

# Consumer Protection Act and the Supreme Court



# **Consumer Protection Act and the Supreme Court**

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## Foreword to the Second Edition

Thanks to those consumers who have shown awareness of consumer law and despite all odds fight their battle up to the apex Court, providing the opportunity to CUTS to publish this book.

The book 'Consumer Protection Act and the Supreme Court' is specially written to act as a comprehensive and reliable manual of the Consumer Protection Act and its application in the interest of the consumer. It offers precise and up-to-date information on all the inter-related topics under provisions relating to consumer protection, application of the Act, etc.

The compendium of decisions given by Hon'ble Supreme Court on different subjects, being published by the CUTS is expected to serve the special needs of consumer activists and advocates in particular and all other concerned in general.

This book is a pioneering work and indispensable for day-to-day consultation providing the readers with comprehensive information on all aspects concerning the topic of consumer protection and would be of much assistance in understanding as to when, where and what level redressal of grievance can be sought within minimum time without spending much in litigation.

I wish the publication a success.

A handwritten signature in blue ink, appearing to read 'V S Dave'.

**Jaipur**  
**February 26, 2007**

**(Justice V S Dave)**  
**Former Judge, Rajasthan High Court,**  
**Former Chairman, Rajasthan Law Commission**  
**& State Consumer Disputes Redressal Commission**



GOVERNOR OF RAJASTHAN



## Foreword to the First Edition

The Consumer Unity & Trust Society (CUTS) has taken up the task of creating awareness among the people about their rights and knowledge of law as consumer.

The effort of CUTS in bringing out a compendium of decisions given by Hon'ble Supreme Court on different subjects is praiseworthy.

In the race of economic competition today, a consumer finds it difficult to get the optimum or at least reasonable return of the purchase price. There are numerous fields of consumer service like housing, medical facilities, water, electricity, gas, transport service, banking service, accidents claim, insurance, weights & measure, etc. where s/he is likely to be cheated in one way or the other and deprived of what is due.

For want of knowledge about prevalent laws and rules, s/he cannot fight for his/her rights boldly and indeed it is need of the hour that some social agency enlightens a common consumer about the legal aspect of consumerism.

I am confident, the compendium being published by the Society will help the people in general to know, first hand, about the legal position of the rights of a consumer.

I wish the publication a success.

**Jaipur**  
**November, 1998**

**(Justice NL Tibrewal)**  
**Governor of Rajasthan**

## Preface

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The Supreme Court of India is the highest court of the land as established by Part V, Chapter IV of the Constitution of India. As one of the three organs of the Indian governance system, the role of the Supreme Court is that of a federal court, guardian of the Constitution and the highest court of appeal. It stands tallest not only before the two organs of the state i.e. the legislature and the executive, but also its other counterparts.

As an appellate court, the Supreme Court has to uphold the judicial impartiality and integrity, and its decisions and observations have far reaching effects on every aspect of rule of law. With its valued and visionary judgments, the Supreme Court has enhanced the prestige of judiciary in the country. Since its inauguration on January 28, 1950, the Supreme Court has delivered more than 24,000 reported judgments so far.

And it is rightly said that the guardian of democracy is not the legislative wisdom but the wisdom of the highest court of the land. Not only the Supreme Court has been able to successfully resolve the disputes between the Centre and States, and between the States, but also intervened, time and again, to uphold the consumer's rights.

Though the Consumer Protection Act (COPRA), 1986, provides for the better protection of consumers, the provisions of this Act are compensatory in nature. Hence, the Act has not been able to solve the tangles of legal intricacies involved.

Through "Consumer Protection Act and the Supreme Court", CUTS presents a compendium of some of the landmark decisions of the Supreme Court relating to consumer protection which provide exemplary judgments and decisions of the Supreme Court *vis-à-vis* various orders of consumer forums. In addition, a brief understanding of the Act, its history, its procedures as well as mechanisms are explained to foster a better insight into the cases.

CUTS published the first edition of "Consumer Protection Act and the Supreme Court" in the year 1998. This is the second edition which includes the case

studies published in the first edition. It would help the people to know about the legal positions of the rights of a consumer which are now law of the land, having been settled by the apex court.

Research and assistance provided by Deepak Saxena, Programme Officer, CUTS Centre for Consumer Action, Research & Training (CUTS CART), in the compilation of cases and that of Madhuri Vasnani for editing is gratefully acknowledged.

**Jaipur**  
**June 2007**

**Pradeep S Mehta**  
**Secretary General**

## INTRODUCTION

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Through *Consumer Protection Act and the Supreme Court*, CUTS presents a rare compendium of the landmark decisions of the Supreme Court relating to consumer protection. The Supreme Court being the highest arbiter of the country is not only the final authority in legal disputes but also it has the power to create law through its decisions. By Article 141 of the Constitution the law declared by the Supreme Court is applicable to all the courts in the country.

Once laws come into force, certain aspects of the law may be found to be ambiguous and may need clarification. In such cases, the judgments of the Supreme Court are used as the final checkpoint to complement and substantiate the legislation.

The same is true for the Consumer Protection Act, 1986 (COPRA) and this compendium provides a collection of Supreme Court decisions, which have helped enhance COPRA. Nonetheless, a brief understanding of the legislation, its history, its procedures as well as mechanisms is provided below to foster a better understanding of the cases.

### **Consumer Protection – The Beginning**

The first stride towards consumer protection was taken in 1709 in England, when The Justices of Peace made it mandatory to stamp on breads the quantity and quality of the bread being sold. Up to the 20<sup>th</sup> century, however, the remedies were confined to ordinary ones like claims under the law of torts or contracts. Until the Pearson Commission, Malony Report etc., aired the views that there should be *strict liability of producers*. Thus, the Unfair Contract Terms Act, 1977, Food Safety Act, 1961 etc. were enacted in England.<sup>1</sup> In the US, consumer complaints earlier fell within the domain of trade and commerce till President Kennedy's address, "President's Message on Protection, 1961" started the wave of consumer protection legislation.

In almost all countries evolution of consumer protection law has followed the same trend. That is, taking consumer rights from the realm of commerce (or contracts or tort law) to separate legislation catalysed by activist concerns.

### **Consumer Protection in India**

Although, the concept of consumer protection existed even in the days of kings but, as every where else, it was more a part of the trade and business law than being a separate branch itself and was mostly confined to the administrative or local government level. However, while the debate on the **UN Guidelines on Consumer Protection, 1985** the *Consumer Protection Act, 1986* was also being debated in India, until its enactment in 1986. This established a separate hierarchy of tribunals for the trial of consumer complaints, which are discussed below. The Act was amended in 1993.

### **The Consumer Protection Act – A Brief Introduction**

In India, the Consumer Protection Act was enacted in 1986 to codify the legal procedures and law relating to consumers and was hailed as one of the landmark achievements in codification in India. The object of the legislation as mentioned in its Preamble was 'better protection of the interests of the consumers' - saving her from various exploitative practices such as defective goods and services, unfair trade practices as well as unsatisfactory or deficient services.

The Act also provides for *Consumer Protection Councils* which are meant to promote the cause of consumer protection and cover the six consumer rights: right to safety, right to be informed, right to choose, right to be heard, right to redress, and right to consumer education.<sup>2</sup>

A complaint may be lodged alleging an unfair or restrictive trade practice adopted by the trader, defects in goods, deficiency in service, excess price charging or alleging goods hazardous to life sold without proper display of information (in regard to the contents, manner and effect or use of such goods).

The legislation provides for a **three-tier dispute resolution mechanism**. The complaints can be filed in the specially instituted consumer fora (consumer courts in popular jargon) without any court fee. The hierarchy of the fora is as follows:

- The District Forum
- The State Commissions
- The National Consumer Dispute Redressal Commission

These fora have been vested with powers similar to that of the civil courts under the Civil Procedure Code, 1908. Depending on the value of the subject matter of the case the complaint can be filed in any of the above fora. For example, a complaint involving a shipping vessel owing to the huge sums of money involved was directly filed in the National Commission.<sup>3</sup>

But the procedures in these cases are much simpler than the usual court proceedings. Moreover, the complainant can himself present the case without engaging a lawyer. The Act also allows filing of class actions.

After the judgment is delivered if either party is not satisfied then an appeal to the case can be filed. The State and National Commissions are also the courts of appeal for the judgments by the District Forum and State Commissions respectively.

The appeal against the judgments of the National Commission lies with the Supreme Court of India under the Act.

However, if a matter is already sub-judice under a civil court it cannot be brought before the consumer fora. In *Proprietor, Jabalpur Tractors vs Sedmal Jainarain and Another*<sup>4</sup>, Jabalpur Tractors had filed a complaint in the civil court while for the same issue Sedmal Jainarain filed a complaint in the State Commission. Here it was held by the Supreme Court that as the case was already pending disposal (sub-judice) before a competent civil court the complaint in the consumer forum cannot be entertained.

### **Defining Consumer and Service**

The definitions of 'consumer' and 'service' are essential for an understanding of the Legislation. The Consumer Protection Act, 1986 defines a consumer in two ways: separately for goods and services.

#### ***Consumer of Goods***

A person who buys any goods for consideration, including a user who uses without the approval of the buyer is a consumer of goods. This but does not include one who re-sells the goods or uses them for commercial purposes.

Commercial purpose after the 1993 amendment did not include goods used solely for the purpose of self-employment or for earning livelihood.

#### ***Consumer of Service***

For the purpose of services, a consumer means a person belonging to any one of the following:

- One (suppose X) who hires any service for a consideration, or
- One who is beneficiary (suppose Y) of such service, but Y must avail such service with the approval of the person who actually hires it (i.e. X).<sup>5</sup>
  - In *Spring Meadows Hospital vs Harjot Ahluwalia* through KS Ahluwalia<sup>6</sup> a minor had been reduced to a vegetative state due to

negligence of the medical staff at the hospital. In this case, the Supreme Court held that the parents of the minor being a beneficiary of the service were also the consumer of the services provided by the hospital.

Definition of service covers facilities like banking, finance; by any person or organisation including public sector undertakings (PSUs) and Government agencies, provided some consideration has been given for the same.

If a service is availed for free then a claim against such a service does not stand under COPRA, e.g. a patient using the services of a government run hospital; though he might have a remedy under the law of torts.<sup>7</sup> Payment of a token amount would also not alter the position.<sup>8</sup>

Additionally, services under the contract of personal service have also been explicitly excluded (e.g. a servant or any person who is hired for a work and who is not only told *what* to do but also *how* to do it).

When the Act was enacted health and education were two important services, which did not find a specific mention in it, giving rise to lot of uncertainties. However, by subsequent decisions of the Supreme Court it has been clarified that they also come under the purview of the Act.

***In Indian Medical Association vs VP Shantha and Others,***<sup>9</sup> the court clearly laid down that services rendered by a doctor would fall within the ambit of COPRA even though medical practitioners are governed by the Indian Medical Council Act. However, some conditions were spelt out.

On the contrary, if money is paid, it does not automatically make the payee a consumer. In ***SP Goel vs Collector of Stamps, Delhi,***<sup>10</sup> SP Goel had paid a fee to the collector of stamps to execute a will, however the latter refused to do so. Hence, Goel preferred a complaint in the District Forum, which later through a series of appeals to the Supreme Court, which held that, mere payment of fees and deposition of document for registration does not automatically make a person a consumer.

Thus, the question as to 'who is a consumer' is to be decided based on the facts of individual cases before the court.<sup>11</sup>

### **Mode of Settlement**

The defect in goods and deficiency in service may have to be removed and compensated differently. The defective goods are, normally, capable of being

replaced and repaired, whereas deficiency in service may have to be compensated by award of the just equivalent of the value of damages or losses. In some cases, the court may order specific performance as well.

### **Miscellaneous**

Cases may be decided on either fact or law. The difference being, that a case decided on facts may not necessarily become a precedent for future cases unless the facts of both cases match, while a case decided on law promulgates a general rule of law which can be used later.

For instance, a case cannot be filed after a certain period has passed after the occurrence of the incident. In the case of *France B Martins*<sup>12</sup> the respondents had not delivered the possession of flats on time to the complainant and refused to execute the sale deed. Moreover, the construction was also sub-standard and the complainant had to incur extra expenditure, hence he filed a case in the District Forum. In this case, the complaint was filed seven years after the cause of action, however the Supreme Court said that question of limitation was a mixed question of law and fact and if the delay has been properly explained or condoned then the case can be tried by the courts.

Similarly, the question as to 'who is a consumer' is also to be decided based on the facts of individual cases before the court.<sup>13</sup>

Moreover, if a contract has been signed between the parties before the cause of action arises then the courts would follow the terms of the contracts to decide the case. If the contract states that Rs100 would be paid for deficiency in service then the court would abide by the same, if the clause is just, fair and reasonable.<sup>14</sup>

Thus, the Supreme Court decisions have benefited both consumers and producers. The court decisions were the ones to make mention of Maximum Retail Price (MRP) on goods compulsory<sup>15</sup> while they also ruled that defected goods against which the consumer has filed the complaint should be returned to the producer once the complaint is filed<sup>16</sup>.

The compendium provides an insight to number of such interesting cases, which have moulded the contours of consumer rights in the country.

## Endnotes

- 1 *A Treatise on Consumer Protection* (SK Verma and others (eds.), New Delhi: Indian Law Institute, 2004), pp.324
- 2 SS Gulshan, *Consumer Protection and Satisfaction – Legal and Managerial Perspectives* (New Delhi: Wiley Eastern Ltd., 1994), pp. 245
- 3 *Chief Executive Officer and Vice-Chairman, Gujarat Maritime Board vs Haji Daud Harun Abu and Others* [1998 (1) CCC 107 (NS)]
- 4 [1986-1996 Consumer, 2432 (NS)]
- 5 *Ibid*
- 6 [1998 (1) CCC 23 (NS)]
- 7 *Supra* note 1, pp 328
- 8 1986-1995 Consumer 1569 (NS)
- 9 *Ibid*
- 10 [1986-1996 Consumer 3034 (NS)]
- 11 *Laxmi Engineering Works vs PSG Industrial Institute* [1986-1995 Consumer 1553 (NS)]
- 12 *France B. Martins and others vs Mafaida Maria Teresa Rodrigues* (Civil Appeal No. 7593 of 1995)
- 13 *Laxmi Engineering Works v. PSG Industrial Institute* [1986-1995 Consumer 1553 (NS)]
- 14 *Bharathi Knitting Co. v. DHL Worldwide Express Courier, Division of Airfreight Ltd.* [1986-1996 Consumer 2428 (NS)]. See also, *V Sasidharan vs Branch Manager, Syndicate Bank* [1997 (1) CCC 97 (NS)].
- 15 *India Photographic Co. Ltd. vs HD Shourie* (Civil Appeal No. 5310 of 1990)
- 16 *Tata Engineering & Locomotives Co. Ltd. vs Gajanan Y Manderekar* (Civil Appeal No. 3260 of 1997)

# 1

## HOUSING CONSTRUCTION BY STATUTORY BODY IS "SERVICE" UNDER COPRA AND THEIR EMPLOYEES PERSONALLY RESPONSIBLE FOR HARASSMENT TO ALLOTEES

<b>CASE TITLE</b>	<b>Lucknow Development Authority vs M K Gupta</b> [1986-1995 Consumer 278 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"><li>• Whether statutory authorities e.g. Lucknow Development Authority (LDA), DDA etc; constituted under the State Act and carrying out planned development are amenable to COPRA.</li><li>• Whether functionaries of statutory body while performing duty capriciously and causing harassment to the allottees should personally compensate them.</li></ul>
<b>GIST</b>	<ul style="list-style-type: none"><li>• M K Gupta filed a case before the District Forum that LDA was not handing over possession of flat even after payment of entire amount to it. The District Forum did not agree to LDA's plea that consumer redressal authorities have no jurisdiction over construction activity and directed them to hand over possession of flat to Gupta as he had made full payment and completed all the formalities.</li><li>• LDA appealed to the State Commission which directed it to pay interest upon the deposit made by Gupta and hand over possession of the flat after completing construction or pay the estimated cost of deficient and incomplete construction.</li><li>• LDA, instead of complying with the State Commission's orders, approached the National Commission and raised the question of jurisdiction, which was overruled and</li></ul>

<p><b>GIST</b> (Cont'd)</p>	<p>the appeal was dismissed. The National Commission then directed the LDA to pay Rs 10,000 as compensation for causing harassment, mental torture and agony to Gupta. As its last resort, LDA brought the case before the Supreme Court.</p>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• The Supreme Court held that when a statutory body like LDA uses substandard material in construction or makes misleading representation about condition of the house, it is denial of facility or benefit to a consumer and also harassment. Therefore, while dismissing the appeal it was directed that LDA shall fix responsibility of the officers for such deficient service and causing harassment to consumer and as such Rs 10,000 awarded by the Commission shall be recovered from such concerned officers proportionately from their salaries. The LDA was also ordered to pay Rs 5000 to the consumer.</li> </ul>

**WHETHER THE PROVISIONS OF THE LIMITATION ACT,  
1963 ARE APPLICABLE TO THE PROCEEDINGS  
UNDER THE COPRA?**

<b>CASE TITLE</b>	<b>France B Martins and Others vs Mafaida Maria Teresa Rodrigues</b> (Civil Appeal No. 7593 of 1995)
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether the provisions of the Limitation Act, 1963 are applicable to the proceedings under the COPRA?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• The appellant, France B Martin, promoters/developers of 'Perpetual Apartments' agreed to sell a flat in the name of minor daughter of the respondent, for which the possession was to be delivered to the respondent after two years on payment against whole of the agreed amount. Despite various requests made, the appellant did not execute the sale deed on false pretexts.</li> <li>• As the construction of the flat was sub-standard, the respondent complainant Mafaida Maria had to incur an expense of Rs 26,000 for immediate repairs, for which she filed a claim before the District Consumer Disputes Redressal Forum, Goa which on the ground of limitation, dismissed her petition as it was filed after seven years of 'Cause of Action'.</li> <li>• Then Mafaida appealed before the State Consumer Disputes Redressal Forum, Goa which accepted the appeal preferred by the respondent and remitted the matter to the District Forum permitting the respondent to amend her complaint, which again dismissed the complaint as barred by time. The State Commission allowed an appeal filed by the respondent consumer with a direction to the appellants for specific performance of</li> </ul>

<p><b>GIST</b> (Cont'd)</p>	<p>the agreement. Therefore, the delay in filing the claim must have been found to be properly explained or it might have been condoned. This was the crux of matter.</p> <ul style="list-style-type: none"> <li>• The appellant builders filed the revision before the National Consumer Disputes Redressal Commission, which was dismissed vide impugned order, and finally, an appeal was brought before the Supreme Court.</li> </ul>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• The Supreme Court held that as the question of limitation was mixed with question of law and fact, and the finding of the facts arrived at by the State Commission does not require any interference therefore, there was no merit in this appeal, which was accordingly dismissed but under the circumstances without any order as to costs.</li> </ul>

### 3

## HOMEOPATH PRACTISING ALLOPATHY COMMITS QUACKERY, HENCE LIABLE FOR NEGLIGENCE

<b>CASE TITLE</b>	<b>Poonam Verma vs Ashwin Patel and Others</b> [1986-1996 Consumer 2250 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether giving Allopathic treatment without possessing any degree or diploma in Allopathy is negligence?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• Dr Ashwin Patel, a registered Homeopath with Gujarat Homeopathic Medical Council, treated Pramod Verma for viral fever and prescribed allopathic drugs, but when Verma's condition did not improve he again prescribed Allopathic drugs, this time for typhoid fever.</li> <li>• When Verma did not respond to the treatment and his condition deteriorated, he was shifted to a nursing home and then to Hinduja hospital in an unconscious state, where he died after four hours.</li> <li>• Poonam Verma, (widow of Pramod Verma) filed a complaint before the National Commission, praying for compensation and damages to be paid to her by Dr Patel and Dr Rajiv Warty for their negligence and carelessness in the treatment of her husband. Having dismissed her petition by the National Commission, Poonam Verma then filed an appeal before the Supreme Court.</li> </ul>
<b>OUTCOME</b>	<ul style="list-style-type: none"> <li>• The Supreme Court allowed Poonam Verma's appeal against Dr Ashwin Patel by setting aside the judgement of the National Commission. It agreed to her claim against Dr Patel for Rs 300,000 payable within three months. Poonam Verma was also entitled to costs quantified at Rs 30,000.</li> </ul>

<b>OUTCOME</b> <i>(Cont'd)</i>	<ul style="list-style-type: none"><li>• Dr Patel, having practised in Allopathy, without being qualified, was guilty of negligence <i>per se</i>. Furthermore, the Court asked the Medical Council of India to consider the feasibility of initiating appropriate action against Dr Patel for his having practised in Allopathic System of medicine without being properly registered, and also without possessing the requisite qualifications in that system.</li></ul>
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## 4

### MATTER ALREADY SUB-JUDICE BEFORE CIVIL COURT NOT MAINTAINABLE IN CONSUMER FORAS

<b>CASE TITLE</b>	<b>Proprietor, Jabalpur Tractors vs Sedmal Jainarain and Others</b> [1986-1996 Consumer, 2432 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Can claim for garage charges already sub-judice before competent civil court be decided by a consumer disputes redressal agency?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• Jabalpur Tractors had filed a case for recovering garage charges in the Court of the District Judge, Jabalpur. It was pending disposal. In the same case, Sedmal Jainarain filed a complaint in the State Commission for recovery of their car. It held that complaint cannot be considered as the matter was sub-judice before the competent civil court.</li> <li>• Against this decision, Sedmal filed an appeal before the National Commission against the order of the State Commission. The National Commission directed Jabalpur Tractors to hand over the car to Sedmal on the ground that COPRA is in addition to and not in derogation to any other law for the time being in force.</li> <li>• At this juncture, Jabalpur Tractors filed an appeal before the Supreme Court.</li> </ul>
<b>OUTCOME</b>	<ul style="list-style-type: none"> <li>• The Supreme Court upheld the State Commission's order and set aside the National Commission's order in directing to hand over possession of the car to the respondent.</li> </ul>

## 5

### COMPLAINANT HAS A RIGHT TO SEEK REDRESSAL AGAINST UNFAIR TRADE PRACTICE UNDER COPRA

<b>CASE TITLE</b>	<b>Om Prakash vs Assistant Engineer, Haryana Agro Industries Corporation Ltd. and Others</b> [1986-1995 Consumer 1042 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether delay in delivery of goods by a trader constitutes unfair trade practice.</li> <li>• Whether right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers is maintainable under COPRA?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• A complaint under COPRA was filed on behalf of the complainant, Om Prakash, before the District Forum which held that the respondent, Haryana Agro, Industries failed to deliver tractor to the complainant, although he was at the top in the booking list and also prepared to purchase it.</li> <li>• Due to the delay made by the respondent, the complainant had to pay extra amount of Rs 40,690 due to rise in prices. Haryana Agro was directed by the District Forum to refund Rs 40,690 along with the interest at the rate of 18 percent per annum and pay compensation of Rs 2000 to Om Prakash for harassment and mental agony.</li> <li>• The appeal filed on behalf of Haryana Agro before the State Commission was dismissed, affirming the findings of the District Forum. It went in appeal before the National Commission which held that the mere fact that there has been delay in the delivery of the tractor will not constitute 'unfair trade practice' under COPRA. The National Commission did not point out in its order as to why in the</li> </ul>

<b>GIST</b> <i>(Cont'd)</i>	<p>facts and circumstances of the case it shall not constitute 'unfair trade practice'.</p> <ul style="list-style-type: none"> <li>• Om Prakash thus went in appeal to the Supreme Court.</li> </ul>
<b>OUTCOME</b>	<ul style="list-style-type: none"> <li>• The Supreme Court held that the definitions of 'deficiency' and 'service' given under COPRA will cover the action of the respondent, in intentionally delaying supply of the tractor.</li> <li>• Accordingly, the appeal was allowed. The order of the National Commission was set aside and that of the State Commission was restored whereby Haryana Agro had to refund Rs 40,690 with interest and also pay a compensation of Rs 2000 to Om Prakash.</li> </ul>

## 6

### WHETHER THE COMPLAINANT ON FINDING THE GOODS DEFECTIVE HAS THE RIGHT TO SEEK REDRESSAL UNDER THE COPRA

<b>CASE TITLE</b>	<b>MRF Ltd. vs Jagdish Lal and Others</b> (Civil Appeal No. 2710 of 1999)
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether the District Forum, the State and the National Commission followed the prescribed procedure under Section 13(1) (c) of Consumer Protection Act (COPRA), which says: <i>The District Forum shall, on admission of a complaint, if it relates to any goods, where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, obtain a sample of the goods from the complainant, seals and authenticates it in the manner prescribed. Then, it refers the sample, so sealed to the appropriate laboratory along with a direction that such laboratory makes an analysis or test, whichever may be necessary, with a view to find out whether such goods suffer from any defect alleged in the complaint or from any other defect. The laboratory reports its findings thereon to the District Forum within a period of 45 days of the receipt of the reference or within such extended period as may be granted by the District Forum.</i></li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• Having purchased tyres and tubes for vehicles from the local dealer of MRF Ltd, Jagdish Lal and others, on finding the goods defective, filed a complaint to the dealer to either replace the goods or to refund the money, and therefore, submitted the goods to the dealer, which were further sent to the company for replacement, but no action was taken on the same.</li> </ul>

<p><b>GIST</b> <i>(Cont'd)</i></p>	<ul style="list-style-type: none"> <li>• After rigorous follow ups, there was no redressal either from the dealer's or from the company's side, for which a complaint was registered before the District Forum by the complainants, which held that the defective goods returned to the dealer by the complainant were neither replaced nor the priced money refunded back.</li> <li>• The case was decided in favour of complainant consumer but the appellant company appealed before the Supreme Court, on the grounds that the procedure prescribed under Section 13(1) (c) as explained above, was not followed because the complainant (consumer) was not in the possession of the tyre and tube as these were already given back to the dealer for either replacement or refund of the money.</li> </ul>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• The Supreme Court held that there was no material to show that the appellant had replaced the tyre and tube or refunded the cost to the respondent consumer.</li> <li>• That being the factual matrix, it does not show that how the fault could be found with the District Forum, the State Commission or the National Commission in the matter of not following procedure under section 13 (1) (c) of the Act. The appeal was, therefore, dismissed in favour of aggrieved consumers with no costs.</li> </ul>

**UNDER COPRA A PURCHASER BUYING GOODS FOR  
HIS LIVELIHOOD IS A 'CONSUMER' DESPITE  
COMMERCIAL USE OF THOSE GOODS**

<b>CASE TITLE</b>	<b>Laxmi Engineering Works vs P S G Industrial Institute</b> [1986-1995 Consumer 1553 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether goods purchased by the appellant for use by himself exclusively for the purpose of earning his livelihood amounts to self employment?</li> <li>• Whether a person who purchases an auto-rickshaw, a car or a lathe machine to be plied or operated exclusively by another person would be a consumer?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• The appellant, Laxmi Engineering Works (LEW) on placing an order with the respondent, P S G Industrial Institute for the supply of a Universal Turning Machine, was not provided the machinery six months after the stipulated date, but was supplied a defective piece, which could neither be made in order nor repaired.</li> <li>• A complaint was lodged by the LEW before Maharashtra State Commission claiming an amount of Rs 4,00,000 on several counts from the respondent PSG, which appeared before the State Commission and denied LEW's claim. <i>Inter alia</i>, it raised an objection that since LEW had purchased the machine for commercial purposes they were not a 'consumer' within the meaning as defined in the Act. The State Commission allowed the appellant's claim partly, directing PSG to pay to LEW a sum of Rs 2.48 lakhs within 30 days, failing which the said amount was to carry interest at the rate of 18 percent per annum.</li> </ul>

<b>GIST</b> <i>(Cont'd)</i>	<ul style="list-style-type: none"> <li>• The respondent (PSG) filed an appeal before the National Commission which allowed the said appeal on the only ground that LEW was not a ‘consumer’ as defined by the Act. The order passed by the State Commission was set aside and the petition was dismissed.</li> <li>• The appellant, LEW, then went in appeal before the Supreme Court.</li> </ul>
<b>OUTCOME</b>	<ul style="list-style-type: none"> <li>• The appeal accordingly failed and was dismissed without cost by Supreme Court holding that expression ‘consumer’ should always be decided in the facts and circumstances of each case.</li> </ul>

## 8

### PERSON PRESENTING DOCUMENT FOR REGISTRATION, ALTHOUGH PAYING STAMP DUTY, IS NOT A CONSUMER

<b>CASE TITLE</b>	<b>S P Goel vs Collector of Stamps, Delhi</b> [1986-1996 Consumer 3034 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether statutory duty performed by officers under Stamps and Registration Act is a part of sovereign power?</li> <li>• Do such officers possess immunity from legal action?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• S P Goel on submitting a document (which he described as a 'will') for registration to the Sub-Registrar III, New Delhi, who thereon, instead of registering, impounded it saying that it was not a 'Will' but a 'Deed of Conveyance' not duly stamped.</li> <li>• Goel filed a complaint before the District Consumer Forum, New Delhi for relief, including registration of the 'will', besides compensation for harassment which then allowed the claim with the finding that the Collector of Stamps had not taken any decision as to the nature of document for about six years. It was, therefore, liable to pay Rs 700 as compensation and Rs 500 as costs of litigation particularly as Goel having paid the registration charges should be treated as having hired the services of the Sub-Registrar and the Collector of Stamps within the meaning of COPRA.</li> <li>• The Collector of Stamps, Delhi, thereafter, filed a revision petition before the National Commission which allowed the revision with the finding that the District Forum as also the State Commission had no jurisdiction to entertain and adjudicate upon the claim as Goel was not a 'consumer' within the meaning of COPRA.</li> </ul>

<b>GIST</b> <i>(Cont'd)</i>	<ul style="list-style-type: none"> <li>• S P Goel then went in appeal to the Supreme Court which observed that neither the appellant pleaded nor has the District or State forum recorded any finding that the refusal of the Registering officer or the inaction of the Collector of Stamps was malicious, motivated or malafide.</li> </ul>
<b>OUTCOME</b>	<ul style="list-style-type: none"> <li>• The Supreme Court held that a person who presents a document for registration and pays the stamp duty on it or the registration fee, does not become a consumer nor do the officers appointed to implement the provisions of the said two Acts render any service within the meaning of COPRA. For these reasons the appeal was dismissed.</li> </ul>

9

**DAMAGES AND LIMITED LIABILITY  
IN COURIER CONTRACT**

<b>CASE TITLE</b>	<b>Bharathi Knitting Co vs DHL Worldwide Express Courier, Division of Airfreight Ltd.</b> [1986-1996 Consumer 2428 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether the State Commission or the National Commission under the Act could give relief for damages in excess of the limited liability clause agreed by both the parties.</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• Bharathi Knitting Co (BKC) had an agreement with a German buyer for summer season 1990. They consigned certain goods with documents in a cover through DHL Worldwide Express Courier Co. The documents did not reach the destination and duplicate copies were subsequently sent, but by that time the season was over.</li> <li>• Resultantly, the German buyer agreed to pay only DM35000 (Rs 700,000) instead of the invoice value of DM56469 (Rs 112,9380)). As a result, BKC filed a complaint before the State Commission claiming difference of the loss incurred by DHL of DM21469 (Rs 4,29,392). The State Commission agreed to it.</li> <li>• However, DHL carried the matter in appeal. The National Commission, in its order, held that since the liability as per the receipt, was only to the extent of US\$100 BKC was entitled for deficiency of service only to that extent which was equivalent to Rs 3515 along with interest at 18 percent.</li> <li>• Hence, BKC appealed before the Supreme Court which permitted the appeal by special leave.</li> </ul>

<b>OUTCOME</b>	<ul style="list-style-type: none"><li>• The Supreme Court upheld the decision of National Commission for limiting the liability undertaken in the contract and in awarding the amount for deficiency in service accordingly undertaken by DHL.</li></ul>
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## 10

### TRANSACTIONS OF SALE & PURCHASE SIMPLICITER NOT MAINTAINABLE

<b>CASE TITLE</b>	<b>Punjab Water Supply &amp; Sewage Board vs Udaipur Cement Works</b> [1986-1996 Consumer 2838 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether question of deficiency of service can arise so as to entitle the complainant to invoke the jurisdiction of the consumer court when there was no case at all of any defect in the goods supplied?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• The complainant, Punjab Water Supply &amp; Sewage Board (the Board) placed an order for the supply of cement with the respondent firm, Udaipur Cement Works (Cement Co). For this purpose, an amount of Rs 23,62,900 was remitted to the Cement Co. through bank drafts as deposit.</li> <li>• According to the confirmed order, 2500 MT cement had to be supplied on or before March 1988. The goods in question were delivered to the Board in November 1990, and that too at a price higher than agreed upon at the time of placing the order.</li> <li>• The Board filed a complaint before the State Commission, Chandigarh against the Cement Co, alleging <i>inter alia</i>, deficiency in service in the supply of cement.</li> <li>• The State Commission allowed the complaint and awarded 12 percent interest to the Board for the period during which the amount of deposit remained with the Cement Co. The Board went in appeal to the National Commission.</li> <li>• On appeal, the National Commission set aside the order of the State Commission and ordered that the complainant</li> </ul>

<p><b>GIST</b> <i>(Cont'd)</i></p>	<p>will be at liberty to pursue whatever other remedies are open to him in law. Thus, the matter went to the Supreme Court in appeal, by way of special leave against the order of the National Commission.</p> <ul style="list-style-type: none"> <li>• The Supreme Court did not appreciate the blanket observation of the National Commission when the transaction was one of sale and purchase simpliciter. It was, therefore, held that in this case 'no question of deficiency in service can arise so as to entitle the complainant to invoke the jurisdiction of the Consumer Forum when there was no case at all of any defect in the goods supplied'.</li> </ul>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• The Supreme Court allowed the appeal and set aside the order of the National Commission. The Supreme Court remanded the case to the National Commission to hear the appeal afresh after affording opportunity to the parties and considering the pleading of the parties.</li> </ul>

## 11

### LIMITATION STARTS FROM THE DATE THE ORDER IS RECEIVED

<b>CASE TITLE</b>	<b>Housing Board, Haryana vs Housing Board Colony Welfare Association</b> [1986-1996 Consumer 3253 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"><li>• Is mere pronouncement of an order in open court enough or the same is required to be communicated in writing to the affected parties;</li><li>• Does a case become time barred on the basis of the date of pronouncement of judgement?</li></ul>
<b>GIST</b>	<ul style="list-style-type: none"><li>• Housing Board, Haryana (the Board) invited applications from member of the economically weaker sections for allotment of houses/flats and these allotment letters had a clause which said that if the cost of increase in due to land award or arbitration proceedings, then the prices of the houses/flats being constructed by the Board may also increase.</li><li>• Consequently, due to some judicial order that compensation granted to people on whose land the Board had been constructing houses/flats was increased, therefore the Board issued letter demanding additional money from the persons who had been allotted houses/flats.</li><li>• Three complaints were submitted before the District Forum, Kurukshetra, against this additional demand of money.</li><li>• The Board argued that as there was no 'service' rendered by it, no question of deficiency arose, and therefore, the</li></ul>

<p><b>GIST</b> <i>(Cont'd)</i></p>	<p>matter was outside the jurisdiction of the District Forum. The District Forum rejected it and ruled that the allottees would not be liable to pay any excess amount demanded by the Board.</p> <ul style="list-style-type: none"> <li>• The Board filed three separate appeals before the State Commission. The State Commission, however, found that the appeals had been filed after the prescribed limitation period was over and no reason for delay was stated. On this ground, the State Commission dismissed the appeals.</li> <li>• Consequently, the Board brought the matter to the National Commission which gave the same ruling and dismissed the appeals.</li> <li>• The Board finally appealed before the Supreme Court. The counsel for the Board argued that copy of the judgement of the District Forum was not made available immediately, due to which they could not file appeals to the State Commission within the limitation period of two years under COPRA.</li> <li>• The Supreme Court found this to be true. It further found that if the period by which the appeal had to be filed started on the day the appellant got the copy of the previous judgement of the District Forum, they had actually filed the appeals within time.</li> </ul>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• Thus, the appeals succeeded and were thereby allowed. The impugned orders of the National Commission and the State Commission were set aside. The appeals were remitted back to the State Commission for disposal on merits in accordance with law.</li> </ul>

## 12

### INTEREST NOT PAYABLE IF SUCH PROVISION EXISTED IN CONTRACT

<b>CASE TITLE</b>	<b>Haryana Urban Development Authority vs Smt Nalini Agarwal</b> [1997 (1) CCC 265 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether an applicant is entitled to interest on amount deposited for house allotment, if allotment is not made?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• A notification was issued by Haryana Urban Development Authority (HUDA) calling for application for allotment of houses. Nalini Agarwal was also one of the applicants. After initial formalities and scrutiny, lots were drawn to decide the successful applicants. The money deposited by the unsuccessful applicants was refunded in over a month's time. Nalini Agarwal, who was unsuccessful in getting an allotment, claimed interest on the amount she had deposited. When HUDA refused to pay any interest, she complained in the District Forum which ordered that Agarwal should be paid interest. Consequently, HUDA appealed before the State Commission which too gave the same decision. On appeal, the National Commission followed suit, on which HUDA appealed in the Supreme Court.</li> <li>• While passing its judgement the Supreme Court observed that:             <ul style="list-style-type: none"> <li>✓ One of the conditions imposed in the notification inviting applications for allotment was that 'No interest shall be payable on the money of the applicant for the period for which the same is lying with the Authority'. This was accepted by the applicants.</li> </ul> </li> </ul>

<p><b>GIST</b> (Cont'd)</p>	<p>✓ The draw of lots was delayed for one year due to administrative exigencies and not on account of any malafide intentions; nor was there any absolute indifference on the part of the Authority in not drawing the lots.</p>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• Under the circumstances, the Supreme Court allowed the Urban Development Authority's appeal. Going by the conditions imposed in the notification inviting applications, the Supreme Court held that no interest was payable to Agarwal on the money lying with HUDA. Holding the orders of the National Commission and State Commission as 'clearly illegal', the Supreme Court set them aside.</li> </ul>

## 13

### DEFAULT IN PAYMENT OF LOAN AMOUNT BY BANK IS DEFICIENCY IN SERVICE

<b>CASE TITLE</b>	<b>V Sasidharan vs Branch Manager, Syndicate Bank</b> [1997 (1) CCC 97 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether failure to disburse total loan amount by bank, contracted under agreement, was a deficiency in service resulting in stoppage of business?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• V Sasidharan had taken a loan from Syndicate Bank on two accounts, one for a sum of Rs 1,50,000 and the other for Rs 3,00,000. But the Bank had disbursed Rs 1,47,000 only and the balance amount was not released to him.</li> <li>• In the complaint filed before the District Forum, Sasidharan accused that failure to disburse the total amount contracted under the agreement was a deficiency in service on the Bank's part, which resulted in stoppage of his business by the Bank.</li> <li>• Consequently, Sasidharan held that he could not manufacture the products for which orders had been received as he could not discharge the obligations to pay labour charges. Also, since there was a slump in the market, he could not sell his goods and discharge the contract for repayment of loan. Accordingly, he filed the complaint for damages amounting to a sum of Rs 9,50,000 by the District Forum.</li> <li>• The District Forum dismissed the case, and in appeal the State Commission also did the same. The National Commission too confirmed the dismissal of the complaint.</li> </ul>

<p><b>GIST</b> <i>(Cont'd)</i></p>	<ul style="list-style-type: none"> <li>On appeal, the Supreme Court observed that if, in pursuant to the contract, the Bank did not disburse the amount and if there was any resultant default in the payment on account thereof, that may be a defence open to Sasidharan in the suit. It also furnishes him the right to submit complaint of deficiency in service in order to seek redressal under COPRA.</li> </ul>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>The Supreme Court further stated that it was not the case of the petitioners that there was deficiency in service of the Bank. On the other hand, it is admitted that due to slump in the market they could not sell the goods, realise the price of the finished product and pay back the loan to the Bank. Under the circumstances, the Supreme Court held that it had not found any ground warranting interference. Thus, the Special Leave Petition was dismissed.</li> </ul>

## 14

### MERE ISSUING CHEQUES SHOULD NOT RESULT INTO AUTOMATIC RENEWAL OF INSURANCE POLICY?

<b>CASE TITLE</b>	<b>Pradeep Kumar Jain vs Citibank and Others</b> (Civil Appeal No. 6618 of 1995)
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"><li>• Insurance policy not renewed by the Bank for which payment was already made to it.</li><li>• Whether mere issuing cheques should result into automatic renewal of insurance policy?</li><li>• Whether relief can be granted to the appellant?</li></ul>
<b>GIST</b>	<ul style="list-style-type: none"><li>• Having bought a car on hire purchase from Citibank, for which consumer Pradeep Jain issued two cheques to Insurance Company towards the premium for two years, and for subsequent two years issued two cheques to the respondent Bank on assurance of automatic renewal of policy which were not considered by the Bank and as a result the insurance got lapsed.</li><li>• Meanwhile, car met with an accident in which five passengers died and the car got badly damaged for which the insurance company refused to provide the claim to the consumer.</li><li>• Aggrieved consumer then approached the District Consumer Forum for the claim for grievous neglect of duty on the part of the respondent Bank which did not held the Bank responsible for the negligence, therefore, issued the orders in favour of the respondent Bank.</li></ul>

<p><b>GIST</b> <i>(Cont'd)</i></p>	<ul style="list-style-type: none"> <li>• The consumer then appealed before the State Commission and then to the National Commission, but at both the places, the case was dismissed against the consumer and the orders of the District Forum were restored. Finally, the case was brought before the Supreme Court.</li> </ul>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• The Supreme Court held that mere issuing cheques of the premium does not result in an automatic renewal of the policy and the appellant also had certain duties in obtaining insurance policy and cannot put the blame entirely on the respondent. Hence, the appeal was dismissed against the consumer without any order as to cost.</li> </ul>

## 15

### WHETHER INSURANCE POLICY PROVIDES RIGHT TO SUE FOR LOSS? DOES IT MAKE HIM A CONSUMER?

<b>CASE TITLE</b>	<b>New India Assurance Co Ltd vs B N Sainani</b> [1997 (2) CCC 386 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether the assignee of insurance policy, who has been given a mere right to sue for the loss and not for rendering any service can be considered as consumer?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• In this case, B N Sainani was an assignee of two insurance policies taken by the consignee (a person or organisation to whom goods are sent) Ajanta Paper and General Products Ltd from New India Assurance Co Ltd (the insurer). An assignee of insurance policy is one who has the legal right to sue for loss of goods which are covered by the policy.</li> <li>• One policy was to insure 244 bales of computer wastes and computer print-out valued at Rs 5,87,000 and the second was for 170 bales valued at Rs 4,04,000 to cover the risk from the port of Antwerp to Mumbai.</li> <li>• The consignee, Ajanta Paper, informed the insurer New India Assurance Co that he had been told that due to a strike in Indian ports, the vessel S S IRISH MAPLE, which was bringing the goods, had been diverted to Muscat and the cargo had been discharged there. Ajanta Paper, therefore, requested New India Assurance to cover the risk accordingly.</li> <li>• New India Assurance informed them that the consignments in question were required to be reshipped from Muscat to Mumbai within 60 days' time from the date the same were discharged at Muscat, failing which</li> </ul>

<p><b>GIST</b> (Cont'd)</p>	<p>there would be no liability of any claim covered under the two policies.</p> <ul style="list-style-type: none"> <li>• At this juncture, Ajanta Paper informed the assignee i.e. Sainani, that the consignment was still lying at Muscat and that any additional charges that may be levied by the steamer company will be borne by the insurer i.e. New India Assurance. Further, New India Assurance was asked to cover the risk of the journey from Muscat to Mumbai to which they did not agree.</li> <li>• Ajanta Paper then lodged a claim with the Maharashtra State Commission, on account of short landing. The State Commission agreed with the said claim and on appeal, the order was further confirmed by the National Commission.</li> <li>• New India Assurance then appealed before the Supreme Court which held that the assignee, B N Sainani, was not a 'consumer' as defined under COPRA because he had only been assigned the right to recover the loss that may be suffered due to short landing and nothing else. It naturally followed from this that the insurer was not under any obligation to render any service to Sainani.</li> <li>• The Supreme Court made two important points: <ul style="list-style-type: none"> <li>✓ Unless the assignee (Sainani) had some insurable interest and until the policy terminated, he could not be beneficiary of any service required to be rendered by the insurer.</li> <li>✓ If the policy had been assigned during validity and before the goods were appropriated, it could perhaps be said that assignee (Sainani) had beneficial interest.</li> <li>✓ The Supreme Court held that for establishing his case, Sainani had to prove that he was a consumer under COPRA and that there had been deficiency in service, which he failed to prove.</li> </ul> </li> </ul>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• The Supreme Court thus allowed the insurance company's appeal, the orders of the National and the State Commission were set aside, and the complaint of the respondent was dismissed with no costs.</li> </ul>

## 16

### FOR ANY CLAIM PRIVACY OF CONTRACT IS ESSENTIAL

<b>CASE TITLE</b>	<b>Indian Oil Corporation vs Consumer Protection Council, Kerala and Others</b> [1986-1995 Consumer 701 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether privity of contract is essential for regularisation of gas connection or to raise question of deficiency of service.</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• Dr P Kamalasanan, member and Secretary of Consumer Protection Council, a voluntary consumer organisation in Kerala had purchased an LPG connection through M/s Karthika Gas Agency, who were the authorised distributors of Indian Oil Corporation (IOC). A consumer number was also granted to him.</li> <li>• When Dr Kamalasanan requested for regularisation of his gas connection, IOC refused the same. According to Dr Kamalasanan, this amounted to a deficiency of service. He, therefore, preferred a complaint before the District Forum, Kollam, who directed IOC to regularise the connection and issue a subscription voucher and also pay Rs 100 as costs.</li> <li>• IOC filed an appeal before the State Commission against this order. IOC's plea was that there was no privity of contract between it and Dr Kamalasanan. Further, Dr Kamalasanan was having an unauthorised connection which could not be regularised. Accordingly, the appeal was dismissed.</li> <li>• The revision filed before the National Commission also met the same fate, and was dismissed. Hence, IOC appealed before the Supreme Court.</li> </ul>

<p><b>GIST</b> (Cont'd)</p>	<ul style="list-style-type: none"> <li>• IOC's argument was that a person can only become an LPG customer of the Corporation only after signing a subscription voucher which contains necessary terms and conditions. Possession of a cylinder without a subscription voucher is an illegal act. In so far as Dr Kamalasanan had failed to furnish a subscription voucher, he could not raise a claim against IOC. Hence, in the instant case, there was no deficiency of service.</li> <li>• The counsel for the respondent argued that possession of an LPG cylinder, pressure regulator and regular supply and refill of cylinders would constitute enough evidence to establish authorised connection.</li> </ul>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• The Supreme Court held that Karthika Gas Agency had given an unauthorised gas connection, and if it was a legal connection nothing would have been easier than to produce the subscription voucher.</li> <li>• The Supreme Court also held that as there was no privity of contract between IOC and Dr Kamalasanan, no deficiency of service arose. Therefore, the action itself was not maintainable before the Consumer Forum. For these reasons, the Supreme Court allowed the appeal and set aside the judgements of the Consumer Courts.</li> </ul>

## 17

### NATIONAL COMMISSION HAS NO JURISDICTION TO ENTERTAIN CLAIM AND AWARD COMPENSATION IN RESPECT OF MOTOR VEHICLE ACCIDENT

<b>CASE TITLE</b>	<b>The Chairman, Thiruvalluvar Transport Corporation vs Consumer Protection Council, Tamil Nadu</b> [1986-1995 Consumer 1541 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether National Commission has jurisdiction to entertain claim application and award compensation in respect of a motor vehicle accident?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• K Kumar on travelling in a bus from Kombakonam to Thanjavur met with an accident and sustained a serious head injury, to which, unfortunately, he succumbed.</li> <li>• The Consumer Protection Council, Tamil Nadu, on behalf of the legal representatives of the deceased lodged a complaint before the National Commission claiming compensation.</li> <li>• The appellant, Thiruvalluvar Transport Corporation (TTC) contested the claim stating that the claimant i.e. the Council, had no locus standi to maintain action; and in any case National Commission had no jurisdiction to entertain a petition since exclusive jurisdiction was conferred by the Motor Vehicle Act, 1988 on the Accident Claims Tribunal. Despite this, the National Commission awarded Rs 5.10 lakhs by way of compensation with interest at 18 percent per annum from May 01, 1992 till the date of payment. It also awarded Rs 10,000 by way of costs. Hence, TTC appealed before the Supreme Court.</li> <li>• The Supreme Court wanted to settle the issue whether or not in such cases the National Commission had</li> </ul>

<b>GIST</b> <i>(Cont'd)</i>	<p>jurisdiction to entertain the complaint. The main emphasis was to decide the question of law as it was apprehended that similar cases which had become time barred under the Motor Vehicles Act, 1988 may be taken to the National Commission under the Consumer Protection Act, 1986, even though that body had no jurisdiction whatsoever.</p>
<b>OUTCOME</b>	<ul style="list-style-type: none"> <li>• The Supreme Court was of the opinion that it should rest content by deciding the question of jurisdiction and holding that the National Commission had no jurisdiction whatsoever. In the facts and circumstances of the case, the Supreme Court reversed the order of the National Commission by allowing the appeal and said that the National Commission had no jurisdiction to decide an accident case as it came under the Motor Vehicles Act, 1988.</li> </ul>

## 18

### BANK NOT LIABLE TO COMPENSATE WHEN ILLEGAL & UNRULY STRIKING EMPLOYEES FORCE BANK NO TO WORK

<b>CASE TITLE</b>	<b>Consumer Unity &amp; Trust Society (CUTS), Jaipur vs The chairman &amp; Managing Director, Bank of Baroda, Calcutta.</b> [1986-95 Consumer 1546(NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"><li>• Whether due to illegal and unruly behaviour of striking employees, Bank's failure to render service to its clients amounts to 'deficiency in service' as per COPRA?</li><li>• Is Bank liable to compensate for the damages suffered due to such failure?</li></ul>
<b>GIST</b>	<ul style="list-style-type: none"><li>• There had been a 54 day long strike in all the 73 branches of the Bank of Baroda in West Bengal during September 1988, which resulted in much hardship to its customers and the Bank was prevented from rendering even any skeleton service to its customers by unruly striking employees.</li><li>• CUTS Calcutta Resource Centre, filed a class-action complaint before the National Commission, as the 1<sup>st</sup> complaint before it started functioning. CUTS argued that the Bank of Baroda had quietly provided service to some select customers by issuing cheques drawn on the Reserve Bank of India and Grindlays Bank. At the same time, the Bank of Baroda advertised that it cannot render service due to the strike.</li><li>• Secondly, CUTS argued that the strike, even if it is illegal, has been caused due to Bank of Baroda's negligence, therefore, the Bank of Baroda is responsible for the</li></ul>

<p><b>GIST</b> (Cont'd)</p>	<p>hardships being caused to its small depositors, in particular, pensioners.</p> <ul style="list-style-type: none"> <li>• At the same time, the Indian Bank Association also filed an intervention pleading <i>inter alia</i>, if such an action succeeds then consumer organisations will blackmail bank managements to accept unreasonable demands of unions. It also pleaded that 'rendering uninterrupted service is not a bank's duty'.</li> <li>• The National Commission did not agree with the plea that the strike was caused due to negligence of the Bank of Baroda management thus treating the situation as force majeure (due to factors beyond human control). Therefore, the complaint did not succeed. However, the National Commission ruled that any bank in such a situation should make skeleton arrangements for depositors to operate their accounts. It added that non-success of this action will not mean that in any similar situation, banks can get away with force majeure. That is, each case will be decided on merits. It also came down heavily on the Indian Bank Association for being so flippant in its intervention.</li> <li>• Aggrieved with the order, CUTS filed an appeal before the Supreme Court. The Supreme Court observed that depositors were prevented from availing the bank services not due to any deficiency but due to unruly strikers who prevented them from working.</li> </ul>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• In view of the above facts, the Supreme Court held that no claim of damages under the Act was maintainable. The appeal, therefore, failed and was dismissed.</li> </ul>

## 19

### TRANSFER OF MOTOR INSURANCE ALONGWITH VEHICLE!

<b>CASE TITLE</b>	<b>Complete Insulations (P) Ltd. vs New India Assurance Co Ltd.</b> [1986-1996 Consumer 2839 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"><li>• When insurer had not transferred the policy of his vehicle to the transferee, was the insurer liable to make good the damages occurred to the vehicle in absence of an agreement to cover the risk.</li></ul>
<b>GIST</b>	<ul style="list-style-type: none"><li>• Having purchased a Maruti car in the name of Archana Wadhwa, for which the respondent, New India Assurance Co Ltd (NIA), had issued a comprehensive insurance policy, the premium for the insurance was paid by the appellat company, Complete Insulations P Ltd (CIPL) in whose favour the car was transferred. The registration of the car was transferred to CIPL on June 15, 1989. On June 26, 1989, CIPL intimated the transfer of registration and also asked for transfer of the insurance policy.</li><li>• On September 17, 1989 the car met with a serious accident in which the Managing Director of CIPL suffered serious injuries and his sister died. On October 11, 1989, CIPL asked for the assessment of the damage as the car was a total loss.</li><li>• CIPL filed a complaint before the State Commission, Chandigarh, which directed NIA to pay Rs 83,000 i.e. the insured value of the vehicle, as the vehicle was a total loss, along with costs and interest.</li></ul>

<p><b>GIST</b> (Cont'd)</p>	<ul style="list-style-type: none"> <li>• The National Commission, on appeal, set aside the order of the State Commission at Chandigarh. Hence, the appeal was brought before the Supreme Court.</li> <li>• The Supreme Court observed that the moot question involved in the case was whether on the above facts, without the insurance policy being transferred in the name of the appellant, it was entitled to be indemnified by the insurer.</li> <li>• The Supreme Court observed that, if the policy of insurance covers other risks as well, e.g., damage caused to the vehicle of the insured himself, that would be a matter falling outside Chapter XI of the New Act. It would fall in the realm of the contract for which there must be an agreement between the insurer and the transferee, the former undertaking to cover the risk or damage to the vehicle.</li> </ul>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• In the present case, since there was no such agreement and as the insurer (NIA) had not transferred the policy to the transferee (CIPL), it was not liable to make good the damage to the vehicle. The Supreme Court thus held the view taken by the National Commission as correct. It saw no merit in the appeal and dismissed the same but with no order as to costs.</li> </ul>

## 20

### TRANSFER OF MOTOR VEHICLE ALONGWITH INSURANCE WITHOUT PROVIDING INTIMATION IN A PRESCRIBED FORMAT

<b>CASE TITLE</b>	<b>G Govindam vs New India Insurance Co. Ltd.</b> (Civil Appeal No. 1816 of 1982)
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether insurer's liability discontinues on transfer of vehicle, when no intimation as prescribed given?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• The consumer G Govindam on having purchased a vehicle from another consumer, who was the owner of that vehicle prior to him, got the vehicle transferred from the owner, for which there was no intimation of sale transaction to the respondent-insurer, from where the vehicle was originally insured.</li> <li>• Meanwhile, the vehicle met with an accident and the appellant consumer Govindam claimed for compensation with the insurer company, New India Insurance, who rejected the claim for the reasons that there was no intimation of the deal between the first and the second owner regarding the transfer of ownership.</li> <li>• Finally, when no redressal came up, the consumer booked the company in the Motor Accident Claim Tribunal (MACT), which held the respondent aware of the transfer, so transferee and respondent were jointly liable. Then the insurer filed an appeal before the High Court which reversed the decision by MACT, and gave the decision in favour of the company.</li> <li>• Complainant appealed before the Supreme Court that whether insurer's liabilities discontinue in the case of</li> </ul>

<b>GIST</b> <i>(Cont'd)</i>	transfer of vehicle without giving information in a prescribed format.
<b>OUTCOME</b>	<ul style="list-style-type: none"> <li>• Supreme Court held that the insurance in the dispute was of a vehicle and not the person and allowed the appeal in favour of the complainant consumer (appellant) and set aside the impugned judgment of the High Court and upheld the order of MACT. There was no order as to cost.</li> </ul>

## 21

### THE VEHICLE INSURED AS PER THE TERMS AND CONDITIONS OF THE MOTOR VEHICLE ACT 1988, SHOULD NOT CARRY THE HIGHLY INFLAMMABLE SUBSTANCE

<b>CASE TITLE</b>	<b>Oriental Insurance Co. Ltd. vs Sony Cheriyan</b> (Civil Appeal No. 4913 of 1997)
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• The vehicle, which was insured as per the terms and conditions prescribed with the insurance liability, should not carry the highly inflammable solvent 'Ether Solvent'.</li> <li>• Whether the terms used in the petition, 'Ether' or 'Ethyl Ether' are the same chemical substance and commonly known as 'Ether Solvent'?</li> <li>• Whether the orders of the State and the National Commission are correct?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• A truck belonging to Sony Cheriyan, insured with the appellant Oriental Insurance having caught fire on the way, while carrying Ether Solvent, filed a claim before the said company, which refused to grant the claim as per terms and conditions prescribed with the insurance liability that the vehicle should not carry the inflammable substance.</li> <li>• Then, the consumer filed a claim petition before the District Consumer Disputes Redressal Forum (DCDRF) which dismissed the case on the ground that as the vehicle was not insured as per the terms and conditions of insurance policy, and carrying Ethyl Ether – a hazardous and highly inflammable substance – which could not be carried legally as per the terms of Motor Vehicle Act, 1988 for which respondent consumer was not permitted.</li> </ul>

<p><b>GIST</b> (Cont'd)</p>	<ul style="list-style-type: none"> <li>Respondent consumer then appealed before the State Commission, where the decision of the District Forum was reversed and the appeal was allowed in favour of the consumer directing the Insurance Company to pay a sum of Rs 1,93,500 together with an interest of 12 percent per annum to the respondent. The said company then went to the National Commission with an appeal, before which, it was concluded that the Ethyl Ether and Ether Solvent are the same substance and passed the orders against the company and stayed in line with the orders of the State Commission. Finally, the company appealed before the Supreme Court.</li> </ul>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>The Supreme Court held that the Ether Solvent is only a descriptive term for Ether, which is being widely used as solvent not only in industry but also in chemical manufacture and research laboratories.</li> <li>The judgment of orders passed by the State and the National Commission were set aside, while the judgment passed by the District Forum was restored by which the complaint was rightly dismissed and there was no order as to cost.</li> </ul>

**WHETHER THE INSURANCE COMPANY IS LIABLE TO PAY  
THE COMPENSATION, IF THE INTIMATION OF  
THE TRANSFER OF THE VEHICLE WAS PROVIDED  
TO THE INSURANCE COMPANY, THOUGH NOT IN  
THE PRESCRIBED FORM**

<b>CASE TITLE</b>	<b>The New India Insurance Co. Ltd. vs Sheela Rani and Others</b> (Civil Appeal No. 5525 of 1995)
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether the insurance company is liable to pay the compensation, if the transferee had intimated the appellant insurance company about the transfer of the vehicle in his favour, but not in the prescribed form, though the company did not intimate to the transferee that the said application is not in the prescribed form.</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• Having purchased a car by Sheela Rani from the original owner of the vehicle already insured by the Insurance Company, for which the intimation of the transfer of the car from the original owner to Sheela Rani was made to the Regional Transport Office (RTO), and the Regional Transport Authority (RTA), which accepted the transfer.</li> <li>• After intimation of the same to the appellant insurance company about the transfer and the new owner of the vehicle, the appellant insurance company denied issuing the policy to consumer Sheela Rani who sought for the transfer of the policy, which was originally in the name of the first owner.</li> <li>• The consumer then booked the company into the District Consumer Forum which decided the matter in favour of the complainant consumer on the grounds that since RTO</li> </ul>

<p><b>GIST</b> (Cont'd)</p>	<p>has accepted the transfer of the vehicle, then the insurance company should not deny issuing of transferred policy to consumer.</p> <ul style="list-style-type: none"> <li>• The respondent company then appealed before the State Commission on the ground that the complainant consumer Sheela Rani did not applied for the transfer of the policy in the prescribed format, whereas Sheela Rani had allegations that the company authorities had never informed her regarding any format. The State Commission restored the decision of the District Forum in favour of consumer Sheela Rani. The company then filed the appeal before the National Commission, and after losing at this stage, the appellant appealed before the Supreme Court.</li> </ul>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• The Supreme Court held that the insurance policy of the vehicle in question for which the transfer was not intimated in the prescribed form as mentioned in Section 103-A of the Motor Vehicle Act, 1988 would not lapse even after the refusal by the insurance company.</li> <li>• In the absence of the reply from the appellant, it should be deemed to have been transferred in favour of the transferee Sheela Rani as per section 103-A of the Act. The decisions of the lower courts were upheld.</li> <li>• The case was dismissed with no order as to costs.</li> </ul>

## 23

### WHETHER THE INSURANCE COMPANY IS LIABLE TO PAY THE COMPENSATION TO THE APPELLANT WHEN AT THE TIME OF THE ACCIDENT THE VEHICLE WAS DRIVEN BY SOME OTHER PERSON THEN THE OWNER?

<b>CASE TITLE</b>	<b>National Insurance Company Ltd. vs Santro Devi and Others</b> (Civil Appeal no. 7749 of 1997)
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Appeal against obiter – an opinion by a judge – not essential to the decision on the main question in the case on trial.</li> <li>• Merely employing a driver with a forged driving licence would not absolve the insurer of its liability.</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• Santro Devi, the owner of the vehicle met with a motor accident, and at that time, some other driver was driving the vehicle other than the owner Santro Devi, for which the claim for compensation arose before the insurer, The National Insurance Company Ltd., which denied giving the compensation saying that the driver at the time of accident was some other person than the owner herself, and the said driver not possessing a valid driving licence.</li> <li>• Then the dispute was brought before the Motor Accident Claim Tribunal which confirmed that the driver was holding a valid driving licence and ordered the respondent company to pay compensation to Santro Devi.</li> <li>• But the National Insurance Company appealed before the High Court, which affirmed the decision of MACT. Yet, a question was raised by the High Court as to whether a forged or a fake licence, if renewed would get</li> </ul>

<b>GIST</b> <i>(Cont'd)</i>	<p>validated or not so as to work out the liabilities under the Motor Vehicle Act, 1988. The High Court also affirmed that the consumer owner of the accidental car should be awarded the compensation but the appellant company further appealed before the Supreme Court.</p>
<b>OUTCOME</b>	<ul style="list-style-type: none"> <li>• The Supreme Court held that there was a concurrent finding by the Tribunal as well as by the High Court that the offending vehicle was driven by a driver, who had a valid licence which stood renewed on the date of accident and there was thus no reason for the High Court to have ruled on assumption to the contrary in order to interpret the law and that too on a fact situation not available to it. Thus, Supreme Court was constrained to intervene and to hold that the entire exercise of the High Court in the direction was obiter, not at all a binding precedent.</li> <li>• The appeal thus allowed in part to the extent and in the manner afore-indicated.</li> </ul>

## 24

### IN WHAT CIRCUMSTANCES AND CASES MEDICAL SERVICE RENDERED ON PAYMENT ALSO COVER FREE SERVICE IN GOVERNMENT & NON-GOVERNMENT MEDICAL INSTITUTIONS

<b>CASE TITLE</b>	<b>Indian Medical Association vs V P Shantha and Others</b> [1986-1995 Consumer 1569 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether and in what circumstances a medical practitioner can be regarded as rendering service?</li> <li>• Whether and in what circumstances medical service rendered free of charge at a non-government as well as government hospital, dispensary, nursing home and health centre is regarded as 'service' and the recipient a 'consumer' under the Act.</li> <li>• In the absence of a medical expert on its bench is a consumer court capable of adjudicating such complaints?</li> </ul>
<b>GIST and OUTCOME</b>	<p>The Supreme Court held that under COPRA, Section 2 (1)(o):</p> <ul style="list-style-type: none"> <li>• Service rendered to a patient by a doctor (except free service) by way of consultation, diagnosis and treatment, would fall within the ambit of 'service'.</li> <li>• The fact that doctors belong to the medical profession and are subject to the disciplinary control of the Medical Council of India and/or State Medical Councils under the Indian Medical Council Act would not exclude the services rendered by them from the ambit of COPRA.</li> <li>• Service rendered at a non-government hospital/nursing home where charges are required to be paid by the persons</li> </ul>

<p><b>GIST and OUTCOME</b> (Cont'd)</p>	<p>availing such services falls within the purview of the expression 'service'.</p> <ul style="list-style-type: none"> <li>● Service rendered by a doctor or hospital/nursing home cannot be regarded as service rendered free of charge, if the person availing the service has taken an insurance policy for medical care, whereunder the charges for consultation, diagnosis and medical treatment are borne by the insurance company and such service would fall within the ambit of 'service' as defined in above Section.</li> <li>● Similarly, where, as part of the conditions of service, the employer bears the expenses of medical treatment of an employee and his family members dependent on him, the service rendered to such an employee and his family members by a doctor or a hospital/nursing home would not be free of charge and would constitute 'service'.</li> <li>● In the absence of a relationship of master and servant between the patient and doctor, the service rendered by a doctor to the patient cannot be regarded as service rendered under a 'contract of personal service'. Such service is service rendered under a 'contract for personal services' and is not covered by definition of 'service'.</li> <li>● The service rendered by a medical officer to his employer under the contract of employment would be outside the purview of 'service'.</li> <li>● Service rendered free of charge by a doctor attached to a hospital/nursing home or a doctor employed in a hospital/nursing home where such services are rendered free of charge to everybody, would not be 'service'. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.</li> <li>● Service rendered at a non-government hospital/nursing home where no charge whatsoever is made from any person availing the service and all patients (rich and poor) are given free service – is outside the purview of the expression 'service'.</li> </ul>
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<p><b>GIST and OUTCOME</b> <i>(Cont'd)</i></p>	<ul style="list-style-type: none"> <li>• Service rendered at a government hospital/health centre/ dispensary where no charge whatsoever is made from any person availing the services and all patients (rich and poor) are given free service – is outside the purview of the expression ‘service’. The payment of a token amount for registration etc; would not alter the position.</li>   <li>• Service rendered at a (i) non government hospital/nursing home or (ii) government hospital health centre/dispensary where services are rendered on payment of charges as well as free of charge to those who can not afford to pay, free service would also be ‘service’ and the recipient a ‘consumer’ under the Act.</li>   <li>• On the question of the members’ ability to decide medical negligence cases unless they were themselves medical practitioners, the Court ruled: “[it] cannot be expected that the members of the consumer fora must have expertise in all fields. It will be for the parties to place the necessary materials on record, which will enable the members to arrive at their findings on the basis of that material”.</li> </ul>
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**WITHOUT DISCUSSION ON MERIT AND CONSIDERATION  
OF QUESTION OF LAW SUMMARY DISMISSAL OF  
PETITION BY NATIONAL COMMISSION IS IMPROPER**

<b>CASE TITLE</b>	<b>Maharashtra Hybrid Seeds Co. Ltd. vs Alavalapati Chandra Reddy and Others</b> [1988 (2) CCC 5 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether the complainants were justified in moving the Consumer Forum for redressal on the facts of the case?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• On recommendation of the local Agricultural Officer (AO), the farmers of Cuddapah district of Andhra Pradesh, purchased sunflower seeds produced by Maharashtra Hybrid Seeds Co. Ltd. (MHSCCL), which failed to germinate.</li> <li>• On receiving the complaint from the farmers, the AO visited the site and verified that the seeds had actually failed. AO, then, wrote to MHSCCL, asking them to compensate the farmers, but there was no response from MHSCCL's side.</li> <li>• A Chandra Reddy together with other farmers filed a complaint before the District Forum. MHSCCL contested the complaint contending that the matter is covered under Seeds Act, 1966 hence, the complaint is not maintainable before District Forum. Secondly, the defects alleged in the seeds was not tested in appropriate laboratory as per S.13 (1) (C) of COPRA. Thirdly, that the purchase of seeds was for commercial purpose, hence complainants are not 'consumers' within the meaning of COPRA.</li> <li>• The District Forum rejected these contentions and held in favour of farmers. The District Forum awarded</li> </ul>

<p><b>GIST</b> (Cont'd)</p>	<p>compensation to the complainants at Rs 2000 per acre plus the cost of the seeds. On appeal, the State Commission affirmed and upheld the order of the District Forum. MHSCCL filed a revision petition before the National Commission, which rejected the petition summarily (i.e. without going to its merit). MHSCCL, then moved to the Supreme Court under Article 136 of the Constitution (special leave).</p>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• The Supreme Court observed that the National Commission should have discussed the matter on merits and then disposed of the same after considering the question of law raised before the commission.</li> <li>• In light of the above findings and in view of the conduct of the appellant in this case, the Supreme Court held that it does not consider that the Court should exercise its jurisdiction under Article 136 of the Constitution. Accordingly, it left the question of law open to be decided in an appropriate case and dismissed the appeal on the facts of the case with no orders as to cost.</li> </ul>

## 26

### BOTH THE AILING MINOR CHILD AND HIS PARENTS ARE ENTITLED TO COMPENSATION

<b>CASE TITLE</b>	<b>Spring Meadows Hospital and Others vs Harjot Ahluwalia through K S Ahluwalia</b> [1998 (1) CCC 23 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Where complaint is filed by parents on behalf of minor, whether parents and also minor child are consumers and entitled to compensation?</li> <li>• Whether delegation of responsibility by a doctor to his junior doctor is negligence?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• Harjot was admitted as an in-patient after diagnosis by Senior Consultant Paediatrician, Dr Promila Bhutani saying that he was suffering from typhoid. On December 30, 1993, Nurse Bina Mathew asked the patient's father to purchase injection and medicines. But Harjot, on being administered the injection, collapsed immediately. Seeing Harjot collapsing, his parents called Dr Dhananjay, the Resident Doctor, who came and attended the child and intimated the parents that Harjot had suffered a cardiac arrest. Then, by manually pumping the child's chest the doctor tried to revive his heart-beat.</li> <li>• The anaesthetists, Dr Anil Mehta, and Dr Bhutani also put Harjot on a device called manual respirator. Though he was kept alive on the respirator, but his condition did not improve. As his platelets count fell, a blood transfusion was given but still no improvement could be seen.</li> <li>• As the hospital did not have the necessary facilities to treat the child, Dr Mehta advised the parents of the child</li> </ul>

**GIST**  
(Cont'd)

to shift him to an Intensive Care Unit (ICU) equipped with an Auto Respirator. On his advice, the parents admitted Harjot to the Paediatric ICU of All India Institute of Medical Sciences (AIIMS) on January 03, 1994, where the doctors examined him thoroughly, and informed the parents of his critical condition and pronounced that the child would live only in a vegetative state even on survival.

- Harjot was then kept in ICU till January 24, 1994 and was thereafter discharged as there was no improvement in his critical condition. Dr Anil Mehta and Dr Naresh Juneja of Spring Meadows Hospital, New Delhi however, offered to admit Harjot at their hospital and to do whatever was possible to stabilise his condition. Accordingly, he was again admitted and treated, but he survived only in a vegetative state.
- A complaint was filed by minor Harjot through his parents before the National Commission to claim Rs 28 lakhs as compensation, which on the basis of oral and documentary evidence, came to the conclusion that the child had suffered from cardiac arrest due to the high dose of intravenous injection of Lariago and there had been considerable delay in reviving the heart of the child which lead to brain haemorrhage.
- The Commission, ultimately, came to the finding that the minor patient had suffered on account of negligence, error and omission on the part of the nurse as well as Dr Dhananjay in rendering their professional services. Since the doctor and the nurse were employees of the hospital, the hospital is responsible for the negligence of the employees, and is liable for the consequences.
- The National Commission then determined the quantum of compensation and awarded Rs 12.5 lakhs to the minor. In addition, the National Commission also awarded Rs 5 lakhs as compensation to be paid to the parents for the acute mental agony that has been caused to them by

<b>GIST</b> <i>(Cont'd)</i>	<p>reason of their only son having been reduced to a vegetative state requiring lifelong care and attention.</p> <ul style="list-style-type: none"> <li>• The Hospital, filed an appeal to the Supreme Court.</li> </ul>
<b>OUTCOME</b>	<ul style="list-style-type: none"> <li>• The Supreme Court held that the Commission rightly awarded compensation in favour of parents in addition to compensation in favour of the minor child. The definition of the term 'consumer' given in clause (ii) of Section 2(1)(d) of COPRA, which includes not only the person who hires the services but also the beneficiary of such services as consumer. Therefore, compensation of Rs 12.5 lakhs awarded to the child and Rs 5 lakhs to the parents was up held by the Supreme Court.</li> </ul>

**LIC AGENTS HAVE NO AUTHORITY TO RECEIVE  
INSURANCE PREMIUM ON BEHALF OF LIC**

<b>CASE TITLE</b>	<b>Harshad J Shah and Others vs LIC of India and Others</b> [CPJ September 97 Part I Vol. III]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether payment of premium in respect of a life insurance policy paid to the agent of the LIC can be regarded as payment to the insurer LIC?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• Jswantrai G Shah, the insured and husband of the appellant No. 2, took four insurance policies of Rs 25,000 each with double accident benefits on March 06, 1986, through Chaturbhuj Shah (respondent No. 3) who was a general agent of the LIC (respondent No. 1). Premium was payable on half yearly basis. Two premiums were paid and the third half yearly premium fell due on March 06, 1987, but it was not deposited within the prescribed period.</li> <li>• On June 04, 14987, respondent No. 3 met the insured and obtained from him a bearer cheque dated June 04, 1987, for Rs 2730 towards half yearly premium on all the four policies. The cheque was encashed by the son of respondent No. 3 on June 05, 1987. The said amount of premium was deposited by respondent No. 3 with the LIC of August 10, 1987. In the meanwhile on August 09, 1987, the insured met with a fatal accident and he died on the same day.</li> <li>• Appellant No. 2, the widow of the insured, as the nominee under all the policies, submitted a claim to the LIC. But the claim was repudiated by the LIC on the ground that the policies had lapsed on account of non-payment of the premium.</li> </ul>

<p><b>GIST</b> (Cont'd)</p>	<ul style="list-style-type: none"> <li>• Appellant No. 2, along with appellant No. 1 Consumer Education and Research Society, submitted a claim before the Gujarat State Commission, Ahmedabad. The said complaint was later transferred to the Maharashtra State Commission by the Gujarat State Commission.</li> <li>• Before the State Commission, the case of the appellants was that the amount of premium collected by respondent No. 3 from the insured was collected by him on behalf of the LIC. The LIC, on the other hand, pleaded that the amount of premium collected by the Agent cannot be said to have been received by the LIC. It was stated that agents are not authorised to collect premium amount.</li> <li>• The State Commission was of the view that when the practice of accepting money by the LIC agent from policy holders is in existence and the money is collected by the agent in his capacity and authority, the reasonable inference was the LIC was negligent in its service towards the policy holder.</li> <li>• Appeals were filed against the judgement of the State Commission by the appellants as well as by respondents Nos. 1 and 2. The National Commission, by its order dated July 26, 1994 dismissed the appeals filed by the appellants and allowed the appeal filed by the respondents Nos 1 and 2.</li> <li>• The National Commission held that the agent, in receiving a bearer cheque from the insured towards payment of the premium, was not acting as the agent of LIC. Nor could it be deemed that the LIC had received the premium.</li> <li>• The appellants filed appeals in Supreme Court. It observed that in the present case it cannot be said that respondent No. 3 (agent of LIC) had the express authority to receive the premium on behalf of the LIC. The terms of Appointment expressly prohibit him from collecting the premium. It cannot be said that the LIC</li> </ul>
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<b>GIST</b> <i>(Cont'd)</i>	induced the insured to believe that the agent has been authorised by the LIC to receive premium on behalf of the LIC.
<b>OUTCOME</b>	<ul style="list-style-type: none"> <li>• Keeping in view the facts and circumstances of the case, the Supreme Court directed LIC to refund the entire amount of premium paid to the LIC on the four insurance policies to appellant No. 2 along with interest @ 15 percent per annum, payable from the date of receipt of the amounts of premium.</li> <li>• The Supreme Court was also of the opinion that having regard to the fact that the appellants had succeeded before the State Commission and the questions raised by them were of sufficient importance requiring a decision by it, respondent No. 1 shall pay the appellants a sum of Rs 10,000 as costs. The amount of premium with interest and the costs to be paid within a month, the appeals were disposed off accordingly.</li> </ul>

**WHILE DECIDING A MATTER AFFECTING PUBLIC  
INTEREST ARBITRATOR MUST GIVE REASONS**

<b>CASE TITLE</b>	<b>M L Jaggi vs Mahanagar Telephones Nigam Ltd. and Others</b> [1997 (2) CCC 471 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether it is necessary to give reasons in support of the award by Arbitrator?</li> <li>• Whether the award of the Arbitrator shall be conclusive between the parties to the dispute and shall not be questioned in any court of law?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• The respondents had issued telephone bills for Rs 50219, Rs 20873 and Rs 9084 respectively, for different periods.</li> <li>• When the appellant filed the suit, an objection was raised about the availability of remedy under Section 7B of the Indian Telegraph Act 1985. The Civil Court referred the matter to the Arbitrator, the latter made the award giving some rebate on one bill only and confirmed rest of the demand.</li> <li>• When the appellant filed the writ petition, the High Court affirmed the award of the arbitrator. Thus, this appeal by special leave in the Supreme Court.</li> <li>• The Supreme Court observed that when the matter affects the public interest and the Arbitrator decides the dispute as per settled law he is enjoined to give reason in support of his decision.</li> </ul>

<b>OUTCOME</b>	<ul style="list-style-type: none"><li>• The Supreme Court held that in this case Arbitrator has not given reasons, therefore the award is set aside and the matter remitted to the Arbitrator to make an award and give reasons in support thereof.</li><li>• The Court further held that since ‘we have decided this question for the first time, it must be treated that any decision made by any Arbitrator prior to this day is not liable to be reopened’.</li></ul>
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**INSURER BECOMES LIABLE TO INDEMNIFY THIRD PARTIES FOR THE RISK COVERED BY POLICY ISSUED BY COMPETENT AUTHORITY WITHOUT RECEIPT OF PREMIUM**

<b>CASE TITLE</b>	<b>Oriental Insurance Co. Ltd. vs Inderjeet Kaur and Others</b> [1997 (2) CCC 478 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• When is the risk assumed under a policy issued by the authorised insurer?</li> <li>• When an authorised insurer issued an insurance policy to cover risk of a vehicle (bus) without receiving premium, does he becomes liable to indemnify the third parties?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• On receipt of a cheque by insurer for payment of premium on November 30, 1989, the authorised insurer issued its policy.</li> <li>• However, the cheque was dishonoured by the bank. Therefore, a letter was issued to the insured stating that the cheque of the premium had been dishonoured by the bank and that the appellant was not at risk. The premium against the dishonoured cheque was paid in cash on May 02, 1990 after issue of the policy by the competent authority.</li> <li>• On April 19, 1990 the bus met with an accident and its driver died. The driver's widow and minor sons filed the claim petition, which was rejected by the insurers as at the time of accident the insured had failed to pay the premium.</li> <li>• The matter went before Motor Accident Claims Tribunal and also the High Court. The view of the High Court was</li> </ul>

<p><b>GIST</b> <i>(Cont'd)</i></p>	<p>that, in the absence of steps to cancel the cover note, the insurer's liability continued.</p> <ul style="list-style-type: none"> <li>• In appeal, the Supreme Court quoted the following passage from the case of Montreal Street Rly Co. vs Normandin [AIR 1917 PC 142]:</li> </ul> <p><i>“When the provision of statute relate to the performance of a public duty and the case is such that to hold null and void the act done in neglect of this duty it would be serious inconvenience or injustice to the persons who have no control over those entrusted with the duty, and at the same time, would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them though punishable not affecting the validity of the acts done”.</i></p>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• The Supreme Court, therefore, held that the public interest that a policy of insurance serves must clearly, prevail over the interest of the appellant and the appeal was dismissed with no costs.</li> </ul>

## 30

### MAKING SUPPLEMENTARY DEMAND FOR ESCAPED BILLING BY ELECTRICITY BOARD IS NO DEFICIENCY IN SERVICE UNDER COPRA

<b>CASE TITLE</b>	<b>M/s Swastic Industries vs Maharashtra Electricity Board</b> [1997 (1) CCC 1(NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Where there is a right given to an Electricity Board to file suit and if limitation period has also been prescribed, then it does not take away the right conferred on the Board to make demand for the charges and on neglecting to pay the same, the Board can discontinue complainants supply.</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• The respondent Electricity Board issued a supplementary bill to the petitioner demanding payment of Rs 3,17,659. The petitioner objected to the bill.</li> <li>• The State Commission allowed the claim and held that it was barred by limitation. The Board filed an appeal before the National Commission where it was held that there was no limitation for making demand by way of supplementary bill. The Electricity Act gives power to the Board to issue such demand and discontinue the supply to a consumer who neglects to pay the changes.</li> <li>• Petitioners appealed before the Supreme Court, which observed that there is a right given to the Board in the Act to file the suit and the limitation has also been prescribed to file the suit, it does not take away the right conferred to the Board under Section 24 of the said Act to make demand for the charges. And, on neglecting to pay the same they have power to discontinue or cut off the supply line.</li> </ul>

<b>OUTCOME</b>	<ul style="list-style-type: none"><li>• The Supreme Court further held that the National Commission was right in allowing the appeal and setting aside the order of the State Commission. Moreover, there was no deficiency in service in making supplementary demand for the escaped bill.</li></ul>
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## 31

### IN A CASE OF “SELF EMPLOYMENT” UNDER COPRA COMPLAINANT INCLUDES HIS FAMILY MEMBERS - AND THE FACTS OF EMPLOYMENT & WORKING OF LABOUR ETC. A MATTER OF EVIDENCE

<b>CASE TITLE</b>	<b>Cheema Engineering Services vs Rajan Singh</b> [1997 (1) CCC 88 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether under COPRA, using machinery exclusively by complainant himself includes his family members?</li> <li>• Whether preparation, manufacturing and sale of articles by workmen is a matter of evidence?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• The word “self employment” is not defined in COPRA. Therefore, unless there is evidence and on consideration thereof it is concluded that the machine was used for self-employment to earn his livelihood without a sense of commercial purpose by employing on regular basis the employee or workmen for trade in the manufacture and sale of bricks would not be for self employment.</li> <li>• Manufacture and sale of bricks in a commercial way may also be to earn livelihood, but ‘merely earning livelihood in commercial business’ does not mean that it is not for commercial purpose.</li> <li>• Self employment connotes altogether a different concept, namely he alone uses the machinery purchased for the purpose of manufacture by employing himself in working out or producing the goods for earning his livelihood. ‘He’ includes members of his family also. However, the burden to prove the above facts of self employment etc; is on the respondent.</li> </ul>

<p><b>GIST</b> <i>(Cont'd)</i></p>	<ul style="list-style-type: none"> <li>• The matter went before the Supreme Court which observed that the tribunals were not right in concluding that the respondent was using the machine only for self employment and therefore, it was not a commercial purpose.</li> </ul>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• The Supreme Court, therefore, set aside the orders of all the tribunals and remitted the matter to the District Forum. The latter was further directed to record the evidence of the parties and dispose it of in accordance with law with no order as to costs.</li> </ul>

**PROSPECTIVE INVESTORS ARE NOT CONSUMERS  
& CONSUMER FORUM HAS NO POWER TO GRANT  
ANY INTERIM RELIEF**

<b>CASE TITLE</b>	<b>Morgan Stanley Mutual Fund vs Kartick Das</b> [1986-1995 Consumer 609 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether a prospective investor could be a consumer within the meaning of COPRA, 1986?</li> <li>• Whether ad-interim injunction can be granted by a consumer forum?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• The appellant, Morgan Stanley Mutual Fund (MSMF) is a domestic fund duly registered with Securities and Exchange Board of India (SEBI) Mumbai. It came out with a scheme of public issue. In order to market the scheme, MSMF launched publicity measures of the issue, such as advertisements in press, presentation with brokers etc.</li> <li>• The respondent Kartick Das, at this stage, moved the Calcutta District Forum seeking a restraint order on the public issue from being floated. The grounds were that MSMF had not complied with certain regulations of the SEBI; the basis of allotment was arbitrary unfair and unjust; and that MSMF was seeking to collect money by misleading the public.</li> <li>• The Forum granted an injunction, as an interim order, against MSMF and its agents directing them not to proceed any further with the issue.</li> <li>• Aggrieved by this order of the Forum, MSMF moved an appeal in the Supreme Court under Article 136 of the Constitution of India (special leave).</li> </ul>

<b>OUTCOME</b>	<ul style="list-style-type: none"><li>• The Supreme Court held that the respondent was not a ‘consumer’ within the meaning of COPRA. The shares are not ‘goods’ at the stage of application for its allotment. As the issue was yet to open, the respondent was only a prospective investor of future goods, when the complaint in the Forum was made. Neither there was purchase of goods nor any service was hired for a consideration as required by Section 2 of COPRA.</li><li>• The apex court further held that the Forum has no power to grant any interim relief under the Act. A forum could only give a final relief. Accordingly, the order of the Forum was set aside by the Supreme Court.</li></ul>
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**NATIONAL COMMISSION HAS THE JURISDICTION TO  
ADJUDICATE THE RIVAL CLAIMS OF THE PARTIES WHERE  
PLURALITY OF PERSONS CLAIM THE SAME RELIEF,  
SIMULTANEOUSLY DISPUTING EACH OTHER'S RIGHT TO  
CLAIM THE SAID RELIEF**

<b>CASE TITLE</b>	<b>Chief Executive Officer and Vice-Chairman, Gujarat Maritime Board vs Haji Daud Haji Harun Abu and Others</b> [1998(1) CCC 107(NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether the National Commission has the jurisdiction to decide the rival claims of the parties, where plurality of persons claim the same relief, simultaneously disputing each other's right to claim the said relief?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• The Gujarat Maritime Board (GMB) had financed Ramesh Chandra for purchasing a vessel named 'Chandra Vasa'. In compliance with the finance-agreement the said vessel was mortgaged in favour of GMB and also the insurance policy was assigned in favour of GMB.</li> <li>• Later Chandra sold the vessel to Haji Daud Haji Harun Abu. After some time, the vessel sank in sea on its voyage from Dubai to Mumbai. The ill fated vessel was insured with the United India Insurance (UII). Haji Abu claimed the insurance amount but UII refused the claim on the ground that he has no insurable interest in the vessel. Whereupon Haji Abu preferred a complaint in National Commission.</li> <li>• The National Commission, <i>inter alia</i>, recorded following findings:</li> </ul>

<p><b>GIST</b> (Cont'd)</p>	<ul style="list-style-type: none"> <li>– The ownership of the vessel was registered with GMB.</li> <li>– The title in the vessel was not transferred in the name of Haji Abu in as much as the mortgagee (GMB) also had an interest in the vessel along with the purchaser.</li> <li>– The possession of the vessel was with Haji Abu.</li> <li>– GMB considered Haji Abu as an administrator of the vessel.</li> <li>– GMB too claimed the whole insurance amount from UII.</li> </ul> <ul style="list-style-type: none"> <li>• In spite of these findings, the National Commission ruled in favour of Haji Abu and directed UII to pay him the entire insurance amount.</li> <li>• When GMB came to know about the above order by National Commission, it filed an application before National Commission stating that in as much as it (GMB) was the mortgagee and assignee of the said vessel to the knowledge of National Commission, the direction to pay entire insurance amount to Haji Abu is unsustainable in law. The National Commission rejected the application, leaving GMB to adopt such remedies as are open to it in law.</li> <li>• Aggrieved by this order of National Commission, GMB preferred this appeal in the Supreme Court.</li> </ul>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• The Supreme Court was of the opinion that National Commission should have gone into the question ‘whether GMB is entitled to the whole or part of the insurance amount in terms of the financial agreement and the insurance policy’.</li> <li>• On the contention ‘whether National Commission has the jurisdiction to decide the rival claims of GMB and Haji Abu in a complaint under COPRA’, the apex court opined that such a power must be held available to the Commission as a power incidental or ancillary to the substantive power conferred upon it by virtue of S.21 (a) (i) read with S.22 (which applies sub-section (4), (5),</li> </ul>

<b>OUTCOME</b> <i>(Cont'd)</i>	<p>and (6) of S.13 to National Commission as well). It is well settled that where a substantive power is conferred upon a court or tribunal, all incidental and ancillary powers necessary for an effective exercise of the substantive power have to be inferred.</p> <ul style="list-style-type: none"><li>• The Supreme Court, thus, allowed the appeal and set aside the impugned order of National Commission. The matter was remitted to National Commission for fresh disposal according to law.</li></ul>
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## 34

### THERE IS NO DEFICIENCY IN SERVICE ON THE PART OF INSURANCE COMPANY WHEN IT DOES NOT HONOUR THE CLAIM FOR THE INSURED CONSIGNMENT LOST DUE TO WAR

<b>CASE TITLE</b>	<b>Jewellers Naraindas and Others vs Oriental Insurance Co. Ltd.</b> [1998 (2) CCC 103 (NS)]
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether insurer is liable for the consignment lost due to war?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• Jewellers Naraindas, manufacturer and exporter of jewellery, insured a consignment of gold with Oriental Insurance Co. Ltd. (OICL), which was to be delivered to a consignee in Kuwait.</li> <li>• Due to invasion of Kuwait by Iraqi forces the said consignment was lost/destroyed/stolen from the strong room at Kuwait Airport. Naraindas claimed the insurance amount, which OICL disagreed and he then moved the National Commission claiming the insurance amount.</li> <li>• The National Commission held that there was no deficiency in service on the part of OICL, hence it is not liable to Naraindas.</li> </ul>
<b>OUTCOME</b>	<ul style="list-style-type: none"> <li>• Naraindas appealed before the Supreme Court against the order of the National Commission which upheld National Commission's ruling and dismissed the appeal.</li> </ul>

## 35

### WHETHER THE APPELLANT IS JUSTIFIED IN DEMANDING EXTRA AMOUNT AFTER THE RECEIPT OF FULL PAYMENT AS PRICE OF THE CAR?

<b>CASE TITLE</b>	<b>Vikas Motors Ltd. vs Dr P K Jain</b> (Civil Appeal No. 7693 of 1996)
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"><li>• Whether the appellant at this stage can urge that the District Forum had no territorial jurisdiction to entertain the complaint?</li><li>• Whether the appellant is justified in demanding extra amount after the receipt of full payment as price of the car, which was agreed to be delivered to the respondent (consumer)?</li></ul>
<b>GIST</b>	<ul style="list-style-type: none"><li>• Having booked a Maruti AC car with Vikas Motors, Dr Jain was charged an extra amount of Rs 9,232, by the company on the delivery of car, due to increase in prices, for which the consumer have not been informed prior to booking.</li><li>• The aggrieved respondent complained before the District Consumer Forum, Hissar, which found that charging extra amount was totally wrong, and ordered the appellant to refund the extra amount charged.</li><li>• Vikas Motors then appealed before the State Consumer Commission and then to National Commission on the ground, that the District Forum had no territorial jurisdiction to entertain the complaint, but both the forums did not found any merit in the appeal and restored the decision given by District Forum and dismissed it in favour of consumer. Then the appeal was made before the Supreme Court on the grounds of jurisdiction.</li></ul>

<b>OUTCOME</b>	<ul style="list-style-type: none"><li>• As the Supreme Court did not find any substance in the appeal, it restored the decision of the National Commission and dismissed the case in favour of consumer Dr Jain without any order as to cost.</li></ul>
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## 36

### WHETHER THE COMPENSATION SHOULD BE DEDUCTED IN CASE OF THE USE OF THE VEHICLE DURING THE DISPUTED PERIOD OF TIME?

<b>CASE TITLE</b>	<b>Tata Engineering &amp; Locomotive Co. Ltd. and Others vs Gajanan Y Mandrekar</b> (Civil Appeal No. 3620 of 1997)
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"><li>• Proportion of compensation shall be deducted from the compensated amount towards the use of the vehicle during the disputed period of time.</li></ul>
<b>GIST</b>	<ul style="list-style-type: none"><li>• Having purchased a vehicle by Gajanan for commercial purpose from the appellant Tata Engineering, and running it for 9000kms and then discovering that the tyres are being worn out completely, intimating to the appellant after eight months and rigorously following up with the agent through whom the vehicle was purchased, and reiterating the same in his different letters addressed to the agent, the complainant filed a complaint before the State Commission.</li><li>• The State Commission found the Tata Engineering guilty for delivering a faulty vehicle to the consumer complainant and passed the order on September 24, 1994 in favour of consumer and ordered for compensation. But by that time, the State Consumer Disputes Redressal Commission (SCDRC) gave its order, the vehicle had run for another 25,000 to 30,000 kms.</li><li>• As the vehicle was being used with the same defects as pointed out, the purchaser was required to be compensated for not delivering the vehicle in good condition as per the warranty after deduction towards the use of the vehicle during the period in question.</li></ul>

<p><b>GIST</b> (Cont'd)</p>	<ul style="list-style-type: none"> <li>• The company people then appealed before the National Commission, which also found that the consumer to be compensated, and restored the SCDRC's decision, but by the time, National Consumer Disputes Redressal Commission's (NCDRC) decision came, the vehicle in dispute ran for another few thousand kilometers. Finally, the appeal was made before the Supreme Court by the Tata Engineering Company.</li> </ul>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• The Supreme Court held that in view of the facts and circumstances, one-third of the compensation awarded by the State Commission, might be deducted towards the use of the vehicle for the period in question as it was the duty of the aggrieved consumer to either return the faulty vehicle to the company or not to use it till the dispute gets over. For rest of the amount, the order of the State and National Commission was confirmed.</li> </ul>

**WHETHER ANY PERSON GETTING THE BENEFITS OF  
WATER SUPPLY FROM THE LOCAL BODY *JAL SANSTHAN*  
OR ANY NIGAM, BE A CONSUMER?**

<b>CASE TITLE</b>	<b><i>Nagrik Parishad Pauri Garhwal vs Garhwal Jal Sansthan and Others</i></b> (Civil Appeal No of 1997)
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether any person getting the benefit of any water supply or sewerage service from the local body Jal Sansthan or any Nigam, be a consumer as defined in S.2 (4) of the UP Water Supply and Sewerage Act, 1975.</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• After complaining for unsatisfactory service and shortage of water supply by service provider Garhwal Jal Sansthan by the complainant Nagrik Parishad and discontinuing the payments of the bills, the service provider disconnected the water connection and the dispute began thereafter.</li> <li>• The consumer then complained before the local District Forum, where the complaint was dismissed on the ground that the complainant was not a consumer as per the definition of UP Water Supply Sewerage Act 1975. Then the appeal was made before the State Commission, where the District Forum's decision was restored.</li> <li>• Nagrik Parishad further appealed before the NCDRC, where National Commission restored the decision of SCDRC and decided against the complainant consumer. The word 'consumer' in itself has been defined in Section 2(4) of the UP Water Supply and Sewerage Act, 1975. Finally, the case was brought before the Supreme Court.</li> </ul>

<b>OUTCOME</b>	<ul style="list-style-type: none"><li>• The Supreme Court allowed the appeal on the ground that the complainant had been using water from the service provider, and no doubt that they were the consumers of water supply. The matter was remitted back to the National Commission for proceeding further in accordance with the law.</li></ul>
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**WHETHER THE INSURER COMPANY HAS LIABILITY  
WHEN THE POLICY WAS RENEWED AFTER 35 MINUTES  
OF THE ACCIDENT OCCURRED?**

<b>CASE TITLE</b>	<b>Oriental Insurance Co. Ltd. vs Sunita Rathi and Others</b> (Civil Appeal No. 8504 of 1997)
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Commencement of the insurance on the same day but after the accident occurred.</li> <li>• Whether the insurer company has liability.</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• Consumer Sunita Rathi, on insuring her vehicle with Oriental Insurance Company Ltd., and after getting renewed on December 10, 1991, met with an accident the same day, i.e. on December 10, 1991 at 2.20 pm. But the technical problem arose as the commencement of the insurance took place on the same day, but after 35 minutes of the accident occurred i.e. at 2.55 pm, for which the insurance company refused to compensate the consumer and the dispute began.</li> <li>• The consumer Sunita Rathi filed a complaint before the MACT, where the Tribunal held against the insurer placing reliance on a two-judge Bench decision of this Court in New India Assurance Co. Ltd. vs Ram Dayal and others 1990 (2) SCR 570. Then an appeal by the insurer involved an issue, which was related to a small time.</li> <li>• Under the policy of insurance issued subsequent to the accident, though it was issued some times later on the same day. Then the insurer company appealed before the High Court, where the same decision of MACT was restored. Finally, the dispute came before the Supreme Court.</li> </ul>

<b>OUTCOME</b>	<ul style="list-style-type: none"><li>• In the Supreme Court, the appeal was allowed on the ground that no matter the policy was renewed after 35 minutes of the accident occurred and it was a matter of small time but looking it technically, the vehicle was not insured at the time of accident. The judgment of the High Court and MACT were set aside.</li></ul>
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### 39

#### WHETHER THE APPELLANT SHOULD BE PAID AN AMOUNT ON EX-GRATIA BASIS AFTER THE LAPSE OF POLICY?

<b>CASE TITLE</b>	<b>Shashi Gupta vs Life Insurance Corporation of India and Others</b> (Civil Appeal No. 3033 of 1995)
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Amount paid by the Insurer on <i>ex-gratia</i> basis after the policy lapsed.</li> <li>• Interest of justice demands further payment of Rs 50,000 be paid on <i>ex-gratia</i> basis.</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• Appellant Shashi Gupta, the widow of Vijay Kumar Gupta, obtained a policy for an assured sum of Rs one lakh from the respondent for which two installments of the premiums were paid and as the third installment could not be paid within the grace period of a month thereafter, policy lapsed on May 01, 1991. Life Insurance Corporation of India (LIC) paid the sum of Rs 1,13,925 as <i>ex-gratia</i> after the assassination of the policyholder on May 30, 1991.</li> <li>• The grievance of the appellant was that under the terms and conditions of the policy, if the policyholder dies in an incident, then an additional sum equal to the sum assured was payable. On refusal by LIC of India, the policyholder consumer filed a complaint before the District Forum, where there was no relief to the aggrieved consumer as the District Forum ruled that the policy got lapsed at the time of death.</li> <li>• The same decision got restored before the State and the National Commission, and finally the appeal was made before the Supreme Court.</li> </ul>

<b>OUTCOME</b>	<ul style="list-style-type: none"><li>• The Supreme Court held that the subsequent circular with regard to extra payment by LIC under some terms and conditions of that particular policy was not brought to the notice of either the State or the National Commission.</li><li>• By analysing the facts and the circumstances of the case, the Supreme Court ordered that the respondents on ex-gratia basis should pay a further amount of Rs 50,000 to the appellant within a month from the date of the order.</li></ul>
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## 40

### THE ORDER OF THE STATE COMMISSION SETTING ASIDE ITS OWN EX-PARTE ORDER WAS ONE WITHOUT JURISDICTION

<b>CASE TITLE</b>	<b>Jyotsana Arvind Kumar Shah and Others vs Bombay Hospital Trust</b> (Civil Appeal No. 314-415 of 1999)
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether the State Commission had jurisdiction to set aside the ex-parte order passed by it?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• Complainant consumer Jyotsana Arvind Kumar's husband died in Bombay Hospital due to medical carelessness and negligence in the year 1992, for which she filed a complaint for compensation before the SCDRC for Rs seven lakh, which recorded the statement of complainant in the absence of the respondent Bombay Hospital on date of hearing and also failure to file any defence.</li> <li>• The State Commission proposed to proceed ex-parte and directed the Hospital to file the affidavit by April 09, 1992 but no one appeared on behalf of the respondent, so the State Commission proceeded ex-parte and passed a reasoned order on merits awarding compensation of Rs seven lakh with interest at the rate of 12 percent per annum to the victim consumer.</li> <li>• The Bombay Hospital then filed a revision for setting aside the ex-parte order before the State Commission, if permissible under the law, then SCDRC set aside the order passed by itself, and gave the decision in favour of the Hospital.</li> </ul>

<p><b>GIST</b> <i>(Cont'd)</i></p>	<ul style="list-style-type: none"> <li>• Then the consumer Jyotsana (now the appellant) filed an appeal before the NCDRC, which also restored the order of SCDRC in favour of respondent Bombay Hospital, and finally, the appeal by the aggrieved appellant consumer was made before the Supreme Court.</li> </ul>
<p><b>OUTCOME</b></p>	<ul style="list-style-type: none"> <li>• The Supreme Court held that it was clear from the discussion that the order of the State Commission setting aside its own ex-parte order was one without jurisdiction and directed the National Commission to restore the miscellaneous application for disposing the case in accordance with law. The appeal was allowed accordingly with no order as to costs.</li> </ul>

## 41

### WHETHER THE STANDARDS OF WEIGHTS AND MEASURES RULES 1977 EXCLUDED THE DEALER FROM AFFIXING THE PRICE ON THE PACKAGE OF THE FILM ROLL?

<b>CASE TITLE</b>	<b>India Photographic Co. Ltd. vs H D Shourie</b> (Civil Appeal No. 5310 of 1990)
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether sub-rule (2) of rule 6 of the Standards of Weights and Measures (Packed Commodities) Rules 1977 excluded the dealer from affixing the price on the package of the film roll?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• The respondent H D Shourie on alleging the appellant selling films as a representative of Kodak without price being printed on the packing containing films filed a complaint before the DCDRF, New Delhi which directed the appellant to display the sale price on the package in a manner so as not to violate the order passed by the High Court in this connection in a different case.</li> <li>• Furthering to this, on an appeal by the Kodak representatives, State Commission held that it would be in the interest of justice for the appellant company to publish the price of the film in a national newspaper fortnightly; to print notice on its invoice; and issue circulars to each dealer to print or affix a price tag on each film before selling it to the customer. The National Commission also ordered in the similar way and finally, an appeal was made before the Supreme Court.</li> </ul>
<b>OUTCOME</b>	<ul style="list-style-type: none"> <li>• After examining the matter from various aspects, the Supreme Court did not found any infirmity or illegality in the order of the National Commission requiring interference and the appeal was dismissed without any order as to costs.</li> </ul>

**WHETHER APPELLANT ON NOT CREDITED FOR A LONG PERIOD IS ENTITLED TO HIGHER INTEREST?**

<b>CASE TITLE</b>	<b>Sovintorg (India) Ltd. vs State Bank of India, New Delhi</b> (Civil Appeal No. 823 of 1992)
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether appellant entitled to higher interest, when the amount was not credited for a long period.</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• The appellant's company having an account in the State Bank of India (SBI) deposited a cheque for Rs one lakh for collection but the amount was not credited for over seven years, for which there was claim for interest at 24 percent with other compensation for wrongful retention from the respondent Bank.</li> <li>• The case was filed before the District Consumer Forum, where the claim was allowed without interest, and then, the appeal was made before the SCDRC which partly allowed the complaint by directing the respondent to pay Rs one lakh with interest at the rate of 12 percent per annum from the date of amount received till the date of payment within the prescribed time.</li> <li>• Still, the appellant was dissatisfied and further appealed before the NCDRC which confirmed the order of the State Commission with no extra benefits to the appellant Sovintorg Ltd. Hence, the appeal was brought before the Supreme Court.</li> </ul>
<b>OUTCOME</b>	<ul style="list-style-type: none"> <li>• Supreme Court held that under the facts and circumstances of the case, the appeal was partly allowed by modifying the orders of the State as well as the National Commission, with direction that the appellant</li> </ul>

<b>OUTCOME</b> <i>(Cont'd)</i>	<p>should be entitled to the payment of Rs one lakh with interest at 15 percent per annum (instead of 12 percent), when the amount on account was received by it till the date of payment.</p> <ul style="list-style-type: none"><li>• The difference of the amount on account of enhancement of the rate of interest should be paid to the appellant within a period of six weeks from the date of the judgment.</li></ul>
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## 43

### BY DISCLOSING THE FACT THAT THE PATIENT IS HIV- POSITIVE, THE MEDICAL OFFICER DOES NOT VIOLATE THE RULE OF CONFIDENTIALITY

<b>CASE TITLE</b>	<p><b>Mr. X Vs Hospital Z</b> [1998(2) CCC 117(NS)] [Note: Names have deliberately been kept secret in this case]</p>
<b>ISSUES RAISED</b>	<ul style="list-style-type: none"> <li>• Whether a medical officer has violated his duty to maintain confidentiality by disclosing that the patient is HIV+ and hence liable to the patient?</li> </ul>
<b>GIST</b>	<ul style="list-style-type: none"> <li>• In June, 1995, Mr. X donated blood to one Yephthomi in Z Hospital at Madras which was required for latter's operation. Blood sample was taken and the result showed that X's blood group was A+.</li> <li>• In August, 1995, X proposed to one Ms. Y for marriage which was accepted and the marriage was scheduled to be held on December 12, 1995. The said marriage was, however, called off on the ground that X was HIV+ according to the blood test conducted at the Z hospital. Further, when many people came to know about it, X was ostracised by the community.</li> <li>• X, a doctor, was working with the Nagaland State Health Service as Assistant Surgeon Grade I. He left Nagaland in November, 1995 and settled and started working in Madras.</li> <li>• X, then approached the National Commission for damages against Z hospital, on the ground that the information, which required to be kept confidential under Medical ethics, was disclosed illegally, making hospital Z liable. The National Commission dismissed the</li> </ul>



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