Hospital,* (2000) 7 SCC 668 : 2000 SCC (Cri) 1444.
7. *P. Sarathy v. SBI,* (2000) 5 SCC 355 : 2000 SCC (L&S) 699.
8. *Skypak Couriers Ltd. v. Tata Chemicals Ltd.,* (2000) 5 SCC 294.
9. *Patel Roadways Ltd. v. Birla Yamaha Ltd.,* (2000) 4 SCC 91.
10. *Fair Air Engineers (P) Ltd. v. N.K. Modi,* (1996) 6 SCC 385.
11. *Laxmi Engg. Works v. P.S.G. Industrial Institute,* (1995) 3 SCC 583.

12. *Jabalpur Tractors v. Sedmal Jainarain,* 1995 Supp. (4) SCC 107.
13. *Canara Bank v. Nuclear Power Corpn. of India Ltd.,* 1995 Supp. (3) SCC 81.
14. *State of T.N. v. G.N. Venkataswamy,* (1994) 5 SCC 314.
15. *Kihoto Hollohon v. Zachillhu,* 1992 Supp. (2) SCC 651.
16. *Baradakanta Mishra v. Orissa High Court,* (1974) 1 SCC 374 : 1974 SCC (Cri) 128.
17. *Jugal Kishore Sinha v. Sitamarhi Central Coop. Bank Ltd.,* AIR 1967 SC 1494 : 1967 Cri LJ 1380.
18. *Ram Narain v. Simla Banking and Industrial Co. Ltd.,* AIR 1956 SC 614.
19. *Brajnandan Sinha v. Jyoti Narain,* AIR 1956 SC 66 : 1956 Cri LJ 156 : (1955) 2 SCR 955.
20. *State of Bombay v. Narottamdas Jethabhai,* AIR 1951 SC 69 : 1951 SCR 51.
21. *Bharat Bank Ltd. v. Employees,* AIR 1950 SC 188 : 1950 SCR 459.
22. *Isbill v. Stovall,* 92 SW 2d 1067 (Tex Civ App, 1936).

vii) Issues raised and decided:

a) The core issues that arose for consideration and decision were :

(i) Whether the National Commission under the CP Act has the jurisdiction to entertain and decide a complaint filed by the consignor claiming deficiency of service by the carrier, in view of the provisions of CA Act and the Warsaw Convention? Or whether domestic laws can be added to or substituted for the provisions of the conventions?

(ii) Whether the Appellant can be directed to compensate the consignor for deficiency in service in the facts and circumstances of the case?

b) The Court observed that the use of the word 'court' in Rule 29 of the Second Schedule of the CA Act has been borrowed from the Warsaw Convention and that the said word has not been used in the strict sense in the convention as has come to be in our procedural law. The word

'court' has been employed to mean a body that adjudicates a dispute arising under the provisions of the CP Act. The CP Act gives the District Forums, State Forums and National Commission the power to decide disputes of consumers. The jurisdiction, the power and procedure of these Forums are all clearly enumerated by the CP Act. Though these Forums decide matters after following a summary procedure, their main function is still to decide disputes which is the main function and purpose of a court. The Court held that for the purpose of the CP Act and the Warsaw Convention, the Consumer Forums can fall within the meaning of the expression 'court'. Relying on the decision in Patel Roadways Ltd. it was held that when it comes to legislations like the CP Act there can be no restricted meaning given to the word 'court'.

c) The Court rejected the contention of the Appellant carrier that BB SAE, Madrid is not the consignee, that it was the responsibility of the consignor and his agent to have furnished the correct and accurate particulars of the consignee and since the name of M/s. Liwe Espanola also finds a place in the consignee box, the consignment was delivered to the notified party and that there was no deficiency in service. The consignor through his agent had stated that in the airway bill that is handed over to the Appellant carrier the name of BB SAE, Madrid is specifically mentioned in the consignee box. The Court held that, if for any reason, the Appellant carrier was of the view that the name of the consignee is not forthcoming or if the particulars furnished were insufficient for effecting the delivery of the consignment, it was expected from the Appellant carrier to have made enquiries. The Court noted that the Appellant being an airline carrier of high repute who effect transportation of goods to various parts of the world including Spain, they should have been fully aware of the consignee's name which was in the consignee's box and they should have notified the notified party immediately after the arrival of the consignment. Their failure to do so amounted to deficiency in service as rightly held by the National Commission.

d) The Court held that the National Commission has jurisdiction to decide the dispute between the parties and it is a court and that there was deficiency in service by the Appellant carrier. The appeal was accordingly dismissed.

viii) Citation:

(2011) 10 SCC 316; IV (2011) CPJ 13 (SC).

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3. Dhanbir Singh v. Haryana Urban Development Authority

i) Order appealed against:

From the judgment and order dated 01.04.2011 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Dhanbir Singh - Appellant

versus

Haryana Urban Development Authority - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.8639 of 2011.

Date of Judgment: 14.10.2011

iv) Case in Brief:

The Applicant purchased a plot measuring 420 sq. mtr. from the original allottee, Shishpal Singh. He applied for transfer of the plot which was duly approved by the competent authority after payment of the extension fee of Rs.62,400/-. Thereafter the plot was reallotted to the Appellant vide office memo dated 10.12.1998. However, the building plan submitted by him was not sanctioned on the ground that he was yet to obtain possession of the plot. When he got the possession, he found that the area of the plot was less by 11.25 sq. mtr. He was also called upon to pay extension fee upto 31.12.1999 i.e. the date of delivery of possession. A further demand of extension fee amounting to Rs.71,688/- was also raised against the Appellant. He filed complaint under Section 12 of the Consumer Protection Act before the District Forum. The Forum allowed the complaint and held that there was deficiency in service on the part of the Respondent inasmuch as there was delay in giving possession of the plot, the area of the plot was less by 11.25 sq. mtr. and excessive transfer fee and extension fee had been demanded. The Respondent was directed to refund the excess amount deposited by the Appellant with interest @ 15% p.a. from the date of deposit. The Forum directed payment of compensation of Rs.10,000/- and cost of Rs.3,000/-. The appeal preferred by the Respondent was allowed by the State Commission only on the ground that the appeal filed by the Appellant against the demand of extension fee etc. had been dismissed by the administrator, HUDA, Hisar. The Revision filed by the Appellant was dismissed by the National Commission with the observation that the Appellant cannot be permitted 'Forum Shopping'. The National Commission's view is that once the Appellant had availed the remedy of

appeal, instead of filing the complaint he should have pursued the alternative remedy. Aggrieved by the order of the National Commission, the present appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Sections 2(d), 3, 12, 17, 21, 23 and 24(A)(2) of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court observed that the State Commission had allowed the appeal against the order of the District Forum under a misapprehension that once a consumer avails and exhausts the department remedies, he cannot invoke the jurisdiction of any Consumer Forum and the National Commission dismissed the Revision by erroneously assuming that the appeal preferred by the Appellant against the demand of extension fee was still pending before the Administrator, HUDA.

b) Referring to Section 3 of the Act, the Court observed that the provisions contained in the Act are in addition to and not in derogation of the provisions of any other law for the time being in force. There is no provision in the Act which bars filing of a complaint by a consumer after availing other statutory remedies. The Court further observed that in matters like allotment of plot/land by HUDA and other similar agencies/instrumentalities of the State, whose functioning is governed by the law enacted by the State Legislature, departmental remedies are usually available to an aggrieved person. If such person falls within the definition of consumer under Section 2(d) of the Act then he can directly file compliant under Sections 12, 17 and 21 as the case may be. Once the appeal is decided and the consumer is aggrieved by the decision of the Appellate Authority then he can challenge the action/decision of the initial authority as well as the appellate authority by filing a complaint. If the complaint is time barred, he can seek condonation of delay by filing an application under Section 24(A)(2).

c) In the present case, the Court noted that the appeal filed by the Appellant against the demand of extension fee had already been rejected by the Administrator, HUDA, Hisar. Therefore, it was held that the National Commission was clearly in error in dismissing the Revision only on the ground that the appeal filed by him was pending

before the Administrator. The Court held that the State Commission also committed an error by non-suiting the Appellant on the ground that he had already availed the remedy of appeal. The dismissal of departmental appeal could hardly be pressed into service by the Respondent for facilitating rejection of the Appellant's complaint against the levy of excess extension fee and delayed delivery of possession of the plot and that too of a similar size.

d) The appeal was allowed. The impugned order as well as the order of the State Commission were set aside and the matter was remitted to the State Commission for disposal of the appeal preferred by the Respondent against the order of the District Forum on merits.

viii) Citation:

III (2012) CPJ 1 (SC).

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4. Sunil J. Verma & Ors. v. City & Industrial Development Corporation Ltd. & Anr.

i) Order appealed against:

From the judgment and order of the National Consumer Disputes Redressal Commission.

ii) Parties:

Sunil J. Verma & Ors. - Petitioners

versus

City & Industrial Development Corporation Ltd. & Anr. - Respondents

iii) Case No and Date of Judgment:

Petition for Special Leave to Appeal (C) No.9435 of 2013.
Date of Judgment: 03.05.2013.

iv) Case in Brief:

The Petitioners approached the Consumer Forum for a direction to the Respondents to constitute a Cooperative Society and on failure to do so, they claimed compensation on that account. The National Consumer Disputes Redressal Commission refused to entertain the complaint. Aggrieved by such refusal the present Petition for Special Leave to Appeal had been filed. Special Leave Petition dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 11, 17, 21 and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court observed that the Petitioners in the first place would not have approached the Consumer Forum for a direction as to why the Respondent authorities have not constituted a Cooperative Society. Non-formation of a Cooperative Society cannot be within the ambit and scope of deficiency of service so as to claim compensation for the same under the Consumer Protection Act.

b) The Court upheld the orders of the National Consumer Redressal Commission and dismissed the Special Leave Petition.

c) The Court observed that if non-formation of a Cooperative Society can lead to the consequence of violation of any Rule or Bye-law of a Town Planning or any other provision, it will be open for the Petitioners to approach the High Court in this regard, but insofar as the claim of the compensation under the Consumer Protection Act is concerned, the same has no substance.

viii) Citation:

IV (2013) CPJ 62 (SC).

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5. Dr. Jagmittar Sain Bhagat v. Director Health Services, Haryana & Ors.

i) Order appealed against:

From the judgment and order dated 26.11.2009 in Revision Petition No.1156/ 2007, M.A.No.291/2008 and M.A.No.450/2008 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Dr. Jagmittar Sain Bhagat - Appellant

versus

Director Health Services, Haryana & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.5476 of 2013 arising out of SLP(C) No.11381 of 2012.
Date of Judgment: 11.07.2013.

iv) Case in Brief:

The Appellant served as Medical Officer in the Health Department of Haryana State from June 1953 till October 1985. During the period of service, he stood transferred to another District but retained his Government accommodation from 11.05.1980 to 11.07.1981. Appellant claimed that he not been paid all his retiral benefits and the penal rent for the said period had been deducted from his dues without giving any show cause notice to him. Despite his representations, no relief was given to him. He preferred a complaint before the District Consumer Forum, Faridabad which was dismissed on merits observing that his dues namely pension, gratuity and PF had been correctly calculated and paid to the Appellant. Appellant appealed to the State Commission which dismissed the same observing that though the District Forum did not have the jurisdiction to entertain the complaint as the Appellant was not a "consumer", since the issue of jurisdiction was not raised by the opposite party (State) nor did it prefer any appeal the order of the District Forum on the jurisdictional issue attained finality. Appellant filed Revision Petition before the National Commission which was dismissed; the Review filed by the Appellant was also dismissed vide impugned order dated 26.11.2009. Hence this appeal. Appeal dismissed.

v) Acts and Sections referred:

Sections 2(1)(d)(ii), 2(b), (c), (d), (g), (o) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *United Commercial Bank Ltd. v. Their Workmen,*
   AIR 1951 SC 230. [Para 7]
2. *Smt. Nai Bahu v. Lal Ramnarayan & Ors.,*
   AIR 1978 SC 22. [Para 7]
3. *Natraj Studios (P) Ltd. v. Navrang Studios & Anr.,*
   AIR 1981 SC 537. [Para 7]
4. *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors.,*
   AIR 1999 SC 2213. [Para 7]
5. *Sushil Kumar Mehta v. Gobind Ram Bohra (Dead) Thr. Lrs.,*
   (1990) 1 SCC 193. [Para 8]

6. *Premier Automobiles Ltd. v. K.S. Wadke & Ors.,*
(1976) 1 SCC 496. [Para 8]

7. *Kiran Singh v. Chaman Paswan,*
AIR 1954 SC 340. [Para 8]

8. *Chandrika Misir & Anr. v. Bhaiyalal,*
AIR 1973 SC 2391. [Para 8]

9. *Setrucharlu Ramabhadra Raju Bahadur v. Maharaja of Jeypore,*
AIR 1919 PC 150. [Para 9]

10. *State of Gujarat v. Rajesh Kumar Chimanlal Barot & Anr.,*
AIR 1996 SC 2664. [Para 9]

11. *Harshad Chiman Lal Modi v. D.L.F. Universal Ltd. & Anr.,*
AIR 2005 SC 4446. [Para 9]

12. *Carona Ltd. v. M/s. Parvathy Swaminathan & Sons,*
AIR 2008 SC 187. [Para 9]

13. *Morgan Stanley Mutual Fund v. Kartick Das,*
(1994) 4 SCC 225. [Para 12]

14. *Secretary, Board of Secondary Education, Orissa v. Santosh Kumar Sahoo & Anr.,*
AIR 2010 SC 3553. [Para 13]

15. *Bihar School Examination Board v. Suresh Prasad Sinha,*
AIR 2010 SC 93. [Para 14]

16. *Maharshi Dayanand University v. Surjeet Kaur,*
(2010) 11 SCC 159. [Para 14]

17. *Regional Provident Fund Commissioner v. Bhavani,*
AIR 2008 SC 2957. [Para 15]

vii) Issues raised and decided:

a) The Court observed that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court and if the Court passes a decree having no jurisdiction in the matter it would amount to nullity. The finding of a Court/ Tribunal becomes irrelevant and unenforceable/inexecutable once the Forum is found to have no jurisdiction. Similarly if a Court/ Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate, defeating the legislative animation.

b) In *Sushil Kumar Mehta* (supra) and other cases it had been held that a decree without jurisdiction is a nullity.

c) The Court further observed that law does not permit any Court/ Tribunal/Authority/Forum to usurp jurisdiction on any ground whatsoever in case such an authority does not have jurisdiction on the subject matter. For assumption of jurisdiction by a Court or a Tribunal, existence of jurisdictional fact is a condition precedent [*S.R. Raju Bahadur* (supra)].

d) After analyzing the definition of the terms consumer, Complainant, deficiency etc., under the Consumer Protection Act, 1986, the Court pointed out that in several cases [*Bihar School Examination Board* (supra), *Secretary, Board of Secondary Education, Orissa* (supra)], the Court had held that the Board is not a service provider and a student who takes an examination is not a consumer and consequently complaint under the Act will not be maintainable against the Board.

e) The Court held that by no stretch of imagination a Government servant can raise any dispute regarding his service conditions or for payment of gratuity or GPF or any of his retiral benefits before any of the Forum under the Act. It was further held that the Government servant does not fall under the definition of a "consumer" as defined under Section 2(1)(d)(ii) of the Act. Such Government servant is entitled to claim his retiral benefits strictly in accordance with his service conditions and regulations or statutory rules framed for that purpose.

f) The Court took note of the submission made on the behalf of the State that no penal rent was going to be charged from the Appellant. The Court did not want to pass any further order and disposed of the appeal.

viii) Citation:

AIR 2013 SC 3060; (2013) 10 SCC 136;
(2013) CPJ 22 (SC); 2013(3) CPR 514 (SC).

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6. Haryana State Agricultural Marketing Board v. Bishamber Dayal Goyal and Ors.

i) Order appealed against:

From the order dated 13.04.2005 in Revision Petition Nos.534-537/2005 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Haryana State Agricultural Marketing Board - Appellant

versus

Bishamber Dayal Goyal and Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.3122 of 2006.

Date of Judgment: 26.03.2014.

iv) Case in Brief:

The Haryana State Government had, by a notification dated 16.11.1971, notified the area of New Grain Mandi, Adampur as Market Area. In 1980, the Government notified a sub-market yard of New Grain Mandi. In 1986 the said area was transferred to the Appellant Board. The Respondents were allotted plots by the Appellant upon depositing 25% of the price. The method of payment and consequences for non-payment of any installment had been mentioned in the allotment letter. On non-payment of installments by the Respondents, the Appellant issued notice asking them to pay the balance 75% of the cost with interest and penalty charges. The Respondents filed a complaint before the District Forum alleging deficiency in services, failure to notify Adampur Mandi as Market Area and failure to develop and provide basic amenities in the locality. The District Forum, after appointing a Local Commissioner and getting his report on the status on ground, held that due to the omission of the Appellant, the Complainants/Respondents were deprived of doing the grain business for which the plots were purchased and in the absence of the notification of area as a sub-yard, held that there was a grave deficiency in service. The Forum awarded the Respondents interest at 12% p.a. on the entire deposited amount after two years from the date of issuance of allotment letters. The Respondents were also directed to deposit the remaining balance amount and the Appellant Board was directed not to levy any charge, penalty or interest on the same. The appeal filed by the Respondents before the State Commission was dismissed. The Revision Petition filed before the National Commission was also dismissed. Aggrieved by the said orders the present appeal had been filed. Appeal dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 12 18, 22 and 23 of the Consumer Protection Act, 1986; Section 7 of Punjab Agricultural Produce Markets Act (23 of 1961).

vi) Cases referred:

1. *U.T. Chandigarh Administration & Anr. v. Amarjeet Singh & Ors.,* (2009) 4 SCC 660 : (AIR 2009 SC 1607 : 2009 AIR SCW 2522). [Para 6]
2. *Karnataka Industrial Areas and Development Board v. Nandi Cold Storage Pvt. Ltd.* (2007) 10 SCC 481 : (AIR 2007 SC 2694 : 2007 AIR SCW 4871). [Para 6]
3. *Narne Construction (P) Ltd. v. Union of India,* (2012) 5 SCC 359 : (AIR 2012 SC 2369 : 2012 AIR SCW 3274). [Para 6]
4. *Lucknow Development Authority v. M.K.Gupta,* (1994) 1 SCC 243 : (AIR 1994 SC 787 : 1994 AIR SCW 97). [Para 6]
5. *Municipal Corporation, Chandigarh & Ors. v. Shantikunj Investment (P) Ltd. & Ors.,* (2006) 4 SCC 109 : (AIR 2006 SC 1270 : 2006 AIR SCW 1169). [Para 7]
6. *Haryana State Agricultural Marketing Board v. Raj Pal,* (2011) 13 SCC 504 : (AIR 2011 SC 1394 : 2011 AIR SCW 950). [Para 7]

vii) Issues raised and decided:

a) The Appellant Board contended before the Court that the Respondents are not consumers. However, the Court noted that the Board never challenged the jurisdiction of the consumer forum and reiterated that the statutory Boards and Development Authorities which are allotting sites with the promise of development are amenable to the jurisdiction of consumer forum in case of deficiency of services as was held in *UT Chandigarh Administration and Anr. v. Amarjeet Singh and Ors.* (supra) and *Karnataka Industrial Areas and Development Board v. Nandi Cold Storage Pvt. Ltd.* (supra).

b) The Court observed that the allotments were made when the plots were in development stage on the condition that they be used only for auction and trading of grains. Therefore the present auction is different from a free public auction or an auction on "as is where is basis". In such a scenario the Appellant Board as service provider is obligated to facilitate the utilization and enjoyment of the plots as intended by the allottees and set out in the allotment letter.

c) The Court, on the basis of the principles laid down in *Haryana State Agricultural Marketing Board v. Raj Pal* (supra) held that the Respondents were also incorrect in refusing to pay the installments and violating the terms of the allotment letter. Considering the surrounding

circumstances wherein the Appellant had been unable to develop the area for more than two decades and resultant loss suffered by the Respondents, the Court was of the opinion that there was a need for proportionate relief as the levy of penal interest and other charges on the Respondents would be grossly unfair.

d) The Court held that the Appellant had not made out any grounds to interfere with the order of the National Commission. The Court also observed that adequate relief had been granted to the Respondents/ Complainants by awarding interest at 12% p.a. on the entire deposited amounts. Consequently the appeal being devoid of merit was dismissed.

viii) Citation:

AIR 2014 SC 1766; II (2014) CPJ 11 (SC);

2014(2) CPR 176 (SC); 2017(1) CPR 44 (SC).

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XI. JURISDICTION OF THE CONSUMER FORA – ELECTRICITY SUPPLY

1. U.P. Power Corporation Ltd. & Ors. v. Anis Ahmad

i) Order appealed against:

From the judgment and order dated 10.04.2008/16.04.2008, 13.03.2009, 29.03.2011, 07.07.2011 of the National Consumer Disputes Redressal Commission.

ii) Parties:

U.P. Power Corporation Ltd. & Ors. - Appellants

versus

Anis Ahmad - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.5466 of 2012 (Arising out of SLP (C) No.35906 of 2011) with C.A.No.5467-5468 of 2012 [@ SLP (C) No.18284-18285 of 2008]

C.A.No.5469 of 2012 [@ SLP (C) No.14306 of 2009]

C.A.No.5470 of 2012 [@ SLP (C) No.33557 of 2011]

C.A.No.5471 of 2012 [@ SLP (C) No.33558 of 2011]

C.A.No.5472 of 2012 [@ SLP (C) No.33559 of 2011]

C.A.No.5473 of 2012 [@ SLP (C) No.33560 of 2011]

C.A.No.5474 of 2012 [@ SLP (C) No.33561 of 2011]

C.A.No.5475 of 2012 [@ SLP (C) No.33562 of 2011]

Date of Judgment: 01.07.2013.

iv) Case in Brief:

Eight persons namely Anis Ahmad, Rakhi Ghosh, Prithvi Pal Singh, Zulfikar, Shahzadey Alam, Atul Kumar Gupta, Tauseef Ahmed and Mohd. Yunus who had electric connections in their premises were alleged by the Appellant Corporation to have committed theft of electricity for which assessment notices were issued. They filed complaints under Section 2(1)(d) of the Consumer Protection Act, 1986 against the Appellant, U.P. Power Corporation before the District Forum-II, Moradabad praying for cancellation of the notice/ restoration of power supply and payment of compensation. The Forum decided the cases in favour of the Complainants. The U.P. Power Corporation

filed appeals before the State Consumer Disputes Redressal Commission which were dismissed. The National Commission, on Revision Petition filed by the Corporation, by impugned majority judgment dated 10.04.2008 followed by other orders had held that the rights of consumers under the Consumer Protection Act are not affected by the Electricity Act, that against the assessment order passed under Section 126 of the Electricity Act, a consumer has option either to file appeal under Section 127 of the Electricity Act or to approach the consumer fora by filing the complaint and that he has to select either of the remedy. Aggrieved by the orders the present civil appeals had been filed. The questions involved in these appeals were; (a) whether complaints filed by the Respondents before the Consumer Forum constituted under the Consumer Protection Act, 1986 were maintainable and (b) whether the Consumer Forum has jurisdiction to entertain a complaint filed by a consumer or any person against the assessment made under Section 126 of the Electricity Act, 2003 or action taken under Sections 135 to 140 of the Electricity Act. All the appeals were allowed and the impugned orders of the National Commission were set aside.

v) Acts and Sections referred:

Sections 2(1) (c), (d), (g), (o) and 23 of the Consumer Protection Act, 1986; Sections 126, 127, 135 to 140, 153, 173 and 174 of the Electricity Act, 2003.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Appellants contended before the Supreme Court that: (i) the proceedings under Sections 126, 127, 135 etc. of the Electricity Act, 2003 initiated by the service providers are not related to deficiency of service in the supply of electricity by the service providers under the Electricity Act, 2003. Therefore, the complaints against the proceedings under Sections 126, 127, 135 etc. of the Electricity Act, 2003 are not maintainable before the Forum constituted under the CP Act, 1986 and (ii) in absence of any inconsistency between Sections 126, 127, 135 etc. of the Electricity Act, 2003 and the Consumer Protection Act, 1986, Sections 173 and 174 of the Electricity Act are not attracted.

b) Per contra, the Respondents contended that a complaint under the Consumer Protection Act against the final assessment order passed under Section 126 of the Electricity Act is maintainable before the Consumer Forum.

c) The Court after analyzing the provisions of Sections 2(1)(c), (d), (g), (o), (r) of the Consumer Protection Act and Sections 126, 127, 135 to 140, 173, 174, 175 of the Electricity Act, 2003 observed that the National Commission, though held that the intention of the Parliament is not to bar the jurisdiction of the Consumer Forum under the Consumer Protection Act and had saved the provisions of the Consumer Protection Act, failed to notice that by virtue of Section 3 of the Consumer Protection Act, 1986 or Sections 173, 174 and 175 of the Electricity Act, 2003 the Consumer Forum cannot derive power to adjudicate a dispute in relation to assessment made under Section 126 or offences under Sections 135 to 140 of the Electricity Act, as the acts of indulging in "unauthorized use of electricity" as defined under Section 126 or committing offence under Sections 135 to 140 do not fall within the meaning of "complaint" as defined under Section 2(1)(c) of the Consumer Protection Act.

d) The Court further observed that the acts of indulgence in "unauthorized use of electricity" by a person as defined in Clause (b) of the Explanation below Section 126 of the Electricity Act neither has any relationship with "unfair trade practice" or "restrictive trade practice" or "deficiency in service" nor does it amount to hazardous services by the licensee. Such acts of "unauthorized use of electricity" has nothing to do with charging price in excess of the price. Therefore, acts of persons indulging in "unauthorized use of electricity" do not fall within the meaning of "complaint" and therefore the complaint against assessment under Section 126 is not maintainable under the Consumer Forum. The Court observed that the Commission has already noticed that the offences referred to in Sections 135 to 140 can be tried only by a Special Court constituted under Section 153 of the Electricity Act. In that view of the matter also the complaint against any action taken under Sections 135 to 140 of the Electricity Act is not maintainable before the Consumer Forum.

e) In view of the above observations, the Court held that:

   (i) In case of inconsistency between the Electricity Act and the Consumer Protection Act, the provisions of Consumer Protection Act will prevail but *ipso facto* it will not vest the Consumer Forum with the power to redress any dispute with regard to the matters which do not come within the meaning of "service" as defined under Section 2(1)(o) or "complaint" as defined under Section 2(1)(c) of the Consumer Protection Act.

(ii) A "complaint" against the assessment made by assessing officer under Section 126 or against the offences committed under Sections 135 to 140 of the Electricity Act is not maintainable before a Consumer Forum.

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

f) The Court accordingly set aside the orders of the National Commission and allowed the appeals filed by the service provider – licensee.

viii) Citation:

III (2013) CPJ 1 (SC); 2013(3) CPR 670 (SC).

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XII. LIMITATION

1. Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr.

i) Order appealed against:

From the judgment and order dated 11.09.2009 passed by the High Court of Delhi in LPA Nos.418 & 1006/2007.

ii) Parties:

Office of the Chief Post Master General & Ors. - Appellants

versus

Living Media India Ltd. & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.2474-2475 of 2012 (Arising out of SLP(C) Nos.7595-96 of 2011)
Date of Judgment: 24.02.2012.

iv) Case in Brief:

Respondent No.1, Living Media Ltd., is a company which publishes the magazines "Reader's Digest" and "India Today". These magazines are registered newspapers with registration numbers issued by the Appellant's office, Delhi circle. Under the Indian Post Office Act and the Rules thereunder, Respondent No.1 was entitled for transmission of the magazines by post under concessional rate of postage. On 14.10.2005 the Respondent No.1 submitted an application to the Postal Department seeking permission to post December 2005 issue of "Reader's Digest" magazine containing the advertisement of Toyota Motor Corporation in the form of booklet with calendar for the year 2006 at concessional rates in New Delhi. The department denied permission on the ground that the booklet with calendar is neither a supplement nor a part and parcel of the publication. Similarly the department refused to grant concessional rate of postage to post the December, 26, 2005 issue of "India Today" magazine containing a booklet of Amway India Enterprises titled "Amway". Respondent No.1 being aggrieved by the decision of the department filed Writ Petition before a Single Judge of the High Court who allowed the petitions. The LPAs filed by the Postal Department were dismissed by the High Court vide impugned order dated 11.09.2009. Challenging the said order the Postal Department has preferred the present appeals by way of special leave. Appeals dismissed on the ground of delay.

v) Acts and Sections referred:

Article 136 of Constitution of India; Section 5 of Limitation Act, 1963.

vi) Cases referred:

1. *State of Haryana v. Chandra Mani & Ors.,* (1996) 3 SCC 132. [Para 7]
2. *State of U.P & Ors. v. Harish Chandra & Ors.,* (1996) 9 SCC 309. [Para 7]
3. *National Insurance Co. Ltd. v. Giga Ram & Ors.,* (2002) 10 SCC 176. [Para 7]
4. *State of Nagaland v. Lipok Ao & Ors.,* (2005) 3 SCC 752. [Para 7]
5. *Commissioner of Wealth Tax Bombay v. Amateur Riders Club,* (1994) Supp. (2) SCC 603. [Para 10]
6. *Pundlik Jalam Patil (dead) by LRS v. Executive Engineer, Jalgaon Medium Project & Anr.,* (2008) 17 SC 448. [Para 10]

vii) Issues raised and decided:

a) The following issues arose for consideration before the Court:

(i) Whether the office of the Chief Post Master General has shown sufficient cause for condoning the delay of 427 days in filing SLPs before the Court. Depending on the outcome of the above issue, other issues to be considered are:

(ii) Whether the impugned advertisement inserted in the Reader's Digest issue of December 2005 is in conformity with the requirement of law.

(iii) Whether the Department has made out a case for interference under Article 136 of Constitution of India to reopen concurrent findings of fact rendered by the High Court.

b) The Department relied on the judgments on the Supreme Court in *Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others, G. Ramegowda, Major and Others v. Special Land Acquisition Officer, Bangalore, (1988) 2 SCC 142, State of Haryana v. Chandra Mani & Ors., State of U.P & Ors. v. Harish Chandra & Ors., National Insurance Co. Ltd. v. Giga Ram & Ors., State of Nagaland v. Lipok Ao & Ors.,* to make out a case for condonation of delay. The Respondents' Counsel referred to the decisions in *Commissioner of Wealth Tax Bombay v.*

Amateur Riders Club, Pundlik Jalam Patil (dead) by LRS v. Executive Engineer, Jalgaon Medium Project & Anr., where the Court refused to condone the delay on the ground that the law of limitation binds everybody including Government Departments.

c) The Court observed that considering the peculiar facts and circumstances of each case, the delay had been condoned in the cases cited by the Appellant. Applying the principles laid down in the above cases the Court considered the reasoning placed by the Postal Department in their application for condonation of delay. The Court noted that the Department had itself mentioned that it was aware of the date of the impugned judgment of the High Court. No explanation was forthcoming for not applying for certified copy of the impugned judgment within a reasonable time. The Court observed that there was delay at every stage as seen from the affidavit and except mentioning dates of receipt of the file and decision taken, there was no explanation as to why such delay had occasioned. The Court held that the persons concerned in the Department had not evinced diligence in prosecuting the matter by taking appropriate steps.

d) The Court held that persons concerned were well aware or conversant with the issues involved including the prescribed periods of limitation for taking up the matter by way of filing a Special Leave Petition in the Apex Court. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The Law of limitation undoubtedly binds everybody in Government.

e) The Court observed that it is the right time to inform all the Government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The Government Departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for Government Departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. The Court held that in the present case the Department miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.

f) In view of the conclusion on (i) above the Court held that there was no need to go into the merits of issues (ii) and (iii). The appeals were accordingly dismissed on the ground of delay.

viii) Citation:

2013(2) CPR 306 (SC).

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2. Muneesh Devi v. Uttar Pradesh Power Corporation Ltd. & Ors.

i) Order appealed against:

From the judgment and order in OP.No.253/2012 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Muneesh Devi - Appellant

versus

Uttar Pradesh Power Corporation Ltd. & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.4075 of 2013.
Date of Judgment: 19.07.2013.

iv) Case in Brief:

The Appellant's husband, Shri Jagbir Singh, was employed with Mahanagar Telephone Nigam Limited, Delhi. On 05.02.2000 he suffered 85% burn injuries on his body due to sudden bursting of the transformer installed by Respondent No.1, U.P. Corporation Limited. He succumbed to the injuries leaving behind the Appellant and three minor children. The Appellant claimed to have made representation dated 28.07.2000 to the Respondents for award of Rs.25 lakhs as compensation but they did not respond. She filed a civil suit in the Court of the Civil Judge, Ghaziabad for payment of compensation of Rs.20 lakhs. The same was dismissed on account of non-payment of deficit court fees. The Appellant then filed a petition under Article 226 of the Constitution and prayed for issue of a mandamus to the Respondent to pay compensation by alleging that her husband died due to their negligence. The same was dismissed by the Division Bench of the High Court. SLP(C) filed by the Appellant against the order of the High Court was dismissed by the Supreme Court on 15.03.2002. Thereafter, the Appellant filed a complaint in the National Commission under Section 21 of the Consumer Protection Act for award of compensation of Rs.25 lakhs. By an order dated 25.07.2002, the

Commission gave liberty to the Appellant to amend the complaint which she did. The complaint was admitted. The Appellant also filed an application for condonation of delay of 156 days in filing the complaint. The National Commission did not take cognizance of the Appellant's assertion that before filing the complaint, she had pursued remedies before the Civil Court, the High Court and the Apex Court and dismissed the complaint as barred by time by simply observing that she could not substantiate her assertion of having made representation dated 28.07.2000. Aggrieved by the order the present appeal had been filed. Appeal allowed. Delay condoned and the matter remitted back to the National Commission for disposal thereof on merits.

v) Acts and Sections referred:

Sections 12, 21, 23 and 24A of the Consumer Protection Act, 1986; Sections 5 and 14 of Limitation Act, 1963.

vi) Cases referred:

1. *Munesh Devi v. State of U.P.,*
   SLP (C) No.5210 of 2002, order dated 15.03.2002 (SC).
2. *Munesh Devi v. State of U.P.,*
   Civil Misc. Writ Petition No.34463 of 2001
   (Writ-C 34463 of 2001), order dated 01.11.2001 (All).

vii) Issues raised and decided:

a) The Court observed that a reading of Sections 12 and 24A makes it clear that a complaint filed after expiry of two years counted from the date of accrual of cause of action cannot be admitted by any Consumer Forum unless the Complainant is able to show that he had sufficient cause for not filing the complaint within the prescribed period and the Forum concerned records reasons for condoning the delay.

b) The Court noted that in the application filed by the Appellant for condonation of delay, she had made copious references to the Civil Suit, Writ Petition and the Special Leave Petition filed by her and that the complaint filed by her was admitted *after* considering the issue of limitation. She also pleaded that the cause for claiming compensation was continuing. The Court observed that the National Commission completely ignored the fact that the Appellant is not well educated and she had throughout relied upon the legal advice tendered to her. She first filed Civil Suit which was dismissed due to non-payment of deficient Court fees. She then filed writ petition before the High Court

and the special leave petition before the Supreme Court for issue of mandamus to the Respondents to pay compensation but did not succeed. The Court held that it can reasonably be presumed that substantial time was consumed in availing these remedies. It was neither the pleaded case of Respondent No.1 nor was any material produced before the National Commission to show that in pursuing remedies before the judicial forums, the Appellant had not acted bona fide. The Court therefore held that it was an eminently fit case for exercise of power under Section 24A(2) of the Act. The Court observed that unfortunately the National Commission had rejected the applicant's prayer for condonation of delay on a totally flimsy ground that she had not been able to substantiate the assertion about her having made representation to the Respondents for grant of compensation. The Court held that the impugned order was legally unsustainable and is liable to be set aside.

c) In the result the appeal was allowed, the impugned order was set aside and the delay in filing the complaint was condoned. The matter was remitted to the National Commission for disposal of the case on merits.

viii) Citation:

(2013) 10 SCC 478; AIR 2013 SC 2766.

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XIII. MAINTAINABILITY OF A SECOND COMPLAINT ON THE SAME ISSUE

1. Indian Machinery Company v. M/s. Ansal Housing & Construction Ltd.

i) Order appealed against:

From the order of the National Consumer Disputes Redressal Commission.

ii) Parties:

Indian Machinery Company - Appellant

versus

M/s. Ansal Housing & Construction Ltd. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.557 of 2016 arising out of SLP(C) No.19618 of 2013.
Date of Judgment: 27.01.2016.

iv) Case in Brief:

The question before the Court was whether a second complaint to the District Forum under the Consumer Protection Act, 1986 is maintainable when the first complaint was dismissed for default or non-prosecution. The National Commission had taken the view in the impugned order that the second complaint was not maintainable. Held that the second complaint filed by the Appellant was maintainable on the facts of the case.

v) Acts and Sections referred:

Sections 23 and 30(1) of the Consumer Protection Act, 1986; Rule 9(6) of the Tamil Nadu Consumer Protection Rules, 1988; Rule 15(6) of the Consumer Protection Rules, 1987; Order 9 Rule 9(1) of CPC; Order 9 Rule 8 of CPC, 1908.

vi) Cases referred:

New India Assurance Company Ltd. v. R.Srinivasan, (2000) 3 SCC 242.

vii) Issues raised and decided:

a) In *New India Assurance Company Ltd. v. R. Srinivasan* (supra) an identical question arose. The Court had held in Para 16 as follows: "This Rule [Rule 9(6) of the Tamil Nadu Consumer Protection Act, 1988] is in identical terms with sub-rule 8 of Rule 4 and sub-rule 8 of Rule 8. Under the sub-rule, the appeal filed before the State Commission against

the order of the District Forum can be dismissed in default or the State Commission may in its discretion dispose of it on merits. Similar power has been given to the National Commission under Rule 15(6) of the Rules made by the Central Government under Section 30(1) of the Act. These rules do not provide that if a complaint is dismissed in default by the District Forum under Rule 4(8) or by the State Commission under Rule 8(8) of the rules, a second complaint would not lie. Thus there is no provision parallel to the provision contained in Order 9 Rule 9(1) CPC which contains a prohibition that if a suit is dismissed in default of the Plaintiff under Order 9 Rule 8, a second suit on the same cause of action would not lie. That being so, the rule of prohibition contained in Order 9 Rule 9(1) CPC cannot be extended to the proceedings before the District Forum or the State Commission. The fact that the case was not decided on merits and was dismissed in default of non-appearance of the Complainant cannot be overlooked and therefore it would be permissible to file a second complaint explaining why the earlier complaint could not be pursued and was dismissed in default".

b) In view of the decision given by the Court earlier as extracted above, it was held that the second complaint filed by the Appellant was maintainable on the facts of the case especially when no rule similar to Order 9 Rule 9(1) of the Code of Civil Procedure, 1908 had been shown. Under the circumstances the Court set aside the order passed by the National Commission and remitted the matter back to the National Commission for adjudicating the dispute on merits.

viii) Citation:

(2016) 3 SC 689; AIR 2016 SC 2209.

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XIV. PROCEDURE ADOPTED / FOLLOWED BY THE FORA

1. A. Srimannarayana v. Dasari Santakumari & Anr.

i) Order appealed against:

From the judgment and order dated 15.07.2010 of the National Consumer Disputes Redressal Commission in R.P.No.2032/2010 (Arising out of SLP(C) No.26043/2010 and SLP(C) No.1495/2011).

ii) Parties:

A. Srimannarayana - Appellant

versus

Dasari Santakumari & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeals No.368 of 2013 with 369 of 2013.
Date of Judgment: 09.01.2013.

iv) Case in Brief:

The Appellant and Respondent No.2, who are doctors, conducted an operation on the left leg of the husband of the Complainant. Sometime after the operation, the patient died on 13.07.2008. Respondent No.1, wife of the deceased, filed a complaint against the Appellant and Respondent No.2 before the District Consumer Forum. Notice was issued by the Forum to the Appellant and Respondent No.2. Against the issuance of the notice, Appellant filed a Revision Petition before the State Commission on the ground that the complaint could not have been registered by the Forum without seeking the opinion of an expert in terms of the decision of the Supreme Court in *Martin F. D' Souza v. Mohd. Ishfaq*. In the Revision Petition Respondent No.2 filed IA.No.2240 of 2009 praying for stay of proceedings before the District Consumer Forum. The State Commission rejected the Revision Petition but granted liberty to the Appellant to file the necessary application before the District Forum to refer the matter to an expert. The applicant did not file any application before the District Forum but challenged the order of the State Commission by filing Revision Petition No.2032 of 2010 before the National Commission. The said Revision Petition was dismissed by the National Commission vide impugned order by relying upon a subsequent judgment of the Supreme Court in *V. Kishan Rao v. Nikhil Super Speciality Hospital*, wherein the Court had declared that the judgment rendered in *Martin F. D' Souza* is

per incuriam. The present Special Leave Petitions/Civil Appeals had been filed challenging the impugned order of the National Commission. Civil Appeals dismissed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 13, 14 and 23 of the Consumer Protection Act, 1986; Section 45 of Evidence Act, 1872; Section 304A Indian Penal Code 1860.

vi) Cases referred:

1. *V. Kishan Rao v. Nikhil Super Speciality Hospital,*
   (2010) 5 SCC 513 : (2010) 2 SCC (Civ) 460.
   (Affirmed and followed) [Para 5]
2. *A. Srimannarayana v. Dasari Santakumari,*
   RP.No.2032 of 2010 order dated 15.07.2010 (NC).
   (Affirmed) [Para 1]
3. *Martin F. D' Souza v. Mohd. Ishfaq,*
   (2009) 3 SCC 1 : (2009) 1 SCC (Civ) 735 : (2009) 1 SCC (Cri) 958.
   (Held *per incuriam* on this point) [Para 4]
4. *Jacob Mathew v. State of Punjab,*
   (2005) 6 SCC 1 : 2005 SCC (Cri) 1369.
   (Applied) [Para 4]

vii) Issues raised and decided:

a) It was argued on behalf of the Appellant that the judgment of the Court in *V.Kishan Rao* (supra) had erroneously declared the earlier judgment of the Court in *Martin F. D' Souza* (supra) as *per incuriam*, on a misconception of the law laid down by a three-Judge Bench of the Court in *Jacob Mathew v. State of Punjab*. Not accepting this submission the Court held that the judgment in *Jacob Mathew* was clearly confined to the question of medical negligence leading to criminal prosecution, either on the basis of a criminal complaint or on the basis of an FIR. It was held that the observations of the Court in Paras 12, 28, 29 and 48 of the said judgment leave no manner of doubt that the observations were limited only with regard to prosecution of doctors for the offence under Section 304-A of IPC.

b) The Court held that the judgment rendered in *Martin F. D' Souza* (2009) had been correctly declared *per incuriam* by the judgment in *V. Kishan Rao* (2010) as the law purported to be laid down in *Martin F. D' Souza*

case was contrary to the law laid down in *Jacob Mathew* (2005) case. The Court held that the conclusions recorded by the National Commission in the impugned order therefore do not call for any interference.

c) The Civil Appeals were accordingly dismissed.

viii) Citation:

(2013) 9 SCC 496; I (2013) CPJ 6 (SC);

2013(1) CPR 601 (SC); 2014(4) CPR 273 (SC).

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2. General Motors (India) Pvt. Ltd. v. Ashok Ramnik Lal Tolat and Anr.

i) Order appealed against:

From the order dated 16.12.2008 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition Nos.3349/2006 and 2858/2008.

ii) Parties:

General Motors (India) Pvt. Ltd. - Appellant

versus

Ashok Ramnik Lal Tolat and Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeals No.8072 – 73 of 2009.
Date of Judgment: 09.10.2014.

iv) Case in Brief:

The Respondent/Complainant, after seeing an advertisement put out by the Appellant Company, purchased a Chevrolet Forester AWD Model motor vehicle for Rs.14 lakhs on 01.05.2004 and got accessories worth Rs.1.91 lakhs fitted. He however found that the vehicle was not SUV but a mere passenger car, not fit for off-road, no-road and dirt-road driving as represented by the company. Alleging unfair trade practice he filed a consumer complaint before the District Forum claiming refund of the price paid with interest, compensation of Rs.50,000/- and costs. The District Forum directed refund with interest at 9% p.a. from the date of complaint to the date of payment apart from compensation of Rs.5,000/- for mental agony and Rs.2,000/- towards costs. The State Commission, modifying the order of the District Forum, held that the Respondent was entitled to Rs.50,000/- as compensation

including cost of litigation. The Respondent was required to pay Rs.5,000/- towards costs for undeserving claim. The Appellant was directed not to describe the vehicle in question as SUV in any form of advertisement, website, literature etc., and to make the correction that it was a passenger car as mentioned in the owner's manual. The Appellant complied with the said direction by issuing a disclaimer. The Respondent preferred a Revision Petition against the order of the State Commission while the Appellant filed a cross-revision petition. The National Commission affirmed the findings of the State Commission that the Appellant had committed unfair trade practice. After considering the extent of use of the vehicle for a period of one year, the Commission directed the Appellant to refund a sum of Rs.12.5 lakhs subject to return of the vehicle to the Appellant without the accessories for which the Respondent had paid the money. A further sum of Rs.50,000/- was awarded to the Respondent for meeting the costs of litigation before the three Consumer Fora. The National Commission further held that though the other consumers had not approached the Commission and a period of four years had passed, the Appellant should pay punitive damages of Rs.25 lakhs, out of which Rs.5 lakhs was to be paid to the Respondent and the rest of the amount was to be deposited in the "Consumer Welfare Fund" of the Central Government. Aggrieved by the said order the Appellant had filed the present Civil Appeal and submitted that no claim was made before the National Commission for the punitive damages nor had the Appellant an opportunity to meet such claim. Allowing the appeal the Court set aside the order of the National Commission to the extent of award of punitive damages.

v) Acts and Sections referred:

Sections 12, 13, 14, 22 and 23 of the Consumer Protection Act, 1986 and Section 73 of Contract Act, 1872.

vi) Cases referred:

1. *Ludhiana Improvement Trust v. Shakti Coop. House Building Society Ltd.,* (2009) 12 SCC 369: (2009) 4 SCC (Civ.) 709. [Para 18]
2. *General Motors (I) (P) Ltd. v. Ashok Ramnik Lal Tolat,* SLPs(C) Nos.7313-14 of 2009 dated 20.11.2009 (SC). [Para 15]
3. *Godfrey Phillips India Ltd. v. Ajay Kumar,* (2008) 4 SCC 504. [Para 19]
4. *Ashok Ramnik Lal Tolat v. Gallops Motor (P) Ltd.* in Revision Petition No.3349 of 2006, dated 16.12.2008 (NC). [Para 01]

5. *Colgate Palmolive (India) Ltd. v. MRTP Commission,* (2003) 1 SCC 129. [Para 19]

vii) Issues raised and decided:

a) The Court held that the concurrent finding recorded by the three Consumer Fora to the effect that "unfair trade practice" was committed by the Appellant, which was based on adequate material on record, did not call for any interference as it satisfied the ingredients specified by the Court in *Colgate Palmolive (India) Ltd.* (supra) and affirmed the same.

b) The Court found merit in the argument that there was no claim before the National Commission for the punitive damages nor had the Appellant an opportunity to meet such claim and that part of the order needs to be set aside. The Court noted that neither there was any averment in the complaint about the suffering of punitive damages by the other consumers nor was the Appellant aware that any such claim was to be met by it. Normally punitive damages are awarded against a conscious wrongdoing unrelated to the actual loss suffered. Such a claim has to be specifically pleaded. The Court noted that the Respondent/Complainant was satisfied with the order of the District Forum and did not approach the State Commission. He only approached the National Commission after the State Commission set aside the relief granted by the District Forum. The National Commission, in exercise of revisional jurisdiction, was only concerned about the correctness or otherwise of the order of the State Commission setting aside the relief given by the District Forum and to pass such order as the State Commission ought to have passed. However, the National Commission had gone beyond its jurisdiction in awarding the relief which was neither sought in the complaint nor before the State Commission. The Court therefore held that to that extent the order of the National Commission cannot be sustained since it was contrary to the principles of fair procedure and natural justice. The Court however made it clear that they have not gone into the merits of the case and that the order would not stand in the way of any aggrieved party raising a claim before an appropriate forum in accordance with law.

c) The Court further held that the issue raised by the Respondent/ Complainant for further punitive damages of Rs.100 crores and also dragging the Respondent in the Supreme Court, merited no consideration being beyond the claim of the Complainant in the

complaint filed by them. Moreover no litigant can be punished by way of punitive damages for merely approaching the Supreme Court, unless its case is found to be frivolous.

viii) Citation:

IV (2014) CPJ 1 (SC); 2014(4) CPR 797 (SC);
(2015) 1 SCC 429; AIR 2015 SC 562.

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3. Kamlesh Aggarwal v. Narain Singh Dabbas & Anr.

i) Order appealed against:

From the order dated 08.01.2014 in First Appeal Nos.645 and 646 of 2013 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Kamlesh Aggarwal - Appellant

versus

Narain Singh Dabbas & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal Nos.224-225 of 2015.
Date of Judgment: 10.02.2015.

iv) Case in Brief:

The appellant filed a complaint before the District Consumer Disputes Redressal Forum, Ghaziabad against Navchetna Sahkari Awas Samiti Ltd., for not allotting and registering plot No.114, Village Khoda in her name on the ground that her membership was cancelled for default in payment by her. The District Forum allowed the complaint vide its order dated 17.10.2003. Since the order of the Forum was not implemented, the appellant filed execution petition. In the said case one Gulab Singh filed an application for impleadment claiming that he was in possession of the plot. The District Forum vide its order dated 13.09.2006 held that the order dated 17.10.2003 was null and void and directed the appellant to approach the Civil Court. Appellant filed an appeal before the State Commission which allowed the same and directed the District Forum to proceed afresh with the execution proceedings. The order of the State Commission was not challenged by the Samiti but a Revision Petition was filed by Gulab Singh before the National Commission. The National Commission dismissed the said Revision Petition. The appellant filed an application for execution of the order dated 17.10.2003 before the District

Forum which allowed the same and directed the Respondent Samiti to provide an alternate plot as a replacement for the plot in possession. The Review Application filed by the Respondents was dismissed by the District Forum, vide order dated 26.11.2010, which found the Respondents guilty for non-compliance of the order dated 17.10.2003 and ordered for three months imprisonment of the Respondents along with penalty of Rs.3,000/- payable by them under provisions of Section 27 of the Act. The said order was set aside by the State Commission on appeal which observed that the District Forum had not adopted the procedure of summary trial as provided under the Criminal Procedure Code 1973, at the time of passing the order of conviction and sentence. Being aggrieved by the order of the State Commission the appellant filed First Appeal Nos.645 and 646 of 2013 before the National Commission. The National Commission vide its order dated 08.01.2014 dismissed the appeals holding that there is no provision in the Act regarding the filing of second appeal under Sections 27 or 27A of the Act; even under Section 21 of the Act, a petition filed against the order passed under Section 27A of the Act could not be entertained by as a appellant has no right and the National Commission has no jurisdiction to entertain such appeal. Hence the present appeals had been filed by the appellant aggrieved by the orders of the State Commission and the National Commission. Appeals allowed. The order of the State Commission was modified to the extent of remanding the case to the District Forum to execute the decree and take penal action against the Respondents.

v) Acts and Sections referred:

Article 142 of the Constitution of India; Sections 13(4), 13(6), 13(7), 27 and 27(A) of the Consumer Protection Act, 1986; Section 262 r/w Chapter XX and Section 251 of Criminal Procedure Code; Provisions of Code of Civil Procedure 1908 under Order XXI r/w Rule 32.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

i) The Supreme Court held that a reading of Section 27A of the Act made it clear that appeal against the order passed by the District Forum under Section 27A lies to the State Commission and against the order of the State Commission an appeal lies to the National Commission. Appeal lies to the Supreme Court against the order of the National Commission. Sub-Section 2 of Section 27A states that except as aforesaid, no appeal shall lie to any Court from any order

of the District Forum, State Commission or National Commission as the case may be. It was therefore held that the order passed by the National Commission that the appeals filed by the appellant were not maintainable, is legal and valid.

ii) However, the Supreme Court held that it was necessary to interfere with the order of the State Commission only to the extent in not remanding the case to the District Forum for passing an order in accordance with law. The Supreme Court noted that the appellant had been litigating the matter before the various Consumer Redressal Fora for the last 17 years to get her legitimate right of getting the sale deed registered as she was a member of the Samiti since 1962. Therefore exercising the power under Article 142 of the Constitution, the Court modified the order of the State Commission to the extent of remanding the case to the District Forum to execute the decree and take penal action against the Respondents by following the procedure under Section 262 r/w Chapter XX and Section 251 of the Code of Criminal Procedure in accordance with law.

iii) The Court further held that apart from initiating proceedings under Section 27 of the Act, the alternative right is also available to the appellant to execute the order of the District Forum by invoking the provisions of Code of Civil Procedure, 1908 under Order XXI r/w Rule 32 for seeking direction with Respondents to get sale deed in respect of plot No.114 Village Khoda executed by the Samiti and register the same and hand over possession to her.

iv) The appeal was allowed to the extent indicated above.

viii) Citation:

IV (2015) CPJ 1 (SC).

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4. New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd.

i) Order appealed against:

From the order of the National Consumer Disputes Redressal Commission.

ii) Parties:

New India Assurance Co. Ltd. - Appellant

versus

Hilli Multipurpose Cold Storage Pvt. Ltd - Respondent

iii) Case No and Date of Judgment:

C.A.Nos.10941-10942 of 2013 with C.A.Nos.10943–10944 of 2013, C.A.No.1774 of 2014, SLP (C) No.2833 of 2014 & SLP (C) Nos.11257-11258 of 2014.

Date of Judgment: 04.12.2015.

iv) Case in Brief:

This Civil appeal was filed for resolving the doubt in relation to the period of limitation for filing the written statement or giving version of the opponent as per Section 13(2)(a) of the Consumer Protection Act,1986. The doubt was that where a complaint has been filed and the opposite party has not filed its version to the case within 30 days or within 45 days, which at the most could have been granted by the District Forum, the version given by the opposite party can be accepted or not. The anomaly had arisen because of difference of opinion between *Dr.J.J.Merchant v. Shrinath Chaturvedi* (2002) and *Kailash v. Nanhku* (2005). The Court endorsed the decision given by a three-member Bench in *Dr.J.J.Merchant* supra and held that the maximum time that can be given is 45 days.

v) Acts and Sections referred:

Section 12, 13(2) (a) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *Dr.J.J.Merchant v. Shrinath Chaturvedi, (2002) 6 SCC 635.* (Relied) [Para 1]
2. *Kailash v. Nanku, (2005) 4 SCC 480.* [Para 1]
3. *Topline Shoes Ltd v. Corporation Bank, (2002) 6 SCC 33.* (Referred) [Para 12]
4. *Central Board of Dawoodi Bohra Community v. State of Maharastra (2005) 2 SCC 673.* (Relied) [Para 19]

vii) Issues raised and decided:

a) The issue raised in this case was that within which time the opponent has to give his version to the District Forum in pursuance of a complaint filed by the Complainant to the Consumer Forum under the provisions of Section 13(2)(a) of the Consumer Protection Act,1986.

b) After hearing the arguments advanced by both the parties, the Apex Court cleared the air by stating that in no case time beyond the period of 45 days can be granted to the opposite party for filing its version of case keeping in mind the object of CP Act, 1986 (Speedy Justice) and

thereby endorsed the decision given by a three Judge Bench in *Dr.J.J.Merchant* (Supra).

c) The Court also said that since the issue discussed in *Dr.J.J.Merchant* (supra) is identical to the issue in the present case, it holds the field and not the latter view in *Kailash* (supra), since it deals with Civil Procedure Code provisions and the subject matter is also a different one (Election Matter). The Court held that the law laid down by a Bench of larger strength is binding on a subsequent Bench of lesser or equal strength as held by the Court in the case of *Central Board of Dawoodi Bohra Community & Anr. v. State of Maharastra & Anr.* [(2005) 2 SCC 673]. The Court therefore held that the view expressed by the three Judge Bench in *Dr.J.J.Merchant* (supra) in 2002 will not only prevail over the two judge bench in *Kailash* (supra) in 2005 but also the three judge bench in the current case. The appeal was decided accordingly.

viii) Citation:

AIR 2016 SC 86; 2016(1) CPR 123 (SC).

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5. Chief Administrator, HUDA & Anr. v. Shakuntla Devi

i) Order appealed against:

From the judgment and order dated 25.09.2007 in Appeal No.525/2007 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Chief Administrator, HUDA & Anr. - Appellants

versus

Shakuntla Devi - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.7335 of 2008.
Date of Judgment: 08.12.2016.

iv) Case in Brief:

The Respondent was allotted a plot measuring 40 marlas in Karnal on 03.04.1987. As physical possession was not given she filed original complaint before the State Commission in 1997. The State Commission by order dated 21.12.1998 held that the Respondent had established deficiency in service by the appellants as there was delay in handing over physical possession of the

plot. The complaint was allowed and the appellants were directed to deliver vacant physical possession of the plot within one month, to pay interest on the amount deposited by the respondent at the rate of 12% with effect from 03.04.1989 and to pay a sum of Rs.2,00,000/- as compensation on account of escalation in the cost of construction. A sum of Rs.20,000/- towards compensation for monetary loss and mental harassment was also awarded. The appellants filed an appeal before the National Commission which remanded the matter only for reconsideration of compensation for escalation of cost of construction in accordance with CPWD rates. The other reliefs were confirmed. The State Commission after taking into account the material produced by the respondent to prove escalation in the cost of construction and the fact that the respondent did not commence construction till 2006, awarded a compensation of Rs.15,00,000/- instead of Rs.18,67,000/- towards increase in cost of construction. The National Commission by impugned order dated 25.09.2007 dismissed the appeal filed by the appellants and confirmed the order passed by the State Commission. Aggrieved by the order of the National Commission the appellants had filed the present appeal. Appeal allowed.

v) Acts and Sections referred:

Sections 14(1)(d) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *Charan Singh v. Healing Touch Hospital,*
   (2000) 7 SCC 668; (2000) 6 Supreme 321. (Relied upon) [Para 13]
2. *Ghaziabad Development Authority v. Balbir Singh,*
   (2004) 4 SCC 65. (Relied upon) [Para 14]

vii) Issues raised and decided:

a) The Court noted that the Appellant handed over the plot to the Respondent only in the year 2000 instead of 1989. The Respondent had paid Rs.1,22,400/- towards the cost of plot at the rate prevailing in the year of allotment i.e. 1986. It was also noted that the Respondent was paid Rs.1,28,188/- towards interest awarded by the State Commission. It was further noted that the Respondent did not commence construction till 2006. The State Commission while awarding compensation of Rs.15,00,000/- towards escalation in the cost of construction commented on the conduct of the Respondent in delaying the construction only with the view to claim higher compensation.

b) The Court observed that the *sine qua non* for entitlement of compensation is proof of loss or injury suffered by the consumer due to

the negligence of the opposite party. Once the said conditions are satisfied, the Consumer Forum would have to decide the quantum of compensation to which the consumer is entitled. There cannot be any dispute that the computation of compensation has to be fair, reasonable and commensurate to the loss or injury. The Court observed that there is a duty cast on the Consumer Forum to take into account all relevant factors for arriving at the compensation to be paid. In this context the Court referred to the orders in *Charan Singh v. Healing Touch Hospital* and *Ghaziabad Development Authority v. Balbir Singh*, wherein the principles relating to award of compensation had been spelt out.

c) The point that fell for consideration in this case was whether the State Commission was justified in awarding in Rs.15,00,000/- towards the escalation in the cost of construction. The Court held that the Respondent was not entitled to such compensation. The Respondent suffered an injury due to the delay in handing over the possession as there was definitely escalation in the cost of construction. At the same time the Respondent had surely benefited by increase in the cost of the plot between 1989 and 2000. The Court held that the order of the State Commission is vitiated for non-application of mind to a vital and relevant factor and hence suffers from the vice of unreasonableness. The State Commission criticized the conduct of the Respondent in intentionally delaying the construction for six years but still proceeded to award compensation. In the facts and circumstances of the case, the Court was of the opinion that award of interest would have been sufficient to compensate the Respondent for the loss suffered by her due to the delay in handing over possession of the plot. It was held that the compensation of Rs.15,00,000/- awarded by the State Commission was excessive.

d) The Court accordingly set aside the order of the State Commission dated 05.07.2007 as confirmed by the National Commission and allowed the appeal.

viii) Citation:

2016 (4) CPR 600 (SC); (2017) 2 SCC 301;

AIR 2017 SC 70; 2017(1) CPR 149 (SC).

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XV. POWER OF REVISION/REVIEW/RECALL/RESTORATION

1. Mrs. Rubi (Chandra) Dutta v. M/s. United India Insurance Co. Ltd.

i) Order appealed against:

From the judgment and order dated 18.12.2008 in Revision Petition No.2899/ 2008 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Mrs. Rubi (Chandra) Dutta - Appellant

versus

M/s. United India Insurance Co. Ltd. - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.2588 of 2011 [Arising out of SLP (C) No.19246 of 2009]. Date of Judgment: 08.03.2011 (or 18.03.2011).

iv) Case in Brief:

Appellant, owner of a bus, had taken an insurance policy cover from Respondent insurance company for the period between 13.01.2003 and 12.01.2004 and had paid the premium for the same. On the intervening night of 04/05.07.2003 the bus, while proceeding on National Highway No.34, dashed against a neem tree and turned turtle. The bus was badly damaged and then slid into a roadside ditch. The internal systems of the bus also suffered extensive damage and the passengers traveling therein were also injured. FIR was lodged. The Appellant had promptly informed the Respondent about the accident and the damage caused to the bus. The Surveyor appointed by the Respondent assessed the total loss at Rs.2,90,000/-. The Respondent then appointed one Mr.Surya Dutt to prepare a detailed report and as per his investigation, the amount of damages was computed to the Rs.2,72,517.90. The Appellant however claimed that she had spent an amount of Rs.5,33,782/- and produced bills and receipts showing payments. Since the Respondent repudiated the claim, the Appellant filed a complaint before the District Forum. The Respondent contested the claim on the ground that at the time of the accident, the bus was being driven by a person who was not holding a valid driving licence. The District Forum after a detailed examination of the case held that the driver of the vehicle had a valid licence and allowed the complaint and directed the Respondent to pay the Appellant a total sum of Rs.4,00,000/- together with interest at 9% if the payment was not made within two months of the order. The Respondent filed

an appeal before the State Commission which agreed with the finding of the District Forum regarding the validity of the driver's licence. The State Commission, however held that the Appellant would be entitled to a sum of Rs.2,72,517/- only which was assessed as damages by the second Surveyor. The Respondent challenged the order of the State Commission by filing a Revision Petition before the National Commission. The National Commission after considering the matter came to the conclusion that the driver of the bus at the relevant time was not having a valid driving licence. Accordingly it allowed the plea of the Respondent and set aside the orders of the fora below. Aggrieved by the order of the National Commission the present appeal had been filed. Appeal partly allowed setting aside the order of the National Commission and holding that Respondent was liable to pay the amount of Rs.2,72,517/- with interest at 9% from the date of filing of the application till it is paid.

v) Acts and Sections referred:

Sections 2(1) (g), (o) and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

Nil.

vii) Issues raised and decided:

a) The Court noted that the bone of contention before the District Forum was whether at the relevant point of time, Sirajul Haque, driver of the bus was holding a valid driving licence or not. The District Forum had summoned the authorized officer of the Regional Transport Authority and recorded his evidence. The Forum after going through the records held that the driver had obtained duplicate driving licence after he had lost the original one. The Court further noted that the finding of the Forum on this point had been confirmed by the State Commission. The Court also noted that both the Surveyors namely Mr.Sujit Kumar Sarkar and Mr.Surya Dutt had mentioned in their reports that at the time of driving the bus, Sirajul Haque, was having a valid driving licence. All the records of the RTO's office showed that the said duplicate licence was issued only after checking the previous credentials of the driver. The Court further observed that all these facts have not been carefully dealt with by the National Commission.

b) The Court observed that the revisional powers of the National Commission are derived from Section 21(b) of the Act under which the

said power can be exercised only if there is some *prima facie* jurisdictional error appearing in the impugned order, and only then, may the same be set aside. The Court held that there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rested not on the basis of some legal principle that was ignored by the Courts below, but on a different (and erroneous) interpretation of the same set of facts. The Court held that this is not the manner in which revisional powers should be invoked. The Court further held that the jurisdiction conferred on the National Commission under Section 21(b) had been transgressed. In the light of the above, it was held that the impugned order of the National Commission cannot be sustained in law.

c) The Court held that the compensation amount fixed by the State Commission cannot be enhanced since no further revision was preferred by the Appellant. However, taking recourse to Section 34 of the Code of Civil Procedure to do complete justice between the parties, which principle is based on justice, equity and good conscience, the Court deemed it fit to award interest at the rate of 9% p.a. on Rs.2,72,517/- from the date of filing the complaint till it is actually paid.

d) The appeal was allowed to the extent indicated above.

viii) Citation:

2013(2) CPR 14 (SC); II (2011) CPJ 19 (SC).

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2. Rajeev Hitendra Pathak and Ors. v. Achyut Kashinath Karekar and Anr.

i) Order appealed against:

From the judgment and order dated 16.11.2005 in Revision Petition No.551/2005 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Rajeev Hitendra Pathak and Ors. - Appellants

versus

Achyut Kashinath Karekar and Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal Nos.4307 of 2007 with No.8155 of 2001.
Date of Judgment: 19.08.2011.

iv) Case in Brief:

There are two appeals involving identical questions of law and therefore they have been disposed of by a common judgment by a three member Bench.

Civil Appeal No.4307 of 2007:-

Smita Achyut Karekar underwent an operation for slipped disc on 08.10.1997 in Ashirwad Nursing Home. Her blood vessels had ruptured accidentally during the surgery and she died at 5.35 p.m. The Complainants issued a legal notice on 24.07.1999 and followed it up by filing a complaint alleging deficiency in service. The State Commission issued notice to the parties on 10.02.2004 and dismissed the complaint for want of prosecution on 09.09.2004. On 04.11.2004 Complainants filed an application for recalling 09.09.2004 order. The State Commission recalled the order and restored the complaint. Aggrieved by the said order, Appellants preferred Revision Petition No.551 of 2005 before the National Commission which was dismissed by the Commission. Challenging the said order the present Civil Appeal had been filed. The findings of the National Commission were set aside as far as it had held that the State Commission can review its own order. However the Court agreed with the findings of the Commission that Complaint No.470 of 1999 be restored for hearing in accordance with law.

Civil Appeal No.8155 of 2001:-

In this case the National Commission passed an ex parte order and in the appeal against the order, the Court gave liberty to the Appellants to approach the Commission for setting aside the ex parte order. An application was filed by the Complainants for Review of the order. The Commission vide order dated 12.07.2001 (relying on the judgment of *Jyotsana* case) dismissed the application. Aggrieved by the said order the Appellant had filed this appeal. The appeal was allowed, the impugned order was set aside and the National Commission was directed to dispose of the Original Petition No.110 of 2003 *de novo* within 3 months.

v) Acts and Sections referred:

Sections 12, 13, 17, 17-A, 17-B, 18, 22, 22-A, 23 and 30-A of the Consumer Protection Act, 1986; Regulation 26 of Consumer Protection Regulations, 2005; Or.9 R.13 of Civil Procedure Code, 1908.

vi) Cases referred:

1. *Rajeev Hitendra Pathak v. Achyut Kashinath Karekar,* (2007) 7 SCC 667.
2. *Eureka Estates (P) Ltd. v. A.P. State Consumer Disputes Redressal Commission,* AIR 2005 AP 118. (Referred) [Para 23]
3. *New India Assurance Co. Ltd. v. R.Srinivasan,* (2000) 3 SCC 242. (overruled) [Para 9]
4. *Jyotsana Arvindkumar Shah v. Bombay Hospital,* (1999) 4 SCC 325. (Relied upon) [Para 8]
5. *Forest Research Institute v. Sunshine Enterprises,* (1997) 1 CPR 42. (Referred) [Para 10]
6. *Gulzari Lal Agarwal v. Accounts Officer,* (1996) 10 SCC 590. (Referred) [Para 15]
7. *UCO Bank v. Ram Govind Agarwal,* (1996) 1 CPR 351. (Referred) [Para 10]
8. *Morgan Stanly Mutual Fund v. Kartick Das,* (1994) 4 SCC 225. (Referred) [Para 14]

vii) Issues raised and decided:

a) On a careful analysis of the various provisions of the Act, the Court held that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and the power of review and the powers which have not been expressly given by the statute cannot be exercised.

b) The Court observed that the legislature chose to give the National Commission power to review its ex parte orders. Before amendment, against dismissal of any case by the Commission, the consumer had to rush to the Supreme Court. The amendment in Section 22 (power and procedure applicable to the National Commission) and introduction of Section 22-A (power to set aside ex parte orders) were done for the convenience of the consumers. The Court carefully ascertained the legislative intention and interpreted the law accordingly.

c) The Court held that the decision in *Jyotsana case* laid down the correct law and the view taken in the later decision of the Court in *New India Assurance Co. Ltd.* is untenable and cannot be sustained.

d) In view of the legal position, the findings of the National Commission in Civil Appeal No.4307 of 2007, as far as it held that the State Commission can review its own orders, were set aside. It was held that after the amendment in Section 22 and introduction of Section 22-A in the year 2002, the power of review or recall was vested with the National Commission only. However the Court agreed with the findings of the National Commission holding that Complaint No.473 of 1999 be restored to its original number for hearing in accordance with law.

e) The order of the National Commission in Civil Appeal No.8155 of 2001 was also set aside and the Commission was directed to dispose of Original Petition No.110 of 2003 *de novo* as expeditiously as possible and in any event within 3 months from the date of communication of the order.

f) Both the appeals were disposed of accordingly.

viii) Citation:

(2011) 9 SCC 541; IV (2011) CPJ 35 (SC); 2012(1) CPR 78 (SC).

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3. Lucknow Development Authority v. Shyam Kapoor

i) Order appealed against:

From the judgment and order dated 30.03.2012 of the National Consumer Disputes Redressal Commission in Revision Petition No.3939/2011 (Arising out of SLP(C) No.19556/2012).

ii) Parties:

Lucknow Development Authority - Appellant

versus

Shyam Kapoor - Respondent

iii) Case No and Date of Judgment:

Civil Appeal No.936 of 2013.
Date of Judgment: 05.02.2013.

iv) Case in Brief:

The Respondent had preferred a complaint before the District Forum asserting that he had deposited a sum of Rs.5,000/- with the Appellant authority on 01.12.1982 for allotment of a 6000 sq. ft. plot in "A" category under the Gomti

Nagar Residential Scheme. It was alleged that the Authority had neither allotted any plot to the Complainant nor returned the deposit tendered by him. The Appellant issued a press notice in 1991 requiring persons similarly situated as the Respondent/Complainant to deposit an additional amount by January 1992 so as to be eligible for consideration for such allotment. The Respondent/Complainant accordingly deposited a further amount of Rs.15,000/- on 30.01.1992. Still no plot was allotted. Since letters to the Authority did not evoke any response, the Respondent filed a complaint before the District Forum. By order dated 30.12.2005, the Forum allowed the complaint and directed the OP to allot any developed plot admeasuring 6000 sq. ft. in any scheme in Gomti Nagar at the rate prevailing in January 1992. A sum of Rs.1,000/- was awarded to the Complainant as cost. Aggrieved by the order the Appellant preferred an appeal before the State Commission. The State Commission entertained the appeal, stayed the order of the District Forum and issued notice to the Respondent on 01.11.2006. But the Appellant failed to deposit the process fee. On 11.05.2007 the State Commission passed an order giving one week's time to the Appellant to deposit the process fee failing which the interim order passed on 01.11.2006 would stand vacated and the appeal preferred by the Authority would also stand dismissed. But the Authority did not deposit the process fee even in the extended time allowed by the State Commission. Dissatisfied with the order of the State Commission dated 11.05.2007, the Appellant filed a Revision Petition before the National Commission on 05.12.2011, more than four and a half years after the order was passed by the State Commission. The reason given by the Applicant for not filing an application for recall of the impugned order by the State Commission was that the State Commission did not have the jurisdiction to set aside or recall an order of the nature passed on 11.05.2007. The National Commission after adjourning the case a couple of times at the instance of the Authority, dismissed the petition as frivolous and imposed cost of Rs.10,000/- on the Authority. The Revision Petition was primarily dismissed because it was filed well after the prescribed period of limitation. Aggrieved by the order of the National Commission dated 30.03.2012, the present appeal had been filed. Appeal dismissed but the costs imposed by the National Commission were set aside.

v) Acts and Sections referred:

Sections 15, 17, 18, 21(b), 22, 22-A, 23, 24-A and 30-A of the Consumer Protection Act, 1986 and Regulation 26 of Consumer Protection Regulations, 2005; Or.9 R.13 of Civil Procedure Code, 1908.

vi) Cases referred:

1. *LDA v. Shyam Kapoor,*
   Revision Petition No.3939 of 2011, order dated 30.03.2012 (NC).
   (Modified) [Para ….]
2. *Rajeev Hitendra Pathak v. Achyut Kashinath Karekar,*
   (2011) 9 SCC 541 : (2011) 4 SCC (Civ) 781. (Followed) [Para 10]

vii) Issues raised and decided:

a) The first question before the Court was whether the conclusion drawn by the National Commission, that the Revision Petition filed by the Appellant was frivolous, was justified. The Appellant had relied on the decision of the Court in *Rajeev Hitendra Pathak v. Achyut Kashinath Karekar*, wherein the Court had clearly concluded that neither the District Forum nor the State Commission had power to review its "ex parte" orders. The Court noted that orders of the aforesaid nature were "per se" assailable only before the National Commission. The Court therefore found no fault in the action of the Appellant in having not chosen to move an application for recall of the order dated 11.05.2007 before the State Commission itself and therefore it was held that the observations made by the National Commission to the effect that the Appellant having not approached the State Commission for the revival of the appeal expressed volumes about the defaulting conduct of the Appellant, were clearly unjustified.

b) The Court observed that the real reason for the National Commission for dismissing the Revision Petition was that it was filed belatedly, well after the expiry of the period of limitation. The Court held that there was nothing wrong in the aforesaid determination of the National Commission and confirmed the same. It was imperative for the Lucknow Development Authority to seek condonation of delay for some justifiable reason as the National Commission was being approached after four-and-a-half years. In the absence of valid justification for condoning the delay, the National Commission had no other option but to pass the impugned order. The Court observed that even before the Supreme Court, the Appellant had failed to express any valid justification for having approached the National Commission belatedly. The Court held that there was no ground to set aside the order passed by the National Commission on 30.07.2012.

c) However, the Court observed that it was just and appropriate to set aside the costs imposed upon the Appellant herein by the National

Commission, in view of the conclusion that the choice of the Appellant in approaching the National Commission against the order passed by the State Commission (dated 11.05.2007) could not be described as frivolous. The Court held that, besides the aforesaid, the order of the National Commission did not call for any interference.

viii) Citation:

(2013) 2 SCC 754; I (2013) CPJ 1 (SC);
2013(1) CPR 597 (SC); 2013(4) CPR 369 (SC).

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4. Surendra Mohan Arora v. HDFC Bank Ltd. and Others

i) Order appealed against:

From the order dated 07.01.2013 in Writ Petition No.64/2013 of the High Court of Delhi.

ii) Parties:

Surendra Mohan Arora - Appellant

versus

HDFC Bank Ltd. and Others - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.4891 of 2014 [Arising out of Special Leave Petition (Civil) No.14965 of 2013].

Date of Judgment: 25.04.2014.

iv) Case in Brief:

The Appellant filed a complaint against the Respondent No.1 before the District Forum alleging unfair trade practice. The District Forum allowed the complaint. The State Commission dismissed the appeal filed by the Respondent. A Revision Petition was filed before the National Commission which set aside the orders of the District Forum and the State Commission on the basis of agreements *inter se* between the parties. Aggrieved, the Appellant filed a Review Application before the National Commission resulting in dismissal by an order dated 24.09.2012. The Appellant filed a Writ Petition under Article 226 of the Constitution before the High Court, *inter alia*, praying that Regulation 15 of the Consumer Protection Regulations be struck down on the ground that it was *ultra vires* of the Act and that the Review Application should be reheard by the National Commission granting an opportunity to

present the case by making oral arguments. The High Court dismissed the Writ Petition and upheld the *vires* of Regulation 15. The present appeal had been filed challenging the orders of the High Court. Appeal dismissed.

v) Acts and Sections referred:

Sections 22, 23 and 30A of the Consumer Protection Act, 1986; Regulation 15 of the Consumer Protection Regulations, 2005; Article 226 of the Constitution of India.

vi) Cases referred:

1. *State of Orissa v. Dr.(Miss) Binapani Dei and Ors.*, (1967) 2 SCR 625. [Para 8]
2. *Maneka Gandhi v. Union of India & Anr.*, (1978) 1 SCC 248. [Para 8]
3. *Sahara India (Firm), Lucknow v. Commissioner of Income Tax, Central-1 & Anr.*, (2008) 14 SCC 151. [Para 8]
4. *Automotive Tyre Manufactures Association v. Designate Authority and Ors.*, (2011) 2 SCC 258. [Para 8]
5. *Sanjay Kumar v. The State of Bihar & Anr.*, SLP (Criminal) No.9967 of 2011 dated 28.01.2014. [Para 11]

vii) Issues raised and decided:

a) The main contention of the Appellant was that by introducing Regulation 15, the National Commission has exceeded its jurisdiction and power vested in it under Section 30A of the Act.

b) The Court observed that the power of review has been granted to the National Commission under Section 22 of the CP Act, 1986 which states as follows:

> "Section 22. Power of and procedure applicable to the National Commission. – (1) The provisions of sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the Commission, be applicable to the disposal of disputes by the National Commission.
>
> (2) Without prejudice to the provisions contained in sub-section(1), the National Commission shall have the power to review any order made by it, when there is an error apparent on the face of record."

The power to make Regulations, with the prior approval of the Central Government, had been conferred on the National Commission under Section 30A of the Act.

Regulation 15 states as follows:

> "Regulation 15. Review.- (1) It shall set out clearly the grounds for review.
>
> (2) Unless otherwise ordered by the National Commission, an application for review shall be disposed of by circulation without oral arguments, as far as practicable between the same members who had delivered the order sought to be reviewed."

c) It was contended by the Appellant that the Act sought to promote and protect the rights of consumers including the right to hear and further to assure that the interest of the consumers will receive due consideration at appropriate fora. The decision of the National Commission by providing for disposal of Review Applications by circulation without oral arguments, it was contended, had taken away the right being heard and was against the principles of natural justice, thereby making it *ultra vires* to Section 22 of the Act. It was further contended that the National Commission had exercised its power beyond the scope of Section 30A of the Act while enacting Regulation 15.

d) The Court held that the power conferred by Section 22 of the Act on the National Commission is not an inherent power and further the Commission has the power to review its order when there is an error apparent on the face of the record. The Court held that Regulations have been framed in accordance with the power conferred under Section 30A on the Commission. After going through Regulation 15(2) minutely, the Court held that the power to deal with Review Applications lies with the Commission and procedure is to be adopted by the National Commission, whether the Review Petition would be decided after hearing the parties orally or can be disposed of by way of circulation. The Court accordingly held that the Regulations under Section 22 of the Act cannot be said to be *ultra vires* the said Act.

e) The Court also noted that no request was made by the Appellant before the National Commission for a hearing and that the High Court had correctly held that the Writ Petition was misconceived and devoid of merit without even laying basic foundation for having sought an oral

hearing of the Review Application. The Court found no reason to interfere with the order of the High Court and accordingly upheld and affirmed the same and dismissed the appeal.

viii) Citation:

AIR 2014 SC 2871; II (2014) CPJ 1 (SC); 2014(2) CPR 614 (SC).

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XVI. ROLE OF AUTHORIZED AGENTS IN CONSUMER FORA

1. C. Venkatachalam v. Ajitkumar C Shah & Ors.

i) Order appealed against:

From the judgment and order dated 04.09.2002 of the High Court of Judicature of Bombay in W.P.No.1425/2002.

ii) Parties:

C. Venkatachalam - Appellant

versus

Ajitkumar C Shah & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeals No.868 of 2003 with Nos.869-70 of 2003.
Date of Judgment: 29.08.2011.

iv) Case in Brief:

The South Mumbai District Forum had held in one case that an authorized agent should not be granted permission to appear on behalf of the Complainants as he was not enrolled as an advocate. A contrary decision was given by another District Forum in Maharashtra. The issue was taken to the State Commission which stayed the hearing of matters in which authorized agents were appearing and refused to grant stay where authorized agents were injuncted from appearing before the Consumer Forum. The interim order passed by the State Commission was challenged in the Bombay High Court. The Division Bench of the High Court held that the right of audience inheres in favour of authorized agents of parties in the proceedings before the Consumer Fora and such right is not inconsistent or in conflict with the provisions of the Advocates Act, 1961. Aggrieved by the said order the present appeals had been filed. A three member Bench of the Supreme Court upheld the order of the Bombay High Court and dismissed the appeals as devoid of merit.

v) Acts and Sections referred:

Sections 12, 18, 22 and 28A of the Consumer Protection Act, 1986; Sections 29, 32 and 33 of Advocates Act, 1961; Or.3 R.1 of Civil Procedure Code; Rr. 2(b), 4(7), 14 and 15 of Consumer Protection Rules, 1987; Rule 9 of Maharashtra Consumer Protection Rules, 2000 and Regulation 16 of Regulations framed by National Consumer Disputes Redressal Commission, 2005.

vi) Cases referred:

1. *R.D. Nagpal v. Vijay Dutt,* (2011) 12 SCC 498.
2. *C. Venkatachalam v. Ajitkumar C. Shah*, (2011) 12 SCC 497.
3. *J.J. Merchant v. Shrinath Chaturvedi,* (2002) 6 SCC 635. (Referred) [Para 77]
4. *Bhatia International v. Bulk Trading S.A.,* (2002) 4 SCC 105. (Referred) [Para 62]
5. *Ajitkumar C. Shah v. Oriental Insurance Co. Ltd,* WP (OS) No.1425 of 2002 decided on 04.09.2002 (Bom).
6. *District Mining Officer v. TISCO,* (2001) 7 SCC 358. (Referred) [Para 61]
7. *India Photographic Co. Ltd. v. H.D. Shourie,* (1999) 6 SCC 428. (Referred) [Para 76]
8. *Common Cause v. Union of India,* (1997) 10 SCC 729. (Referred) [Para 78]
9. *Laxmi Engineering Works v. PSG Industrial Institute,* (1995) 3 SCC 583. (Referred) [Para 75]
10. *Kartar Singh v. State of Punjab,* (1994) 3 SCC 569:1994 SCC (Cri) 899. (Referred) [Para 60]
11. *LDA v. M.K. Gupta,* (1994) 1 SCC 243. (Referred) [Para 74]
12. *Harishankar Rastogi v. Girdhari Sharma,* (1978) 2 SCC 165:1978 SCC (Cri) 168. (Referred) [Para 21]
13. *Anandji Haridas & Co. (P) Ltd. v. Engg. Mazdoor Sangh,* (1975) 3 SCC 862:1975 SCC L&S 165.
14. *O.N.Mohindroo v. Bar Council of Delhi,* AIR 1968 SC 888:(1968) 2 SCR 709. (Referred) [Para 20]
15. *R.M.D Chamarbaugwalla v. Union of India,* AIR 1957 SC 628. (Referred) [Para 58]
16. *Donoghue v. Stevenson,* 1932 AC 562:1932 All ER Rep. 1 (HL). (Referred) [Para 25]
17. *MacPherson v. Buick Motor Co.,* 217 NY 382:111 NE 1050 (1916). (Referred) [Para 28]
18. *Carlill v. Carbolic Smoke Ball Co.,* (1893) 1 QB 256:(1891-94) All ER Rep. 127. (Referred) [Para 23]

vii) Issues raised and decided:

a) The Court observed that the Consumer Protection Act, 1986 was enacted with the objective and intention of speedy disposal of Consumer Disputes at a reasonable cost. It is the bounden duty and obligation of the Court to carefully discern the legislative intention and articulate the same. In the present case the legislative intention is not the issue because there are specific rules defining agents and permitting them to appear before the Consumer Forums.

b) The Court held that when the legislature has given an option to the parties before the Consumer Forums to either personally appear or be represented by an 'authorized agent' or by an advocate, the Courts cannot compel the consumer to engage the services of an advocate. The Court further held that advocates are entitled as of right to practice before the Consumer Fora but this privilege cannot be claimed as a matter of right by anyone else.

c) The Court observed that the provisions of Maharashtra Consumer Protection Rules, 2000 clearly show that while advocates have not been debarred from pleading and appearing, the parties have been given an option to either appear personally or be presented by 'duty authorized' agents. Every advocate appointed by the party is an agent. However, the agent as contemplated under the Central and State Rules need not necessarily be an advocate. The provisions in the State and Central Rules are meant to help the consumer to vindicate his right without being burdened with intricate procedures and heavy professional fees. Such an interpretation is not only literally correct but also promotes the declared objective of the statute. It helps the claimant and defendant equally. It does not violate any provision of the Advocates Act.

d) The Court held that the High Court was fully justified in observing that the authorized agents do not practice law when they are permitted to appear before the District Forums and the State Commissions. In the impugned judgment the High Court had aptly observed that may statutes such as Sales Tax Act, Income Tax Act and Competition Act also permit non-advocates to represent the parties before the authorities and those non-advocates cannot be said to practice law. On the same analogy those non-advocates who appear before Consumer Fora also cannot be said to practice law. The view taken by the High Court in the impugned judgment was approved by the Court.

e) The Court observed that the regulations framed by the National Commission under Section 30A of the CP Act, 1986 have been enacted for providing guidelines and safeguards for regulating appearance and audience of the agents. It was held that Regulation 16 is a reasonable restriction on the right to appear by an agent. The Court further observed that in terms of the said regulations framed by the National Commission, the Consumer Forum has the right to prevent an authorized agent to appear in case it is found and believed that he is using the said right as a profession. The Court gave a number of suggestions for the National Commission to consider while framing rules including the accreditation process, fees, code of conduct for representatives etc.

f) Considering the totality of the facts and circumstances, the Court upheld the impugned judgment of the Bombay High Court and dismissed the appeals as devoid of merit.

viii) Citation:

(2011) 9 SCC 707; III (2011) CPJ 33 (SC); 2011(4) CPR 240 (SC).

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XVII. SCOPE OF SECTION 19 SECOND PROVISO OF CONSUMER PROTECTION ACT

1. Shreenath Corporation and Others v. Consumer Education and Research Society and Others

i) Order appealed against:

From the Judgment and Order dated 15.05.2012 in F.A.No.95/2012 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Shreenath Corporation and Others - Appellant

versus

Consumer Education and Research Society and Others - Respondents

iii) Case No and Date of Judgment:

Civil Appeal Nos.9052-9062 of 2013 and 9064-9066 of 2013.

Date of Judgment: 07.07.2014

iv) Case in Brief:

A number of complaints under Section 17(1) of the Consumer Protection Act were filed by different persons before the Consumer Disputes Redressal Commission, Gujarat against the Appellant Opposite parties. The State Commission by order dated 30.01.2012 allowed the Applications in part and directed the Appellant Opposite parties to pay certain amount with interest in favour of the Complainants. Against the aforesaid order, the Appellants preferred separate appeals under Section 19 of the Act before the National Commission. In all the appeals separate interlocutory application for stay were filed by the Appellants. The National Commission vide impugned common order dated 15.05.2012 passed conditional interim order staying the order subject to the Appellants depositing 50% of the awarded amount (Principal amount) within three months with the State Commission. Challenging the said order and questioning the order as being contrary to the provisions of Section 19 of the Act, the present appeals had been filed. Appeals dismissed.

v) Acts and Sections referred:

Sections 19 and 23 of the Consumer Protection Act, 1986; Or.41 R. 5 and Or. 39 R. 1 of Civil Procedure Code.

vi) Cases referred:

1. *Shreenath Corporation and Others v. Consumer Education and Research Society and Others*
   First Appeal No.95 of 2012, order dated 15.05.2012 (NC). [Para 1&11]
2. *K.Kathuria v. National Consumer Disputes Redressal Forum,*
   AIR 2007 Del 135. [Para 4]
3. *State of Haryana v. Maruti Udyog Ltd.,*
   (2000) 7 SCC 348. [Para 8]

vii) Issues raised and decided:

a) The Appellants' contention was that deposit of specific amount has been prescribed under Section 19 of the Act and therefore the National Commission cannot pass the order asking the Appellant before it to deposit an amount more than 50% of the amount awarded by the State Commission or Rs.35,000/- whichever is less. In support of such contention the Appellant relied upon the judgment of the Delhi High Court in *K.Kathuria v. National Consumer Disputes Redressal Forum.* On the other hand the Respondent contended that the impugned order is a conditional order of stay and is not passed under Second proviso to Section 19 of the Act.

b) Agreeing with the Respondent's contention, the Court observed that Section 19 of the Consumer Protection Act deals with the appeals against the order by the State Commission in exercise of its power conferred by Sub-Clause (i) of Clause (a) of Section 17 and the said Section reads as follows:

"19. Appeals – Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by Sub-Clause (i) of Clause (a) of Section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the

prescribed manner fifty per cent of the amount or rupees thirty-five thousand, whichever is less."

c) The Court, on a plain reading of the aforesaid Section 19, held that the second proviso to Section 19 of the Act relates to "pre-deposit" required for an appeal to be entertained by the National Commission. Unless the Appellant had deposited the pre-deposit amount, the appeal could not be entertained by the National Commission. A pre-deposit condition to deposit 50% of the amount in terms of the order of the State Commission or Rs.35,000/- being condition precedent for entertaining appeal, it has no nexus with the order of stay, as such an order may or may not be passed by the National Commission. The condition of pre-deposit is there to avoid frivolous appeals. The Court held that an entertainment of an appeal and stay of proceeding pursuant to order impugned in the appeal stand on different footings, at two different stages. One (pre-deposit) has no nexus with merit of the appeal and the other (grant of stay) depends on *prima facie* case, balance of convenience and irreparable loss of party seeking such stay.

d) In view of the finding recorded above, the Court found no case for interference with the National Commission's order and dismissed the appeals as devoid of merit.

viii) Citation:

(2014) 8 SCC 657; III (2014) CPJ 1 (SC); 2015(1) CPR 1 (SC).

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XVIII. SCOPE OF SECTION 21 OF CONSUMER PROTECTION ACT AND JURISDICTION OF NATIONAL COMMISSION

1. Momna Gauri v. Regional Manager & Ors.

i) Order appealed against:

From the judgment and order dated 04.04.2012 of the National Consumer Disputes Redressal Commission in Revision Petition No.3642 of 2009.

ii) Parties:

Momna Gauri - Appellant

versus

Regional Manager & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.8815 of 2013.
Date of Judgment: 27.09.2013.

iv) Case in Brief:

The Appellant, who is a physically challenged person, purchased a Vikram 750 Deluxe Three Wheeler Auto from Nawal Auto Sales, Morena (Respondent No.3) by availing a loan of Rs.1,95,000/-. She started plying the vehicle for earning her livelihood. When the vehicle was serviced by the dealer, i.e. Respondent No.3, she noticed cracks in the chassis. She demanded replacement of the vehicle with a new one; however, Respondent No.3 got the cracks repaired and returned the vehicle to the Appellant. After some time, the chassis again broke. But the dealer neither carried out the repairs nor replaced the vehicle. The legal notice served by her also did not evoke any response. She filed a complaint under Section 12 of the CP Act before the District Forum. After considering the rival pleadings, the Forum held that the vehicle had a manufacturing defect. The arguments of the OP that there was overloading etc. were rejected. The Forum directed the Respondents to make available a new vehicle in replacement of the old one. The appeal filed by the Respondents was dismissed by the State Commission. The National Commission, however, modified the direction given by the District Forum by relying upon the judgment in *Maruti Udyog Limited v. Susheel Kumar Gabgotra* and directed the Petitioner to replace the chassis of the vehicle with a brand new one and provide the requisite fresh warranty. The Commission further directed the Petitioners to make the vehicle completely roadworthy free of charge to the

Respondent and further awarded costs of Rs.10,000/- to the Respondents. Aggrieved by the said order, the present appeal had been filed. Appeal allowed.

v) Acts and Sections referred:

Sections 2(1) (f), (g), 12, 21 and 23 of the Consumer Protection Act, 1986.

vi) Cases referred:

1. *Maruti Udyog Limited v. Susheel Kumar Gabgotra,* II (2006) CPJ 3 (SC). (Referred) [Para 7]
2. *Rubi (Chandra) Dutta v. United India Insurance Co. Ltd.,* IV (2011) SLT 303=II (2011) CPJ 19 (SC). (Relied) [Para 8]

vii) Issues raised and decided:

a) The Court noted that Section 21 of the Consumer Protection Act, 1986 which relates to the jurisdiction of the National Commission had been interpreted by the Court in *Rubi (Chandra) Dutta case* (supra). It was held therein that the revisional powers of the National Commission can be exercised only if there is some *prima facie* jurisdictional error appearing in the impugned order. In the present case, it was held, that the National Commission did not find any jurisdictional error or perversity in the finding recorded by the District Forum on the issue of deficiency in service. The National Commission also did not find any fault with the conclusion recorded by the District Forum that there was manufacturing defect in the vehicle sold the Appellant. Therefore, it was held that by interfering with the order of the District Forum, the National Commission, transgressed the limits of its jurisdiction under Section 21 of the Act.

b) In the result, the appeal was allowed. The impugned order was set aside and those passed by the District Forum and the State Commission were restored.

viii) Citation:

I (2017) CPJ 11 (SC).

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XIX. SCOPE OF SECTION 27A OF CONSUMER PROTECTION ACT

1. Cicily Kallarackal v. Vehicle Factory

i) Order appealed against:

From the judgment and order dated 16.09.2008 and 17.12.2009 of the High Court of Kerala at Ernakulam in W.A.No.2518/2007 and R.P.No.380/2009.

ii) Parties:

Cicily Kallarackal - Appellant

versus

Vehicle Factory - Respondent

iii) Case No and Date of Judgment:

SLPs (C) Nos.24228-29 of 2012 (CCs Nos.12891-92 of 2012).
Date of Judgment: 06.08.2012.

iv) Case in Brief:

The basic issue raised in the Petitions is that the Kerala High Court did not have the jurisdiction to entertain the Writ Petition against the judgment and order passed by the National Consumer Disputes Redressal Commission and that the said order could be challenged only before the Supreme Court in view of the provisions of the Consumer Protection Act, 1986. The Court observed that though the High Court had no jurisdiction to deal with the matter against the order of the National Commission, the present Petitions had to be dismissed since there was an inordinate delay of 1314 days in filing the Petition against the order dated 16.09.2008 and of 851 days against the order dated 17.12.2009. The Petitions were accordingly dismissed.

v) Acts and Sections referred:

Sections 27-A(1)(c) and 27-A(3) of the Consumer Protection Act, 1986; Section 5 of Limitation Act, 1963.

vi) Cases referred:

1. *Anshul Aggarwal v. Noida*, (2011) 14 SCC 578.
2. *Cicily Kallarackal v. Vehicle Factory,* Review Petition No.380 of 2009, order dated 17.12.2009 (Ker). (Reversed)
3. *Vehicle Factory v. National Consumer Disputes Redressal Commission,* W.A.No.2518 of 2007, decided on 16.09.2008 (Ker). (Reversed)

4. *Mohd. Swalleh v. Addl. District Judge, Meerut,* (1998) 1 SCC 40.

vii) Issues raised and decided:

a) It was argued before the Court that while dealing with a similar issue in *Mohd. Swalleh v. Addl. District Judge, Meerut*, the High Court entertained an appeal against the order of the District Judge exercising the jurisdiction under Article 226 of the Constitution although no appeal lay from the decision of the District Judge. It was argued in that case that the order of the District Judge was illegal and improper and as the improper order of the prescribed authority had been set aside, justice had been done. The Court observed that in view of the above it is not always necessary to set aside an order if it is found to have been passed by an authority/court having no jurisdiction.

b) However, the Court observed that it is not appropriate for the High Court to entertain Writ Petitions under Article 226 of the Constitution against the orders passed by the Commission as a statutory appeal is provided and lies to the Supreme Court under the provisions of the Consumer Protection Act, 1986. Once the legislature has provided for a statutory appeal to a higher Court it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher Court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India. The Court held that the present case was one of improper exercise of jurisdiction.

c) The Court also observed that there is an inordinate unexplained delay of 1314 days in filing the Petitions against the order dated 16.09.2008 and of 851 days against the order dated 17.12.2009. Cause shown for not approaching the Court within limitation was that the Petitioner was not physically fit and for *some days* remained in hospital. The Court observed that the cause shown is not sufficient as it was not necessary for the Petitioner to come to the Court personally. Recalling the decision of the Court in *Anshul Aggarwal v. Noida*, the Court held that while dealing with applications for condonation of delay the Court must keep in mind is special period of limitation prescribed under the statute(s). The Court did not find any cogent reason to condone the delay in this case and accordingly dismissed the Petitions on the ground of delay.

viii) Citation:

(2012) 8 SCC 524; IV (2012) CPJ 1 (SC).

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XX. UNAUTHORIZED CONSTRUCTION

1. Dipak Kumar Mukherjee v. Kolkata Municipal Corporation & Ors.

i) Order appealed against:

From the judgment and order dated 02.05.2011 of the Division Bench of Calcutta High Court in FMA No.2320/2011.

ii) Parties:

Dipak Kumar Mukherjee - Appellant

versus

Kolkata Municipal Corporation & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.7536 of 2012.
Date of Judgment: 08.10.2012.

iv) Case in Brief:

Mohammad Shahid, the sole proprietor-cum-attorney of Respondent No.7 entered into an agreement with Respondent No.8 for development of plot bearing No.8/1F, Gopal Doctor Road, Kolkata. The building plan submitted by Respondent No.7 for construction of two storied building was sanctioned by the Corporation on 11.04.1990 and five years time was given for completing the construction. On inspection of the site by the officers of the Corporation in October 2009, it was found that Respondent No.8 had raised unauthorized construction by erecting RCC column upto third floor along with staircase in deviation of the sanctioned plot. Despite the "stop work" notice issued by the Corporation, Respondent No.7 added one more floor. This act of defiance was viewed seriously by the Corporation and it was decided to demolish the unauthorized construction and about 600 sq. ft. out of the total constructed area measuring 1500 sq. ft. was demolished on 04.02.2010. Meanwhile the Appellant filed Writ Petition No.23741 of 2009 in the High Court for issue of a direction to the Corporation to demolish the said illegal construction. It was disposed of by a Single Judge with the direction to consider the objection raised by the Appellant and take a decision after hearing the parties. The Appellant filed a fresh Writ Petition No.13815 of 2010 for demolition of the unauthorized construction and for issue of a direction to the Corporation not to issue completion certificate. The said W.P was disposed of by Single Judge with the direction to the authorities to demolish the unauthorized structure

within 8 weeks. Immediately thereafter, Mohammad Shahid submitted an application for regularization of the unauthorized portion under Section 400(1) of the 1980 Act. Respondent No.7 also challenged the order of the Single Judge by filing an appeal. In his affidavit he invoked Rule 25 of the Calcutta Municipal Building Rules, 1990 which gave powers to the Corporation to allow construction exceeding the floor area ratio. Two individuals to whom the unauthorized portions of the building had been sold got themselves impleaded as parties to the appeal filed by Respondent No.7. On 01.03.2011 and 15.03.2011 the Division Bench of the High Court *suo motu* directed issue of notice under Order 1 Rule 8 of CPC to enable other purchasers of unauthorized portions to present their cause before the Court. The appeal filed by Respondent No.7 was finally disposed of by the Division Bench of High Court on 02.05.2011 directing the competent authority of the Corporation to take appropriate decision in accordance with law after complying with the principles of natural justice. Aggrieved by the said order the present appeal had been filed. Appeal allowed with directions to (i) the Corporation to demolish the unauthorized construction within one month and (ii) the Respondent No.7 to pay the price of the flats to the affected purchasers with interest at 18% p.a. from the date of payment.

v) Acts and Sections referred:

Article 136 of Constitution of India; Sections 2(1) (g), (o) and 14 of the Consumer Protection Act, 1986; Sections 55(1)(a) and 55(2) of Transfer of Property Act, 1882; Sections 400(1) and 401-A of Calcutta Municipal Corporation Act, 1980; Rule 25(2) of Calcutta Municipal Corporation Building Rules, 1990.

vi) Cases referred:

1. *Priyanka Estates International (P) Ltd. v. State of Assam,* (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283.
2. *Dipak Kumar Mukherjee v. Kolkata Municipal Corporation,* W.P. No.13815 of 2010, order dated 28.07.2010 (Cal).
3. *Shanti Sports Club v. Union of India,* (2009) 15 SCC 705 : (2009) 5 SCC (Civ) 707.
4. *Friends Colony Development Committee v. State of Orissa,* (2004) 8 SCC 733.
5. *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu,* (1999) 6 SCC 464.
6. *Manju Bhatia v. NDMC,* (1997) 6 SCC 370.

7. *Pleasant Stay Hotel v. Palani Hills Conservation Council,* (1995) 6 SCC 127.

8. *G.N. Khajuria v. DDA,* (1995) 5 SCC 762.

9. *Virender Gaur v. State of Haryana,* (1995) 2 SCC 577.

10. *Cantonment Board, Jabalpur v. S.N. Awasthi,* (1995) Supp (4) SCC 595.

11. *Pratibha Coop. Housing Society Ltd. v. State of Maharashtra,* (1991) 3 SCC 341.

12. *K. Ramadas Shenoy v. Town Municipal Council, Udipi,* (1974) 2 SCC 506.

13. *Purusottam Lalji v. Ratan Lal Agarwalla,* AIR 1972 Cal 459.

vii) Issues raised and decided:

a) The Court observed that illegal and unauthorized constructions of buildings and other structures not only violate municipal laws and the concept of planned development of the particular area but also affect fundamental and constitutional rights of other persons. The common man feels cheated and he finds that those making illegal and unauthorized constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/ zonal plan. The failure of the State apparatus to take prompt action to demolish such illegal constructions reinforce the general belief that planning laws are enforced only against the poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors. Therefore there should be no judicial tolerance of illegal and unauthorized construction by those who treat the law to be their subservient.

b) The Court further observed that while preparing master plans/zonal plans, the planning authority takes into consideration the prospectus of future developments and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage etc. Unauthorized construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative

for the public authorities concerned not only to demolish such construction but also impose adequate penalty on the wrongdoer.

c) Since Respondent No.7 has not disputed that the building was constructed in violation of the sanctioned plan and the Mayor-in-Council passed order for demolition of the disputed construction, the Court held that the direction given by the Division Bench of the High Court to the Corporation to pass appropriate order after giving opportunity of hearing to Respondent No.7 cannot be sustained. It was held that Respondent No.7 cannot take benefit of Rule 25 because the disputed construction was in clear violation of the sanctioned plan and the notices issued by the Corporation but also because the application was made after completion of the construction.

d) The Court held that Respondent No.7 was also guilty of cheating those who purchased portions of unauthorized construction under a bona fide belief that the building conformed to the sanctioned plan. Respondent No.7 was therefore directed to compensate them by refunding the cost of the flat with 18% interest from the date of payment.

e) The Court directed the Corporation to demolish the unauthorized construction after taking adequate precautionary measures.

f) Respondent No.7 was directed to pay cost of Rs.25 lakhs for brazen violation of the sanctioned plan and continuance of illegal construction despite "stop work-notice". The Court further directed that the amount shall be deposited with the Kolkata State Legal Service Authority within three months and the same shall be utilized for providing legal aid in deserving cases.

viii) Citation:

(2013) 5 SCC 336.

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2. Esha Ekta Apartments Cooperative Housing Society Ltd. & Ors. v. Municipal Corporation of Mumbai & Ors.

i) Order appealed against:

From the judgment and order dated 24.08.2011 of the High Court of Judicature of Bombay in Appeal from Order No.1124/2010 (Arising out of SLP(C) No.33471/2011.

ii) Parties:

Esha Ekta Apartments Cooperative
Housing Society Ltd. & Ors. - Appellants

versus

Municipal Corporation of Mumbai & Ors - Respondents

iii) Case No and Date of Judgment:

Civil Appeals No.7934 of 2012 with Nos.7935, 7936, 7937 and 7938 of 2012 and Transferred Case (C) No.55 of 2012.

Date of Judgment: 27.02.2013.

iv) Case in Brief:

The lessee of the land in question, M/s. Pure Drinks, got permission from the State Government for conversion of about one third of the industrial land to residential land subject to the condition that the development shall be as per the Maharashtra Development Control Rules, 1967 and other relevant statutory provisions. The lessee entered into assignment agreements with developers. The approval was for construction of six residential buildings with five upper floors. The amended plans for construction of nine buildings were also approved. However, subsequent revised plans for construction of separate buildings with additional floors were rejected by the planning authority on 06.09.1984. Notwithstanding rejection of the plan and issuance of stop-work notice the developers/builders continued to construct the buildings. The Respondent Corporation issued three notices in November/December, 2005 for demolition of the illegal construction. The replies submitted by the societies were rejected by the corporation. The question which arose for consideration was whether the orders passed by the Municipal Corporation refusing to regularize the illegal construction were legally sustainable. The Housing Societies and buyers pleaded that the buyers should not be penalized for the unauthorized constructions not made by them and that the developers and the lessee should be penalized and the said constructions should be regularized. They also claimed that the buyers were not aware of the illegal constructions. They further submitted that in view of Clause 35(2)(c) of DCR for Greater Bombay, 1991, regularization of additional Floor Space Index (FSI) should be permitted by charging appropriate fees. The developers pleaded that buyers cannot plead ignorance because as was evident from the agreements, they were aware that the revised plans had not been sanctioned and construction had been made despite stop-work notice. The State Authorities pleaded that regularizing extra floors would tantamount to

violation of DC Rules, 1967, that Clause 35(2)(c) of the 1991 Regulations cannot be invoked because the same were enforced much after the rejection of the amended plans and because the plot in question was situated in CRZ area. The DC Rules which were in force on 19.02.1991 alone would apply to the areas falling within the CRZ notification. The Supreme Court dismissed the appeals and transfer petition of the flat owners/buyers/housing societies and directed demolition of the illegal construction.

v) Acts and Sections referred:

Article 21 of Constitution of India; Sections 2(1) (g), (o) and 14 of the Consumer Protection Act, 1986; Sections 55(1)(a) and 55(2) of Transfer of Property Act, 1882; Sections 351 and 354-A of Bombay Municipal Corporation Act, 1888; Sections 44-47 and 52-56 of Maharashtra Regional and Town Planning Act, 1966; Clause 35(2)(c) of Development Control Regulations for Greater Bombay, 1991; Rule 9 and 10(2) of Maharashtra Development Control Rules, 1967; Rules 3 and 5 and Form V of Maharashtra Ownership of Flats (Regulation of Construction, Sale, Management and Transfer) Rules, 1964.

vi) Cases referred:

1. *Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai,* (2013) 5 SCC 395. [Para 30]
2. *Dipak Kumar Mukherjee v. Kolkata Municipal Corporation,* (2013) 5 SCC 336. [Para 6]
3. *Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai,* (2012) 4 SCC 689 : (2012) 2 SCC (Civ) 669. [Para 29]
4. *Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai,* Appeal from Order No.1124 of 2010, decided on 24.08.2011 (Bom). [Para 28]
5. *Priyanka Estates International (P) Ltd. v. State of Assam,* (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283. [Para 5]
6. *Shanti Sports Club v. Union of India,* (2009) 15 SCC 705 : (2009) 5 SCC (Civ) 707. [Para 4]
7. *Suresh Estates (P) Ltd. v. Municipal Corpn. of Greater Mumbai,* (2007) 14 SCC 439. [Para 37&42]
8. *Jayantilal Investments v. Madhuvihar Coop. Housing Society,* (2007) 9 SCC 220. [Para 54]

9. *Suresh Estate (P) Ltd. v. Municipal Corpn. of Greater Mumbai,* WP(OS) No.1627 of 2007, decided on 13.08.2007. [Para 42]

10. *Royal Paradise Hotel (P) Ltd. v. State of Haryana,* (2006) 7 SCC 597. [Para 3&56]

11. *Orchid Coop. Housing Society v. Municipal Corpn. of Greater Mumbai,* WP(OS) No.1808 of 2000. [Para 25]

12. *Friends Colony Development Committee v. State of Orissa,* (2004) 8 SCC 733. [Para 2]

13. *Mid-Town Apartment Coop. Housing Society v. Municipal Corpn. of Greater Mumbai,* WP(OS) No.1141 of 1999, Order dated 12.07.1999 (Bom). [Para 22]

vii) Issues raised and decided:

a) The Court observed that by rejecting the prayer for regularization of the floors constructed in wanton violation of the sanctioned plan, the authorities demonstrated their determination to ensure planned development of the city.

b) It was noted that even before the commencement of the construction, some of the agreements entered into by the developers with the prospective buyers show that the buyers of the flat were aware that the revised plans submitted by the architect had not been approved by the planning authority till the signing of the agreements. The Court observed that the Trial Court had rejected the contention of the members of the Housing Society that they had purchased the flats without knowing that the same were illegally constructed by the developers/builders. The Trial Court had noted that the architect had repeatedly told the developers/builders that construction of buildings beyond sanctioned plan was illegal and the members of the societies were very much aware of this fact.

c) The 1991 Regulations were notified on 20.02.1991 and came into force on 25.03.1991 whereas CRZ notification was issued on 02.02.1991. The Court observed that the Appellate Authority of the Municipal Corporation had rightly declined to invoke the 1991 Regulations for entertaining the prayer made for regularization of additional FSI since it was the DC Rules 1967 which were the "existing rules" in force at the relevant time as required by the CRZ notification and not the 1991 Regulations.

d) The Court did not accept the plea that the flat buyers should not be penalized for the illegality committed by the lessee and the developers/ builders in raising construction in violation of the sanctioned plan. It was held that the only remedy available to them is to sue the lessee and the developer/builder for return of the money and/or for damages and they cannot seek a direction for regularization of the illegal and unauthorized construction made by the developers.

e) The Court held that the scheme of the provisions contained in Sections 44, 45 and 52 to 56 of the MRTP Act, 1966 does not mandate regularization of constructions made without obtaining the required permission or in violation thereof.

f) The Court held that the circular dated 04.02.2011 cannot be invoked for entertaining the prayer for regularization. It only contains the procedure for regularization of unauthorized works/structures. It neither deals with the issues relating to entitlement of the applicant to seek regularization nor lays down that the planning authority can regularize illegal construction even after dismissal of the appeal filed under Section 47 of the MRTP Act, 1966. It was therefore held that the procedure laid down in the circular dated 04.02.2011 is of no avail to the flat buyers.

g) Though the argument that the developers/builders/promoters are responsible for the illegal construction finds support from the provisions of the Maharashtra Ownership of Flats (Regulation of Construction, Sale, Management and Transfer) Act, 1963, but that does not help the Housing Societies and their members because there is no provision under that Act for condonation of illegal/unauthorized construction by the developers/builders and promoters or for regularization of such construction.

h) The Court held that though the 1963 Act obligates the promoter to obtain sanctions and approvals from the authority concerned and disclose the same to the flat buyers and also provides for imposition of penalty on the promoters, the provisions contained therein do not entitle the flat buyers to seek a mandamus for regularization of the illegal construction.

i) The Court held that the buyers/societies had failed to make out a case for directing the Respondents to regularize the constructions made in violation of the approved plans. Consequently the appeals and the

transferred case were dismissed and it was declared that there was no impediment in the implementation of the demolition notices issued by the Corporation under Section 351 of the 1888 and order dated 03.12.2005/08.12.2005 passed by the competent authority. The Corporation was directed to take action in the matter at the earliest.

viii) Citation:

(2013) 5 SCC 357.

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XXI. UNFAIR TRADE PRACTICE

1. Girish Chandra Gupta v. U.P. Industrial Development Corporation Ltd. & Ors.

i) Order appealed against:

From the judgment and order dated 20.05.2011 in C.A.No.110/1997 and Order dated 26.04.2012 in C.A.No.126/2008 of the Competition Appellate Tribunal.

ii) Parties:

Girish Chandra Gupta - Appellant

versus

U.P. Industrial Development Corporation Ltd. & Ors. - Respondents

AND

James Kutty P.C. & Anr. - Appellants

versus

Tread Stone Ltd. & Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.8920 of 2012 with Civil Appeal No.8921 of 2012.

Date of Judgment: 11.12.2012.

iv) Case in Brief:

The Appellants filed compensation applications C.A.No.110 of 1997 and C.A.No.126 of 2008 under Section 12B of the MRTP Act, 1969 before the MRTP Commission. Following the dissolution of the Commission the two applications stood transferred to the Competition Appellate Tribunal by virtue of the provision contained in Section 66(3) of the Competition Act, 2002. The Respondents in the two appeals raised preliminary objections with regard to the maintainability of the applications on the ground that no separate proceedings had been initiated either under Section 10 or under Section 36B of the MRTP Act alleging unfair trade practices by the Respondents. The Tribunal relying on the earlier decision of the Tribunal in its order dated 29.03.2011 passed in C.A.No.108 of 2005 in which the same issue came up dismissed the two CAs viz. 110 of 1997 and 126 of 2008 vide impugned orders dated 20.05.2011 and 26.04.2012 respectively. The Tribunal's decision in

C.A.No.108 of 2005 had been based on the judgment of the Supreme Court in *Saurabh Prakash v. DLF Universal Ltd.* Aggrieved by the said orders the present appeals had been filed. Appeals allowed.

v) Acts and Sections referred:

Sections 10, 12B and 36B of the Monopolies and Restrictive Trade Practices Act, 1969 as repealed by Sections 66(1) and 66(3) of the Competition Act, 2002.

vi) Cases referred:

1. *Info Electronics System Ltd. v. Sutran Corporation,* C.A.No.108 of 2005 decided on 29.03.2011. (Relied) [Para 3]
2. *Saurabh Prakash v. DLF Universal Ltd.,* I (2007) CPJ 4 (SC)=IX (2006) SLT 254. (Relied) [Para 3]
3. *M/s. Pennwalt (I) Ltd. & Anr. v. Monopolies and Restrictive Trade Practices Commission & Ors.,* 74 (1998) DLT 422 (DB). (Relied) [Para 4]
4. *R.C. Sood and Co. (P) Ltd. & Ors. v. Monopolies and Restrictive Trade Practices Commission & Anr,* 62 (1996) DLT 272. (Relied) [Para 6]

vii) Issues raised and decided:

a) The Court observed that in *Saurabh Prakash* (supra), the Court was called upon to decide whether the MRTP Commission had jurisdiction to entertain an application under Section 12B of the MRTP Act when no case of indulgence in unfair trade practice or restrictive trade practice was made out. The Court had held that the power of the MRTP Commission to award compensation is restricted to a case where loss or damage had been caused as a result of monopolistic or restrictive trade practice but it had no jurisdiction where damage is claimed for mere breach of contract. In the aforesaid case the Court did not at all consider the question whether an application under Section 12B of the MRTP Act was maintainable without initiation of separate proceeding either under Section 10 or Section 36B of the MRTP Act.

b) The Court further observed that the decision of the Division Bench of the Delhi High Court in *M/s. Pennwalt (I) Ltd. & Anr.* (supra) and decision of the Single Judge of the Delhi High Court in *R.C.Sood and Co. (P) Ltd. & Ors.* (supra) cited by the Counsel for the Appellants, however

held that an application under Section 12B of the MRTP Act was maintainable without any proceeding being initiated under Section 10 or Section 36B of the MRTP Act. The Court held that in their considered opinion the Division Bench as well as the Single Judge of the Delhi High Court had correctly interpreted the provisions of Sections 10, 12B and 36B of the MRTP Act.

c) The Court observed that on a reading of sub-section (1) of section 12B of the MRTP Act, it will be clear that where, as a result of the monopolistic or restrictive or unfair trade practice carried on by any undertaking or any person, any loss or damage is caused to the Central Government, or any State Government or any Trader or class of traders or any consumer, such Government or as the case may be, trader or class of traders or consumer may make an application to the MRTP Commission for an order for the recovery from that undertaking or owner thereof, as the case may be, from such person, of such amount as the MRTP Commission may determine, as compensation for the loss or damage so caused. The Court held that the MRTP Commission had been vested with the powers under sub-section (3) of section 12 of the MRTP Act to make an enquiry to the allegations of monopolistic or restrictive or unfair trade practice made in the application filed under sub-section (1) of section 12B of the MRTP Act and to determine the amount of compensation realizable from the undertaking or the owner thereof. It was held that these powers vested in the MRTP Commission under sub-section (3) of section 12B of the MRTP Act are independent of its powers under section 10 and section 36B of the MRTP Act.

d) The Court observed that there is no reference at all in section 12B of the MRTP Act to the provisions of either section 10 or Section 36B of the MRTP Act and if Parliament intended that the power of the MRTP Commission to award compensation under Section 12B of the MRTP Act was to be dependent on the exercise of power of MRTP Commission either under Section 10 or under Section 36B of the MRTP Act, Parliament would have made this intention clear in the language of some provision in Section 12B of the MRTP Act. There is also no reference in either Section 10 or in Section 36B of the MRTP Act to any of the provisions of Section 12B of the MRTP Act and if Parliament intended to make Sections 10, 12B and 36B of the MRTP Act interdependent, there would have been some indication of this intention of Parliament in Section 10 or in Section 36B of the MRTP Act. In the

absence of such indication the Court held that the Competition Appellate Tribunal had clearly erred in coming to the conclusion that interdependence of the provisions of Section 10 or Section 36B with Section 12B cannot be lost sight of.

e) The Court set aside the impugned orders and allowed the two appeals accordingly.

viii) Citation:

I (2013) CPJ 9 (SC).

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2. Bhanwar Kanwar v. R.K. Gupta & Anr.

i) Order appealed against:

From the judgment and order dated 29.01.2009 of the National Consumer Disputes Redressal Commission in Original Petition No.234/1997.

ii) Parties:

Bhanwar Kanwar - Appellant

versus

R.K. Gupta & Anr. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.8660 of 2009.
Date of Judgment: 05.04.2013.

iv) Case in Brief:

Prashant, son of the Appellant born in May 1989, suffered from febrile convulsions during fever at the age of 6 months. He was treated by one Dr.Ashok Panagariya, Consultant Neurologist, SMS Medical College Hospital, Jaipur and at All India Institute of Medical Sciences (AIIMS), New Delhi. The Appellant came across an advertisement given by the Respondent No.1 in a newspaper on 08.08.1993 offering treatment of patients having fits with Ayurvedic Medicine and claiming 100% cure. On 21.02.1994 the Appellant took her son to the Respondent No.2 clinic, Neeraj Clinic (P) Ltd. run by Respondent No.1 at Rishikesh. Though the treatment continued for more than two years, the child did not get any relief but the Respondent kept on assuring Appellant that Ayurvedic treatment being a slow process, would take longer but that otherwise the treatment was going on in the right direction. Since the child's condition worsened, the Appellant again consulted Dr.Ashok

Panagariya on 28.10.1996 who told her that there was no hope of the child becoming normal. The Appellant was also advised to undergo medical termination of pregnancy around that time because of her preoccupation with Prashant. The Appellant also came to know that the Respondent No.1 was prescribing allopathic medicines for which he had no competence, that he had prescribed tablets which were not meant for children and that he was a quack who is guilty of medical negligence, criminal negligence and breach of duty. The Appellant approached the National Commission seeking compensation of Rs.20 lakhs, Rs.10 lakhs for undergoing medical termination of pregnancy and reimbursement of medical and travel expenses. The National Commission vide its order dated 16.01.2003 directed that the medicines be sent to an appropriate laboratory. As per the reports of the lab it was leant that the medicines were allopathic medicines except one which could not be identified. The National Commission held that the Respondent No.1 was guilty of unfair trade practice but held that in the light of letter dated 24.02.2003 issued by Secretary, Medical Education Department, Government of U.P., Ayurvedic/Unani practitioners practicing Ayurvedic system are also authorized to use allopathic medicines under the U.P. Indian Medical Council Act, 1939. The Commission therefore held that Respondent No.1 could not be faulted on this score. The Commission directed the Respondent No.1 to pay compensation of Rs.5 lakhs of which Rs.2.5 lakhs was ordered to be paid to the Appellant and the balance Rs.2.5 lakhs was ordered to be deposited in favour of the Consumer Legal Aid Account of the National Commission. The Respondents did not challenge the finding of the National Commission that Respondent No.1 had made false representation and was guilty of unfair trade practice. However, aggrieved by the order of the National Commission the Appellant had filed the present appeal seeking enhancement of compensation. Appeal allowed.

v) Acts and Sections referred:

Sections 2(1) (g), (o), (r), 14(1)(c), (d) and proviso thereto, 14(1)(i), 18, 22(b) and 23 of the Consumer Protection Act, 1986; Section 15(2)(b) of the Indian Medical Council Act, 1956; Section 26 of the Indian Medicine Central Council Act, 1970; U.P. Indian Medicine Act, 1939 (10 of 1939).

vi) Cases referred:

Bhanwar Kanwar v. R.K. Gupta, (2009) 2 CPJ 193 (NC). (Modified) [Para 1]

vii) Issues raised and decided:

a) Two issues came up for consideration before the Supreme Court: (i) whether Respondent No.1 was entitled to practice and prescribe

allopathic medicines and (ii) what is the amount of compensation to which the Appellant is entitled.

b) On the first issue, the Court observed that the Respondents had not brought to their notice any Act known as U.P. Indian Medical Council Act, 1939 but there is an Act known as U.P. Indian Medicine Act, 1939. The Court further observed that the incident and treatment as alleged by the Appellant related to the period 1994 to 1997. Therefore the letter dated 24.02.2003 is of no avail to the Respondents as the same was not in existence during the period of treatment. In any case Respondent No.1 has nowhere pleaded that he was registered with the Medical Council or enrolled in the State Medical Register. He has not cited even the registration number. It was held that merely on the basis of a vague plea, the National Commission held that Respondent No.1 was entitled to practice and prescribe modern allopathic medicine.

c) On the second issue, the Court noted that the National Commission had already held that Respondent No.1 was guilty of unfair trade practice and adopted unfair method and deceptive practice by making false statement orally as well as in writing. In view of the aforesaid finding the Court held that Prashant and the Appellant suffered physical and mental injury due to the misleading advertisement, unfair trade practice and negligence of the Respondents. It was held that Appellant and Prashant were entitled for enhanced compensation. The Court found no reason given by the National Commission for deducting 50% of the compensation amount and to deposit the same with the Consumer Legal Aid Account of the Commission.

d) Accordingly the Court set aside that part of the order passed by the National Commission and enhanced the amount of compensation at Rs.15 lakhs for payment in favour of the Appellant with a direction to the Respondent to pay the amount to the Appellant within three months.

viii) Citation:

(2013) 4 SCC 252; II (2013) CPJ 5 (SC); 2013(2) CPR 611 (SC).

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3. Tata Engineering and Locomotive Co. Ltd. v. Director (Research) for on and behalf of Deepak Khanna and Ors.

i) Order appealed against:

From the order dated 28.02.2006 in U.T.P. Inquiry Nos.86/99, 87/99 and 90/99 of the Monopolies and Restrictive Trade Practices Commission.

ii) Parties:

Tata Engineering and Locomotive Co. Ltd. - Appellant

versus

Director (Research) for on and behalf of Deepak Khanna and Ors. - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.2069 of 2006.
Date of Judgment: 07.09.2015.

iv) Case in Brief:

The Appellant is a company engaged in the manufacture and sale of automobiles. It started the manufacture of Tata Indica Cars with an installed capacity of approximately 60,000 cars in a year and began delivery of the cars with effect from February 1999. The terms and conditions for booking were mentioned in detail indicating the model wise price depending upon the city of booking. The price included taxes, duties and cess applicable on the date of delivery. It was indicated that those making valid booking would be supplied the vehicle as per priority numbers generated and allocated by a computerized technique for the first 10,000 bookings only. The terms also provided that the payments against the remaining bookings will be refunded to the customers, without interest at the earliest but in any case within a month from the closing of the booking. For refunds after a month, interest will be paid at the rate of 10% p.a. The order booking form mentioned in Clause 7 that the person concerned had carefully read the terms and conditions of the booking and agreed to the same. A number of persons had purchased the vehicle accepting the said terms and conditions. However, three complaints were filed before the MRTP Commission by persons who claimed that they had intentions to make the booking but were dissuaded by the high quantum of deposit. Their objection was that the demanded amount exceeded the basic price of the car if cess, taxes and transportation cost were left out. The Complainants alleged that the Appellant had indulged in Unfair Trade Practice (UTP) by demanding an excessive amount for booking of the cars. The Commission sent the Director

(Research) for investigation and based on the Preliminary Investigation Reports (PIR) in the three matters, registered three cases. After issuing notices to the appellants and hearing both sides the Commission issued the impugned order directing the appellant to cease and desist from continuing with the practices complained of and not to repeat the same in future. Aggrieved by the said order the present appeal had been filed under Section 55 of the MRTP Act. Appeal allowed.

v) Acts and Sections referred:

Sections 36A(1), 36D(1) and 55 of the Monopolies and Restrictive Trade Practices Act, 1969.

vi) Cases referred:

1. *Rajasthan Housing Board v. Parvati Devi (Smt.),* III (2000) CPJ 9 (SC)=VII (2000) SLT 50. (Referred) [Para 7]

2. *M/s. Lakhanpal National Limited v. M.R.T.P. Commission and Another,* 38 (1989) DLT 310 (SC)=1989 (SLT SOFT) 483. (Relied) [Para 8]

vii) Issues raised and decided:

The term "unfair trade practice" has been defined in Section 36A of the Act as per which it means a trade practice which for the purpose of promoting the sale, use or supply of any goods or for the provisions of any services, adopts any unfair method or unfair or deceptive practice including any of the following practices namely: (1) the practice of making any statement, whether orally or in writing or by visible representation which,-

(i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or mode;

(ii) falsely represents that the services are of a particular standard, quality or grade;

(iii) xxx

(iv) represents that the goods or services have sponsorships, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(v) xxx

(vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services."

The Court, after going through the Preliminary Investigation Report, the Notice of Inquiry as well as the order and appeal, did not find any material or even allegation in the PIR which could satisfy any of the four unfair trade practices covered by Clause (i), (ii), (iv) and (vi) of Section 36A(1) of the Act. A perusal of the Notice of Inquiry revealed that no doubt a copy of the PIR was enclosed but the notice made it clear itself that the Commission came to the considered opinion that the Director (Research) had found the appellant indulging in unfair trade practices falling precisely and only under Clauses (i), (ii), (iv) and (vi) of Section 36A(1) of the Act. The Inquiry, as per the notice, was to cover: a) whether the Respondent had been indulging the above said unfair trade practice(s) and b) whether the said unfair trade practice(s) is/are prejudicial to public interest. The Court held that the Commission failed to keep in mind the precise allegation against the appellant and failed even to notice the stipulation as regards payment of interest on the booking amount although this fact was obvious from the terms and conditions of the booking and was reportedly relied upon by the appellant in its reply even at the stage of preliminary investigation. The order of the Commission appeared to be largely influenced by the conclusion that the appellant should not have asked for an amount above the basic price and it was unfair for the appellant to keep excise and sales tax with itself for any period of time. It was held that such conclusion of the Commission is based only upon subjective considerations of fairness and do not pass the objective test of law as per precise definition under Section 36A of the Act. The Court held that there was no scope to pass order under Section 36D(1) of the Act and no case of any unfair trade practice was made out. The Appeal was allowed and the order of the Commission was set aside.

viii) Citation:

IV (2015) CPJ 6 (SC).

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XXII. WHETHER PROCEEDINGS BEFORE CONSUMER FORA ARE SUITS

1. Ethiopian Airlines v. Ganesh Narain Saboo

i) Order appealed against:

From the judgment and order dated 07.01.2004 in First Appeal No.190/1996 of the National Consumer Disputes Redressal Commission.

ii) Parties:

Ethiopian Airlines - Appellant

versus

Ganesh Narain Saboo - Respondents

iii) Case No and Date of Judgment:

Civil Appeal No.7037 of 2004.
Date of Judgment: 09.08.2011 (Three Member Bench).

iv) Case in Brief:

The Respondent booked a consignment of Reactive Dyes with the Appellant, Ethiopian Airlines to be delivered at Dar Es Salaam, Tanzania. According to the Respondent there was gross delay in arrival of the consignment at the destination, which led to the deterioration of the goods. The Respondent filed a complaint before the State Consumer Disputes Redressal Commission. The State Commission held that the complaint filed by the Respondent was not maintainable in view of Section 86 CPC. However, the National Commission holding that applications before Consumer Fora are not suits and hence Section 86 CPC was not applicable since the case in dispute is covered under the provisions of the Consumer Protection Act, 1986. Therefore, the National Commission set aside the order passed by the State Commission and remitted it to the State Commission so that the State Commission could decide it afresh in accordance with law. Aggrieved by the said order, the Appellant had preferred appeal before the Supreme Court on the ground that a foreign State or its instrumentality cannot be proceeded against under the Act without obtaining prior permission from the Central Government. The Appellant contended that a foreign State or its instrumentality can legitimately claim sovereign immunity from being proceeded against under the Act in respect of a civil claim. The questions before the Supreme Court, which required adjudication, were (i) whether proceedings before the Consumer Forum are suits and (ii) whether the Appellant Ethiopian Airlines was entitled to

sovereign immunity in this case. The Court held that proceedings before the Consumer Forum are suits. The Court dismissed the appeal and directed expeditious disposal of the complaint by the State Commission.

v) Acts and Sections referred:

Article 300 of Constitution of India; Sections 1, 3, 13, 18, 22 and 23 of the Consumer Protection Act, 1986; Section 86 of Code of Civil Procedure, 1908; Sections 7, 3, 1 and Sch. 1 Rr. 1, 2, 18 and 22 of Carriage by Air Act, 1972; Regulation 26 of Consumer Protection Regulation, 2005; Guidelines 1, 5 and 28 of United Nations Guidelines for Consumer Protection; United Nations Consumer Protection Resolution No.39/248.

vi) Cases referred:

1. *Economic Transport Organization v. Charan Spg. Mills (P) Ltd.,* (2010) 4 SCC 114:(2010) 2 SCC (Civ) 42.
2. *EICM Exports Ltd. v. South Indian Corpn. (Agencies) Ltd.,* (2009) 14 SCC 412:(2009) 5 SCC (Civ) 389. (Overruled)
3. *Ghaziabad Zila Sahkari Bank Ltd. v. Labour Commissioner,* (2007) 11 SCC 756:(2008) 1 SCC (L&S) 90.
4. *Maruti Udyog Ltd. v. Ram Lal,* (2005) 2 SCC 638:2005 SCC (L&S) 308.
5. *Savita Garg v. National Heart Institute,* (2004) 8 SCC 56.
6. *State of Karnataka v. Vishwabharathi House Building Coop. Society,* (2003) 2 SCC 412.
7. *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd.,* (2001) 3 SCC 71.
8. *Economic Transport Organization v. Dharwad District Khadi Gramudyog Sangh,* (2000) 5 SCC 78.
9. *Allahabad Bank v. Canara Bank,* (2000) 4 SCC 406.
10. *Patel Roadways Ltd. v. Birla Yamaha Ltd.,* (2000) 4 SCC 91.
11. *Kenya Airways v. Jinibai B. Kheshwala,* AIR 1998 Bom 287.
12. *Bhoruka Steel Ltd. v. Fairgrowth Financial Services Ltd.,* (1997) 89 Comp Cas 547 (Special Court).
13. *Veb Deutfracht Seereederei Rostock v. New Central Jute Mills Co. Ltd.,* (1994) 1 SCC 282.

14. *Maharashtra Tubes Ltd. v. State Industrial & Investment Corpn. of Maharashtra Ltd.*, (1993) 2 SCC 144.
15. *Ratan Lal Adukia v. Union of India,* (1989) 3 SCC 537.
16. *Deepak Wadhwa v. Aeroflot,* (1983) 24 DLT 1.
17. *Sarwan Singh v. Kasturi Lal,* (1977) 1 SCC 750.
18. *Trendtex Trading Corpn. v. Central Bank of Nigeria,* 1977 QB 529 : (1977) 2 WLR 356 : (1977) 1 All ER 881 (CA).
19. *German Democratic Republic v. Dynamic Industrial Undertaking Ltd.,* AIR 1972 Bom 27.
20. *Mirza Ali Akbar Kashani v. United Arab Republic,* AIR 1966 SC 230.
21. *Nawab Usmanali Khan v. Sagar Mal,* AIR 1965 SC 1798.
22. *Bhagwat Singh v. State of Rajasthan,* AIR 1964 SC 444.
23. *Rahimtoola v. Nizam of Hyderabad,* 1958 AC 379 : (1957) 3 WLR 884 : (1957) 3 All ER 441 (HL).
24. *Ram Narain v. Simla Banking & Industrial Co. Ltd.,* AIR 1956 SC 614.
25. *Patterson v. Standard Accident Insurance Co.,* 178 Mich 288 : 144 NW 491 (1913).
26. *Upshur County v. Rich,* 34 L Ed 196 : 135 US 467 (1889).
27. *Weston v. City Council of Charleston,* 7 L Ed 481, p 487 : 27 US 449 (1829).

vii) Issues raised and decided:

a) The Court observed that in common parlance, the term 'suit' is taken to include all the proceedings of a judicial or quasi-judicial nature in which the disputes of the aggrieved parties are adjudicated before an impartial forum. Proceedings before the Consumer Fora fall squarely within that definition. The term 'suit' has not been defined in the Carriage by Air Act, 1972 nor is it provided in the said Act that the term 'suit' will have the same meaning as in CPC. The term 'suit' is a generic term taking within its sweep all the proceedings initiated by a party for realization of the right vested in him in law. In this view of the matter one has to look at the dictionary meaning of the word 'suit'. It was held that the proceedings held before the Consumer Redressal Fora easily fall within the aforementioned definitions. The Court held that the controversy involved in this case is no longer *res integra* and that the Court had clearly held that a proceeding before the Consumer Forum comes within the sweep of the term 'suit'.

b) The Court observed that notwithstanding the fact that the proceedings of the National Commission are 'suits' under the Carriers Act, the Consumer Protection Act, 1986 clearly enumerates those provisions of CPC that are applicable to proceedings before the Consumer Fora. Such provisions include Section 13(4) in which the CP Act vests those powers vested in a civil court to the District Forum. According to the principle of *expressio unius*, because the legislature expressly made the aforementioned provisions of CPC applicable to the consumer proceedings, the legislature is, deemed to have intentionally excluded all other provisions of CPC from applying to the said proceedings. Since the CP Act does not say that Section 86 CPC applies to the Consumer Fora's proceedings, that Section of CPC will not be applicable.

c) The Court observed that CPC itself does not claim to make Section 86 CPC applicable to proceedings before the Consumer Fora. Instead CPC includes a saving clause in Section 4 providing that "in the absence of any specific provision to the contrary, nothing in CPC shall be deemed to limit or otherwise affect any *special* … law … or any special form of procedure prescribed, by or under any other law".

d) The Court held that the Consumer Protection and Carriage by Air Acts must be deemed to be special Acts bypassing Section 86 CPC with respect to suits covered by those special Acts. The Consumer Protection and Carriage Acts, which came long after CPC, are more focused and specific statues, and therefore should be held to exclude Section 86.

e) The Court observed that Carriage by Air Act, 1972 explicitly provides that its rules applied to carriage performed by the State or legally constituted public bodies under Section 2(1). Thus, it is clear that according to the Indian Law, Ethiopian Airlines can be subjected to suit under the Carriage Act, 1972. In effect, by signing on to the Warsaw Convention, Ethiopia had expressly waived its Airlines' right to immunity in cases such as that *sub judice*. Therefore the Central Governments of both India and Ethiopia have waived their rights to sovereign immunity in such cases by passing the Carriage by Air Act, 1972 and by signing on to the Warsaw Convention.

f) Furthermore, that Ethiopian Airlines is not entitled to sovereign immunity with respect to a commercial transaction is also consonant with the holdings of other countries' courts and with the growing international principle of restrictive immunity. On a careful analysis of

the American, English and Indian cases, it was held that the Appellant Ethiopian Airlines must be held accountable for the contractual and commercial activities and obligations that it undertakes in India.

g) Since Ethiopian Airlines is not entitled to sovereign immunity in the suit at issue in the present case, it was held that no consent of the Central Government is required to subject the Appellant Airlines to a suit in an Indian Court.

h) The Court held that according to the international law principle of restrictive immunity, a State-owned entity is not entitled to immunity for acts of a commercial nature, *jure gestionis*. In the modern era, where there is close interconnection between different countries as far as trade commerce and business are concerned, the principle of sovereign immunity can no longer be absolute in the way it earlier was. Countries who participate in trade commerce and business with different countries ought to be subjected to normal rules of the market. If, State owned entities would be able to operate with immunity, the rule of law would be degraded and international trade, commerce and business will come to a grinding halt.

i) The Court agreed with the findings of the National Commission so far as it has remitted the matter to the State Commission for adjudication and directed the State Commission to dispose of the case as expeditiously as possible.

viii) Citation:

(2011) 8 SCC 539; AIR 2011 SC 3495; IV (2011) CPJ 43 (SC).

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