

ADVOCATES ACT

- Consumer Protection Act, 1986 — Section 2(1)(g) — **Advocates Act — Section 11 Rule 12** — Professional Services — Advocate — Withdrawal from engagements — Complaint alleging O.P. Advocate withdrew his Vakalatnama without any prior intimation to complainant — O.P. had sent 3 notices to complainant indicating his intention to withdraw his appearance mainly on ground that proper instructions not given to him — Professional fee also not been paid — Same provides sufficient cause for him to withdraw from case after giving reasonably sufficient notice — No deficiency in rendering legal services could be imputed on O.P.

I (2007) CPJ 11 (NC)

CARRIAGE BY AIR ACT, 1972

Consumer Protection Act, 1986 — Section 2(1)(g) — **Carriage by Air Act, 1972 — Schedule 1 Rule 22** — Airlines — Cargo services — Refusal of buyer to take delivery — Letters of complainant not promptly replied to by O.P. — Liability — Limits of — Had O.P. replied to said letters, in all probability, complainant would have taken appropriate action well in time either against consignee or against buyer — This laches on part of O.P. made complainant to suffer injury and hardship — O.P. to settle claim for US D 2910 as per Act of 1972 with interest.

I (2007) CPJ 45 (Kar.)

Consumer Protection Act, 1986 — Section 15 — **Carriage by Air Act, 1972 — Second Schedule Rules 27(2) and 27(4)** — Airlines — Cargo Services — Non-delivery of consignment — Essential for complainant to complain about loss within 7 days — Same not claimed — Nor any notice under Rule 27(2) given — No action would lie against OP.

I (2007) CPJ 74 (NC)

CARRIERS ACT, 1865

- Consumer Protection Act, 1986 — Section 15 — **Carriers Act, 1865 — Section 10** — Transport Services — Non-delivery of consignment — Requirement to serve notice before filing of complaint — Complainants, after waiting for sufficiently long time, issued legal notice asking OP to pay their claim — Said notice is to be treated as notice under Section 10 — Cannot be said no notice given to OP — OP liable.

I (2007) CPJ 19 (Cha.)

CONSTITUTION OF INDIA, 1950

- **Article 226** — Consumer Protection Act, 1986 — Section 19, second proviso — Appeal — Deposit of 50% of awarded amount as pre-condition for stay of order of State Commission — As per second proviso to Section 19 of Act, appeal against order of State Commission requiring appellant to pay certain amount, not to be entertained by National Commission unless appellant deposited in prescribed manner 50% of said amount or Rs. 35,000/- whichever is less — Amount exceeding Rs. 35,000/- could not be directed to be deposited — Amount of Rs. 35,000/- already deposited according to petitioner — No further deposit required to be made by petitioner — Impugned order directing to deposit amount higher than Rs. 35,000/- cannot be sustained and set aside.

I (2007) CPJ 49 (DB) (Del.)

CONSUMER PROTECTION ACT, 1986

ABANDONMENT OF RIGHTS — Complaint, after abandoning rights in favour of

insurer, not maintainable(see Airlines)

ADVERTISEMENT — Bogus, giving misleading statements — Require control
(see Unfair Trade Practices)

I (2007) CPJ 44 (NC)

— **Misleading and surrogate — Liquor advertisement on railway coaches — Young generation induced to switch over from cold drinks to beer — Unfair trade practices — Issuance of corrective advertisement directed.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 2(1)(r) and 14(1)(hc) — Bombay Prohibition Act, 1929 — Section 24 — Unfair Trade Practices — Advertisement — Misleading and surrogate — Prominent display of false, misleading and surrogate liquor advertisements on coaches of Western Railway trains — Attempt to induce young generation to switch over from cold drinks to beer — General policy guidelines of Railway Administration for commercial advertising prohibit advertisements of alcoholic drinks and various types of drugs — Railway Department contravened its own guidelines — Contention of O.P. that 'Soda' not covered by said prohibitions and impugned advertisement not violative of any law — Rejected — Description made in advertisement matches with whisky and not Soda — Slogan "Ab Cold drink Out" certainly misleading, for soda could not be replacement of ordinary cold drinks — Adoption of unfair trade practices proved — O.P. who took advantage of such practices by publishing surrogate advertisement, not absolved of its liability to issue corrective advertisement to neutralise effect of misleading one — Order of State Commission upheld.

I (2007) CPJ 102 (NC)

AGENT — Insurance agent — Duties(see Insurance)

I (2007) CPJ 106 (Raj.)

— **Insurance agent — Failure to remit premium to insurer — Liable to pay sum insured[see Insurance (Life)]**

I (2007) CPJ 67 (NC)

AGREEMENT — Builder — Construction not completed in time — Failure to comply with its part of terms in agreement — OP not entitled to avail any other term that benefits it.

Consumer Protection Act, 1986 — Section 2(1)(g) — Agreement — Construction of house — Non-completion of project within stipulated time — Agreement provided for construction to be completed by 1999 — Same not done despite deposit of Rs. 7,65,887 — O.P. refunded amount but forfeited 20% of same — Non-refund of balance amount contended to be justified by taking plea that agreement entitled O.P. to forfeit such sum — Conduct of O.P. not only unfair, also amounts to deficiency in service — O.P. entitled to deduct 20% had he completed construction by 1999 — In absence of same, O.P. could not have availed of any other terms or clause that entitles it to deduct any sum — Liability to refund entire sum with interest @ 9% p.a.

I (2007) CPJ 99 (Del.)

— **Builder — Delay in executing conveyance deed — Rs. 5,000 per year payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Agreement — Builder — Construction of building — OP not fulfilled clauses of agreement despite receiving amount for that purpose — Complainant entitled to get that amount from OP with interest @ 9% p.a. — Since 1993 till 2006, OP not executed conveyance deed, not

obtained occupation and completion certificate from concerned authority in favour of complainant — For this delay, complainant entitled to get compensation of Rs. 5,000 per year.

I (2007) CPJ 23 (Mah.)

— **Clause in restraint of legal proceedings — Agreement void.**

Consumer Protection Act, 1986 — Section 15 — Contract Act, 1872 — Section 28 — Agreements in restraint of legal proceedings — Void — Agreement containing clause regarding abandonment of claim if same not filed within 3 months — *Prima facie*, such condition in agreement would be void in view of declaratory nature of Section 28 — Dismissal of complaint on this ground, set aside — Matter remanded.

I (2007) CPJ 158 (NC)

— **Construction — Builder — Poor quality of work — Building collapsed — Deficiency in service — Liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Agreement — Builder — Construction of house — Sub-standard material used, poor supervision and management — Building collapsed — Expert evidence to show that quality of work resulted in collapse of building — No expert evidence to rebut same — Deficiency in service proved — Nothing to contrary been shown to take any different view than one taken by State Commission — O.P. liable.

I (2007) CPJ 26 (NC)

— **Construction incomplete — Deficiency in service — Refund of entire deposited amount with interest directed.**

Consumer Protection Act, 1986 — Section 21(b) — Agreement — Construction of flat — Neither construction completed, nor flat handed over to complainant despite deposit of Rs. 5,50,000 — Deficiency in service proved — State Commission directed refund of entire amount with interest @ 12% p.a. — Order upheld.

I (2007) CPJ 66 (NC)

AIRLINES — Cargo — Non-delivery — Complainant, beneficiary of service rendered by OP — Consumer — Entitled to maintain complaint.

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Beneficiary of service — Airlines — Cargo services — Complaint alleging non-delivery of cargo — Name of none of complainants found anywhere in Airway Bill — OP undertook to deliver consignment to consignee bank — Consignment was to be delivered ultimately to complainant — Documents for taking possession of articles released in its favour — Complainant being beneficiary of service to be rendered by OP is consumer.

I (2007) CPJ 74 (NC)

— **Cargo not delivered — Insurer settled claim — Complainant assigned, transferred and abandoned his rights in favour of insurer — Complaint by former not maintainable.**

Consumer Protection Act, 1986 — Section 2(1)(c) — Complaint — Maintainability — Airlines — Cargo services — Non-delivery of insured cargo — Insurer settled claim of complainant No. 1, who assigned, transferred and abandoned all rights, title, interest in insured goods in favour of insurer — Complainant No. 1 retained no right to recover compensation for loss of consignment — Complaint at his instance not maintainable.

I (2007) CPJ 74 (NC)

- **Cargo services — Buyer refused to take delivery — OP not promptly replied to letters of complainant — Liability as per Carriage by Air Act, 1972.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Carriage by Air Act, 1972 — Schedule 1 Rule 22 — Airlines — Cargo services — Refusal of buyer to take delivery — Letters of complainant not promptly replied to by O.P. — Liability — Limits of — Had O.P. replied to said letters, in all probability, complainant would have taken appropriate action well in time either against consignee or against buyer — This laches on part of O.P. made complainant to suffer injury and hardship — O.P. to settle claim for US D 2910 as per Act of 1972 with interest.

I (2007) CPJ 45 (Kar.)

- **Cargo services — Consignment not delivered — Notice of loss not given within prescribed period — OP not liable.**

Consumer Protection Act, 1986 — Section 15 — Carriage by Air Act, 1972 — Second Schedule Rules 27(2) and 27(4) — Airlines — Cargo Services — Non-delivery of consignment — Essential for complainant to complain about loss within 7 days — Same not claimed — Nor any notice under Rule 27(2) given — No action would lie against OP.

I (2007) CPJ 74 (NC)

- **Connecting flights — Tickets issued — Time gap only 35 minutes — Passenger require to check-in atleast 60 minutes before scheduled time — Boarding denied — Deficiency in Service — Refund — Duty of complainant also to be vigilant, no compensation.**

- Consumer Protection Act, 1986 — Section 2(1)(g) — Airlines — Issuance of tickets for connecting flight — Time gap of only 35 minutes between arrival of one and departure of ongoing flight — As per airlines rules, mandatory for passenger to check-in atleast 60 minutes before scheduled departure time — Complainants were denied boarding pass since they failed to reach 60 minutes before scheduled time of departure — OP being service provider of airline ticketing must be aware of rules of respective airlines — Incumbent upon it to refuse tickets for further journey when there was gap of only 35 minutes — Deficiency in service proved — Amount paid by complainants to reach destination by next flight liable to be refunded — No compensation awarded since duty of complainants also to be vigilant.

I (2007) CPJ 87 (Cha.)

- **APPEAL — Maintainability — Opportunity to contest given, not availed — Appeal not maintainable.**

Consumer Protection Act, 1986 — Section 21 — Appeal — Maintainability — Plea of appellant, fair opportunity not given to him for objections filed by him were not considered — Not accepted — If party does not avail opportunity being given to it, it cannot claim that opportunity was not given.

I (2007) CPJ 140 (NC)

- **Maintainability — Pre-requisite — 50% of award amount or Rs. 35,000, whichever less, has to be deposited.**

Constitution of India, 1950 — Article 226 — Consumer Protection Act, 1986 — Section 19, second proviso — Appeal — Deposit of 50% of awarded amount as pre-condition for stay of order of State Commission — As per second proviso to Section 19 of Act, appeal against order of State Commission requiring appellant to pay certain amount, not to be entertained by National Commission unless appellant deposited in prescribed manner

50% of said amount or Rs. 35,000/- whichever is less — Amount exceeding Rs. 35,000/- could not be directed to be deposited — Amount of Rs. 35,000/- already deposited according to petitioner — No further deposit required to be made by petitioner — Impugned order directing to deposit amount higher than Rs. 35,000/- cannot be sustained and set aside.

I (2007) CPJ 49 (DB) (Del.)

ARBITRATION — Award passed — Disputes between parties settled — Award binding — Complaint filed thereafter — Maintainability.

Consumer Protection Act, 1986 — Section 2(1)(c) — Complaint — Maintainability — Arbitration award already passed — All disputes between complainant and O.P. settled by arbitration in accordance with arbitration agreement — In terms of said award, complainant owes O.P. sum of Rs. 58,114 towards arrears of hire money, etc. — Award passed before filing of complaint — Former will govern dispute between parties — Decision of arbitrator binding — Order of Fora, overlooking said award, not sustainable, set aside.

I (2007) CPJ 34 (NC)

BANKING AND FINANCIAL INSTITUTIONS SERVICES — Account holder died — Payment not released for want of succession certificate — Action justified — No deficiency in service.

I (2007) CPJ 121 (Punjab)

— Cheque dishonoured despite sufficient funds — Negligence of bank — Punitive damages payable.

Consumer Protection Act, 1986 — Sections 2(1)(g), 14(1)(d) — Banking and Financial Services — Cheque dishonoured despite having sufficient funds — Negligence — Entitlement to compensation — Cheque was issued towards premium for obtaining insurance coverage — Wrongful dishonour of cheque resulted in complainant's failure to obtain insurance policy — His claim towards accidental damage in his factory repudiated by Insurance Company — Complainant suffered loss of more than Rs. 25 lakh — Deficiency in service on part of OP bank proved — Liability to pay sufficient and reasonable damages including punitive damages — Rs. 5 lakh awarded.

I (2007) CPJ 91 (NC)

— Cheque lost in transit — Neither amount credited nor cheque returned — Deficiency in service — Compensation, not cheque amount, payable.

Consumer Protection Act, 1986 — Sections 2(1)(g), 14(1)(d) — Banking and Financial Services — Cheque lost in transit — Neither amount credited nor cheque returned — Deficiency in service proved — Bank liable to pay some amount of compensation and not entire amount of cheque — Order of State Commission directing OP to pay entire cheque amount not legally sustainable — OP liable to pay Rs. 5,000 compensation.

I (2007) CPJ 1 (NC)

— Fixed deposits — Premature withdrawal — Interest not paid — Duty of complainant to have verified same before such withdrawal — No relief awardable.

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Fixed deposits — Premature withdrawal — Non-payment of interest — Deficiency in service alleged — Complainant educated person, worked abroad and operates NRE account — He ought to have found out what interest, if any, was payable in case of premature withdrawal — It was his duty to verify same before such withdrawal — Same cannot be shifted to OP — No deficiency in service proved — No relief can be

granted on this ground.

I (2007) CPJ 45 (NC)

- **Float funds — Need for policy to curtail bank's enjoyment thereof — Directions issued.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Policy to curtail Banks' enjoyment of float funds — Need for appropriate action for introduction thereof — Even though Banks have formulated their own policy regarding float fund, credit not given to payee immediately and interest thereon also not paid — Hence, Banks enjoy said fund without paying any interest — RBI to state on affidavit whether Guidelines issued by it are implemented properly by Banks by framing reasonable policies in conformity with Guidelines — Directions issued.

I (2007) CPJ 14 (NC)

- **Foreign Exchange Money Transfer — Amount remitted belatedly — Inordinate delay of 37 days — Deficiency in service.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Foreign exchange money transfer — Delay in remitting sum — During period of undue delay of 37 days, there was devaluation of Sterling Pound — When amount finally transferred, complainants were short of Irish Pounds by 1,500 *i.e.* Rs. 70,000 — Said delay is inordinate by any banking standard — Deficiency in service proved — OPs liable to pay Rs. 70,000 with interest @ 9% p.a.

I (2007) CPJ 45 (NC)

- **Forged cheque passed — Alterations not been authenticated — Deficiency in service — Cheque amount payable with interest and compensation.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Forged cheque passed — Material alterations in cheque not been authenticated at all — Drawer's signatures forged — Same clearly visible to naked eye — Signature on cheque not bearing even remotest resemblance to specimen signature furnished — Bank rules require that corrections have to be authenticated with full signatures — Same not been done — Clumsy attempts made to effect corrections in cheque — Deficiency in service proved — Bank rightly held liable to pay cheque amount with interest @ 12% p.a. and Rs. 10,000 compensation.

I (2007) CPJ 131 (T.N.)

- **Letter of credit — Fee charged for issuance — Complainant beneficiary — Consumer(see Consumer)**

I (2007) CPJ 151 (NC)

- **Letter of Credit — Refusal to honour — Lack of promptness in rendering banking service — Liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking & Financial Services — Letter of Credit — Refusal to honour — Absence of any allegation about submitted documents being fraudulent — O.P., suspecting genuineness of invoices only on basis of suspicion, rejected them — In case O.P. had any doubt, it could have contacted complainant on phone or by sending fax, as expected from it — O.P. showed utter lack of promptness in rendering banking service — Deficiency in service proved — O.P. liable.

I (2007) CPJ 117 (NC)

- **Letter of credit — Refusal to honour — Vague pleas taken — Deficiency in service — Liability to pay interest on wrongfully retained sum.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Letter of credit — Refusal to honour — No specification as to how instructions of inland letter of credit not complied with or that documents incomplete — Payment can be refused only if it is established case of fraud — OP cannot refuse payment by taking vague pleas — Deficiency in service proved — OP failed to pay and retained amount of Rs. 4,92,428 — Liable to pay interest on this sum — Rate of interest modified from 18% to 12% p.a. till 31.3.2001 and @ 9% p.a. thereafter.

I (2007) CPJ 151 (NC)

- **Loan — Sanctioned under Prime Minister Rajgar Yojana — To be disbursed in instalments— Bank acted accordingly — No deficiency in service.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Loan — Sanction under Prime Minister Rojgar Yojna — Implementation of said beneficiary oriented scheme — Loan sanctioned under this scheme is disbursed in instalments to ensure proper utilisation of same — O.P. bank has done exactly same — Total loan of Rs. 95,000 sanctioned — Action of bank in releasing loan of Rs. 30,000 for purchase of machinery in first instance not faulted — No deficiency in service proved.

I (2007) CPJ 38 (NC)

- **Loan for vehicle purchase — Default in repayment — Vehicle repossessed even before expiry of notice period — Deficiency in service — Compensation awarded.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Loan for vehicle purchase — Hire-purchase agreement — Default in payment of certain loan instalments — Vehicle repossessed — In tune with terms of agreement, O.P. issued demand notice dated 16.11.2002 — Same received on 5.12.2002 — Notice period 14 days — O.P. repossessed vehicle on 14.12.2002 *i.e.*, even before expiry of 14 days — O.P. chose not to adhere to time limit laid by themselves — Deficiency in service proved — Rs. 20,000 compensation awarded.

I (2007) CPJ 72 (Chhat.)

- **Penal Interest — Loan — Repayment — Penal interest charged on basis of some circular — Same never supplied to complainants — Action of OP unjustified.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Loan — Repayment — O.P. charged penal interest @ 2% — Challenge against — Contention of O.P., amount in question charged on basis of instructions contained in circular No. 3229 of 1999 — Copy of said circular never supplied to complainants — No notice, drawing their attention to said circular, sent to them — In its absence, O.P. bank not legally entitled to charge penal interest from complainants.

I (2007) CPJ 60 (NC)

- **Recovery of debt — Adjusting insurance amount obtained from death of co-applicant, towards debt due — Action justified — No deficiency in service.**

Consumer Protection Act, 1986 — Section 15 — Banking and Financial Services — Outstanding debt — Recovery of — Principal debtor in default, death of co-applicant — Information regarding death of co-applicant, covered by Group Insurance Scheme, to be submitted to creditor in manner known to law — Same not submitted — O.P. acting pursuant to circular issued by Tamil Nadu Co-operative Building Society Federation, adjusted insurance amount towards debt due — Action of O.P. cannot be called in question — No deficiency in service proved.

I (2007) CPJ 13 (T.N.)

- **Term loan for purchase of goods — Theft of hypothecated stock — Complainant under obligation to get stock insured — Same not done — Bank not liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Granting term loan for purchase of textile goods — Hypothecation agreement executed — Theft of goods — Liability imposed on bank for having failed to deposit premium amount for obtaining insurance — As per Clause 6 of hypothecation agreement, complainant under obligation to get hypothecated stock of cloth insured — Further, risk to be covered under said clause was against fire and not theft — No deficiency in service proved — O.P. not liable to pay claimed amount.

I (2007) CPJ 29 (NC)

- BENEFICIARY OF SERVICE — Complainant being beneficiary entitled to maintain complaint alleging non-delivery of cargo(see Airlines)**

I (2007) CPJ 74 (NC)

- **Electric connection in name of 'G' — Utilisation by complainant — Latter, being beneficiary, consumer (see Consumer)**

I (2007) CPJ 51 (Cha.)

- COMMERCIAL PURPOSE — Machine installed — Defective — Purchase, for self employment, though purpose commercial — Complainant consumer, not debarred from seeking relief.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Installation of machine — Commercial purpose — Complaint alleging failure to send entire accessories and equipments and excess payment — Resisted on ground that machine was to be used for business purposes, hence dispute beyond provisions of Act — Complainant not running any other business — Can be presumed that machine purchased and services of O.P. availed for self-employment — Under such circumstances, even if purchase was for commercial purpose, same would not debar complainant from seeking relief — Plea of O.P. rejected — Complaint rightly allowed by State Commission.

I (2007) CPJ 140 (NC)

- COMPENSATION — Award of — Power of MRTP Commission to grant (See Power of MRTP Commission)**

MRTP — Power of Commission — Award of compensation — Power to award compensation restricted to case where loss/damage caused as result of monopolistic or restrictive or unfair trade practice — Application under Section 12B would not lie where complaint is confined to breach of contract — Monopolies and Restrictive Trade Practices Act, 1969 — Sections 12, 12B.

I (2007) CPJ 4 (SC)

- **Cheque lost in transit — Bank liable to pay some compensation — Entire cheque amount not payable (See Banking and Financial Institutions Services)**

I (2007) CPJ 1 (NC)

- **Indirect losses cannot be awarded (see Housing)**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Delay in executing conveyance deed — Entitlement to compensation — Forum allowed complaint — Rs. 10,000 compensation awarded — Appeal for enhancement — Contention, due to said delay, appellant was denied loan by financial institution hence she suffered immense

loss — Rejected — Indirect losses cannot be compensated — Order of Forum upheld.

I (2007) CPJ 156 (Cha.)

— **Insurance claim — Price of lost property awarded with interest — Award of compensation set aside.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Compensation — Sustainability of award — Insurance — Actual price of lost property awarded with interest — In such circumstances, award of Rs. 2,000 compensation not justified — Same quashed and set aside.

I (2007) CPJ 106 (Raj.)

COMPLAINT — Complaint by unregistered voluntary consumer association — Plea of non-maintainability of complaint — Forum refrained to decide — Failure to exercise jurisdiction (See Insurance)

I (2007) CPJ 10 (U.P.)

— **Maintainability — Arbitration award already passed — All disputes settled — Award binding — Order of Forum, overlooking same, not sustainable — Complaint not maintainable.**

Consumer Protection Act, 1986 — Section 2(1)(c) — Complaint — Maintainability — Arbitration award already passed — All disputes between complainant and O.P. settled by arbitration in accordance with arbitration agreement — In terms of said award, complainant owes O.P. sum of Rs. 58,114 towards arrears of hire money, etc. — Award passed before filing of complaint — Former will govern dispute between parties — Decision of arbitrator binding — Order of Fora, overlooking said award, not sustainable, set aside.

I (2007) CPJ 34 (NC)

— **Maintainability — Insurer settled claim — Abandonment of rights in its favour — Complaint by complainant not maintainable (see Airlines)**

Consumer Protection Act, 1986 — Section 2(1)(c) — Complaint — Maintainability — Airlines — Cargo services — Non-delivery of insured cargo — Insurer settled claim of complainant No. 1, who assigned, transferred and abandoned all rights, title, interest in insured goods in favour of insurer — Complainant No. 1 retained no right to recover compensation for loss of consignment — Complaint at his instance not maintainable.

I (2007) CPJ 74 (NC)

— **Maintainability — Unregistered voluntary consumer association — Non-compliance of Section 2(1)(b)(ii) — Forum required to decide plea of non-maintainability of complaint on said ground at first available opportunity.**

Consumer Protection Act, 1986 — Sections 2(1)(c), 2(1)(b)(ii) — Complaint — Maintainability — Complaint by voluntary Consumer association — Nowhere stated in complaint that it was registered under Companies Act or under any other law as required by definition of complainant under Section 2(1)(b)(ii) of Act — Forum required to decide plea of non-maintainability of complaint raised by OP — Forum failed to exercise jurisdiction vested in it by refraining to decide said issue at first available opportunity — Forum directed to decide said preliminary plea regarding maintainability of complaint — Matter remanded.

I (2007) CPJ 10 (U.P.)

CONSUMER — Banking and Financial Services — Letter of credit — Issued after charging fee, for benefit of complainant — Consumer.

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Banking and Financial Services — Letter of credit — Bank charged fee for issuing letter of credit — Same was taken for benefit of complainant — In terms of Section 2(1)(d) he is consumer.

I (2007) CPJ 151 (NC)

- **Beneficiary — Electric connection in name of 'G' — Utilisation by complainant — Latter, being beneficiary, consumer.**

Consumer Protection Act, 1986 — Section 2(1)(b) — Consumer — Electricity — Tubewell connection in name of 'G' — Complainant took on lease, land measuring 16 kanals from 'G' — Complainant had sown wheat crop there and was utilizing electricity connection granted to 'G' — Complainant beneficiary, hence consumer.

I (2007) CPJ 51 (Cha.)

- **Beneficiary of Service — Entitlement to file complaint(see Airlines)**

I (2007) CPJ 74 (NC)

- **Irrigation — Complainant farmer — Irrigation charges towards relevant crop paid — Same not a consideration — Complainant not consumer (See Water Services)**

I (2007) CPJ 14 (Har.)

- **Hospital — Free treatment granted as part of service conditions is 'service' under Act — Recipient consumer(see Medical Services)**

I (2007) CPJ 167 (NC)

- **Machine defective — Complainant consumer if same purchased for self employment even if purpose commercial(see Commercial Purpose)**

I (2007) CPJ 140 (NC)

- **Telephone — PCO holder — Entitled to commission on bill amount — Not consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Telephone — Franchise/licence to run PCO — Complainant being licence holder for running PCO on behalf of O.P., was entitled to receive proportionate commission on entire bill amount — Such franchise holder not consumer *vis-a-vis* Telecom Department.

I (2007) CPJ 95 (Har.)

- **Motor Vehicles —Manufacturing defects alleged — Vehicles not purchased for self-employment — Complainant not consumer — Complaint wrongly allowed.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Motor vehicles — Complaint alleging manufacturing defects — Buses purchased, for complainant wanted to take up avocation of running tourist buses — Purchase not for self-employment — Complainant not consumer — Complaint wrongly allowed by State Commission — Complainant at liberty to approach appropriate Civil Court.

I (2007) CPJ 51 (NC)

- **Theft of electrical energy — Consumer Fora has jurisdiction to settle disputes arising therefrom (See Electricity)**

I (2007) CPJ 1 (Del.)

- **Transport Services — Short delivery of consignment — Insurer settled claim — Complaint, after obtaining subrogation letter — Insurer not consumer — Complaint**

not maintainable.

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Transport Services — Short delivery of consignment — Claim settled by insurers — Having obtained “Letter of assignment”, “subrogation” and general power of attorney, claim presented before transporter — On claim not being settled, consumer complaint filed — Complainants not consumer — Their complaint not maintainable — Free to seek remedy before appropriate Forum under appropriate law.

I (2007) CPJ 148 (NC)

CONSUMER DISPUTE — Theft of electrical energy — Consumer Fora has jurisdiction to settle disputes arising therefrom (See Electricity)

I (2007) CPJ 1 (Del.)

CONTRACT — Minor — Competency to take insurance — OP itself issued policy, accepted premium — Liable under policy [see Insurance (Life)]

I (2007) CPJ 30 (Har.)

DEALERSHIP AGREEMENT — Withdrawal of dealership — Security deposit not refunded — Deficiency in service.

Consumer Protection Act, 1986 — Section 2(1)(g) — Dealership Agreement — Withdrawal of dealership — Non-refund of security deposit — Complainant appointed as dealer of O.P. after depositing Rs. 2,00,000 security — He fulfilled all terms and conditions of contract entered into between parties — Not refunding security deposit amounts to deficiency in service — Complaint rightly allowed.

I (2007) CPJ 83 (Kar.)

DEFINITIONS — ‘Trade practices’, ‘restrictive trade practice’, ‘service’ and ‘unfair trade practice’ — Defined.

MRTP — ‘Trade practice’, ‘restrictive trade practice’, ‘service’ and ‘unfair trade practice’ — Defined — Monopolies and Restrictive Trade Practices Act, 1969 — Sections 2(u), 2(o), 2(r), 36A.

I (2007) CPJ 4 (SC)

DRIVING LICENCE — Fake — Non est in eyes of law — Subsequent renewal immaterial.

Driving Licence — Fake — Has no existence, is to be ignored — For all purposes is *non est* in eyes of law — Subsequent renewal does not validate it.

I (2007) CPJ 53 (H.P.)

— Two — One fake other valid — Driver competent to drive (see Insurance)

I (2007) CPJ 137 (Chhat.)

ESI HOSPITAL — No doctor on duty at relevant time — Failure of OP to perform duty of care (see Medical Negligence)

I (2007) CPJ 61 (NC)

EDUCATIONAL SERVICES — Coaching Institute — Fee retained without rendering any service — Unfair trade practice — Order directing refund upheld.

Consumer Protection Act, 1986 — Section 2(1)(g) — Educational Services — Coaching Institute — Unfair trade practices — Retaining fees without rendering any service — O.P. prepares and coaches students for IIT-JEE — Complainant paid total fee of Rs. 30,000 — However student failed in Class 12th exam, became ineligible to sit for IIT-JEE

— Claim for refund of fees — Denied — Clear that no service provided but consideration received by O.P. — Deficiency in service and adoption of unfair trade practices proved — State Commission rightly directed O.P. to refund Rs. 30,000.

I (2007) CPJ 115 (NC)

ELECTRICITY — Beneficiary — Electric connection in name of 'G' — Utilisation by complainant — Latter, being beneficiary, consumer (see Consumer)

I (2007) CPJ 51 (Cha.)

— **Connection — Service charges therefor — Determination of rate — Relevant date is date of demand and not of application.**

Consumer Protection Act, 1986 — Section 21(b) — Electricity — Service charges for providing connection — Determination of rate thereof — Relevant date — Considering increasing cost of electricity production, infrastructure, etc., service charges could not remain static at old rate — Relevant date for determining rate of service charge is date of demand of service charges and not date of application — Complainants liable to pay charges in terms of notice of demand.

I (2007) CPJ 65 (NC)

— **Electric connection — Responsibility of HVPN to provide — Having not been implored, OP HUDA not liable (see Housing)**

I (2007) CPJ 148 (Har.)

— **Line erected in front of main gate — Trolley carrying wheat caught fire — No tangible evidence to prove negligence of OP — No liability.**

Consumer Protection Act, 1986 — Section 15 — Electricity — Erection of electric line on main gate of Gher of complainant — Trolley carrying wheat caught fire — Losses suffered — Complaint alleging deficiency in service and claiming compensation — If any cable/wire was over-hanging gate of Gher, he should have informed department or lodged report with police station — Having not done so, cannot be said that trolley caught fire due to negligence of OP department — No tangible evidence to prove negligence of OP — No deficiency in service proved.

I (2007) CPJ 11 (Cha.)

— **Meter defective — Bills accordingly, cannot be allowed to be raised.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Electricity — Meter defective — Bill raised on basis thereof — Complaint dismissed on ground that there was no material to substantiate, replaced meter also faulty — Hence appeal — Meter not inspected by Electrical Inspector/authorised person — Impugned order set aside — Forum to decide matter afresh.

I (2007) CPJ 45 (Del.)

— **Meter tampered — Reference to Electrical Inspector not called for.**

Electricity — Meter tampered — Reference of dispute to Electrical Inspector in terms of Section 26(6) of Act of 1910 — Legality — In case of tampering, no scope for reference to Electrical Inspector — District Forum, State and National Commission not justified in holding that reference in terms of Section 26(6) was called for — Orders passed by these authorities quashed — Consumer Protection Act, 1986 — Section 21 — Indian Electricity Act, 1910 — Section 26(6) — Indian Electricity Rules, 1956 — Rule 57.

I (2007) CPJ 16 (SC)

- **Power supply — Extension of — Petitioners applied and paid under 1995 scheme — Demand of much larger amounts in terms of revised scheme — Unjustified — Benefits under earlier scheme entitled to.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Electricity — Supply of power — Applicability of original/revised scheme — Entitlement of benefits thereunder — Petitioners small farmers applied for extension of supply lines — Cost, in accordance with GOM No. 34 of 14.2.1995, paid — Subsequently above scheme amended by GOM No. 159 dated 6.11.1995 — Farmers were asked to pay much larger amounts in terms with revised scheme — Demand unjustified — Petitioners joined scheme much prior to amendment by GOM No. 159 — They shall be entitled to benefits of earlier scheme — O.P. directed to provide connection within 30 days.

I (2007) CPJ 20 (NC)

- **Sparking in over-hanging cables — Crops burnt — Damages payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Electricity — Sparking cables — Damage to crop — Over-hanging cables passed through field — Fire caused due to sparking from cables of electricity department — Agriculture Development Officer visited spot and prepared inspection report — Evidence that crop of complainant burnt and he sustained loss of Rs. 25,000 — There was indeed such damage — OP liable to pay said sum.

I (2007) CPJ 51 (Cha.)

- **Supply fluctuated equipment damaged — Deficiency alleged — matter adjudicable by Fora after obtaining expert opinion(see Jurisdiction)**

I (2007) CPJ 64 (NC)

- **Theft of energy — Right of registered consumer to challenge against allegations — Denial of — Amounts to consumer dispute — Consumer Fora has jurisdiction.**

Consumer Protection Act, 1986 — Sections 2(1)(c), 2(1)(d), 2(1)(e) and 2(1)(o) — Electricity Act, 2003 — Section 135 — Electricity — Theft of energy — Jurisdiction of Consumer Courts to settle disputes relating to theft/dishonest abstraction of electrical energy — Supply of electrical energy falls within definition of 'service' as defined under Section 2(1)(o) of Act — Any dispute arising under provisions of Electricity Act, is 'Consumer dispute' — Further, every registered consumer of energy is 'consumer' as defined under Section 2(1)(d) of Act — Has right to challenge allegations of theft of energy — Denial of or disputing such allegations by O.P. is itself 'consumer dispute' — Consumer Fora have jurisdiction to try such dispute.

I (2007) CPJ 1 (Del.)

- EVIDENCE — Proof of ownership of vehicle — Registration certificate — No proof.**

Evidence — Motor Vehicles — Proof of ownership — Registration certificate of vehicle is not proof of title of ownership.

I (2007) CPJ 34 (NC)

- EXECUTION PROCEEDINGS — Award to be executed as such — Substituting judgment debtor at execution stage, not permissible.**

Consumer Protection Act, 1986 — Sections 25, 27 — Execution Proceedings — Substituting name of judgment-debtor at later stage in execution proceedings — Legality — Complaint alleging non-return of deposited amounts — Order passed against 'BG' who was said to be sole proprietor of M/s. Akshay Finance, firm with which amounts were deposited — In execution proceedings before Forum, plea taken

by 'BG' that sole proprietress of firm was his wife 'J' and that she alone be made liable for any act and omission on part of proprietary concern — Forum foisted liability on 'J' exonerating original judgment-debtor — Order bad in law — Forum while executing award cannot go behind award — Whatever award been passed (rightly or wrongly) has to be executed by it under Section 25 or 27 of Act, substituting judgment debtor at stage of execution not permissible — Award to be executed against 'BG' as it originally stood — Order of Forum quashed.

I (2007) CPJ 63 (Mah.)

EXPRESSION — Non est — Having no existence at all (see Driving Licence)

I (2007) CPJ 53 (H.P.)

FOOD ARTICLES — Preservation improper — Chocolate infested with worms, fungus — Liability of manufacturer vis-a-vis retailer.

Consumer Protection Act, 1986 — Section 2(1)(g) — Food Articles — Improper preservation — Liability of manufacturer vis-a-vis retailer/vendor — Chocolate infested with worms and fungus — Contention of manufacturer, retailer committed wrong in not preserving same at appropriate place and temperature — Liability cannot be denied on this ground — It is for manufacturer to see that such things do not occur — Directions issued — O.P. to make clear in their advertisements that consumers shall not purchase chocolates from retailer who is not having fridge as vis-cooler — Costs awarded.

I (2007) CPJ 40 (NC)

GOODS — Defective — Building blocks, of sub-standard quality — Walls developed cracks — Complainant rightly allowed — OP liable.

Consumer Protection Act, 1986 — Section 2(1)(g) — Goods — Defective — Aerocon building blocks supplied by O.P., not duly processed and were of substandard quality — Walls of house of complainant developed cracks — Contention of O.P., cracks because of improper use by complainant who not followed prescribed instructions while carrying out construction — Rejected — No evidence that said instructions given to complainant — 3 important documents clearly established manufacturing defects — Also letter from BIS stating that application of O.P. for BIS certification was rejected — State commission rightly allowed complaint, directed O.P. to pay Rs. 6 lakh — Order upheld.

I (2007) CPJ 131 (NC)

— Defective during warranty — Liability to refund price — No privity of contract with manufacturer — Its impleadment not necessary — Dealer liable.

Consumer Protection Act, 1986 — Section 2(1)(g) — Goods — Defective — Liability of dealer vis-a-vis manufacturer — Impleadment of parties — Goods developed problems during warranty period — Dealer held liable — Contention, liability for refund that of manufacturer, who was not impleaded as party — Rejected — Complainant had no privity of contract with manufacturer — Its joinder not at all necessary — Liability upheld.

I (2007) CPJ 69 (NC)

— Inferior quality — OP practised fraud — Deficiency in service — Liability.

Consumer Protection Act, 1986 — Section 2(1)(g) — Goods — Supply of inferior quality — Not in terms with order placed — Number of pipes broken — Broken pieces presented for testing — Nothing was done — Fraud practised by OP for having supplied pipes of inferior quality — Deficiency in service proved — OP rightly held

liable.

I (2007) CPJ 17 (Mah.)

- **Mobile defective — Non-rectification despite repairs — Deficiency in service — Refund of cost with interest and compensation directed.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 14(1)(c) — Goods — Mobile handset defective — Refund of price — Handset giving problems from day one — Defects could not be rectified inspite of being repaired twice — Undoubtedly, it suffered from inherent defects — Deficiency in service proved — Forum rightly ordered refund of cost of handset with interest @ 6% p.a. and Rs. 5,000 compensation — Upheld.

I (2007) CPJ 120 (Cha.)

- **HIRE PURCHASE AGREEMENT — Loan for vehicle purchase — Default in repayment — Vehicle repossessed even before expiry of notice period — Deficiency in service — Compensation awarded (see *Banking and Financial Institutions Services*)**

I (2007) CPJ 72 (Chhat.)

- **HOUSING — Builder — Possession not delivered despite 40% payment — Non-progress of construction dissuaded further payments — OP deficient in service — Amount refunded with interest, compensation.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Builder — Failure to deliver possession despite regular deposits — Almost 40% of total consideration received — Letter sent by O.P., stating that there was delay in completion of projects and offer to allocate alternative premises was made — Absence of any letter of cancellation of allotment on account of delay in making payments as per terms — Complainants all time willing to make payment — Construction not progressed — Such non-progress dissuaded them to make payment of entire consideration before project completed — O.P. deficient in service — Liable to pay deposited amount without any deduction, with reasonable rate of interest — Rs. 10,000 compensation also awarded.

I (2007) CPJ 22 (Del.)

- **Conveyance deed — Belatedly executed — Deficiency in service — Rs. 10,000 awarded — Compensation towards indirect losses cannot be awarded.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Delay in executing conveyance deed — Entitlement to compensation — Forum allowed complaint — Rs. 10,000 compensation awarded — Appeal for enhancement — Contention, due to said delay, appellant was denied loan by financial institution hence she suffered immense loss — Rejected — Indirect losses cannot be compensated — Order of Forum upheld.

I (2007) CPJ 156 (Cha.)

- **Flat buyer's agreement — Allottee not paid total amount — OP entitled to forfeit earnest money as per agreement.**

I (2007) CPJ 4 (SC)

- **Possession delayed — Interest @ 12% p.a. awarded — Plea for enhancement to 18% p.a. — Rejected, since compensation also awarded.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Possession delayed — Contention, complainant herself delayed in taking possession, not accepted, since various defects in flat were asked to be rectified first — Complainant entitled to interest @ 12% p.a. on deposited amount of Rs. 1,24,257 — Plea of enhancement of same to 18% rejected — Costs and compensation also awarded — Directions given.

I (2007) CPJ 59 (H.P.)

- **Possession not offered within reasonable time — Deficiency in service — No interest leviable on instalments.**

Consumer Protection Act, 1986 — Section 15 — Punjab Regional Town Planning and Development (General) Rules, 1995 — Rule 13 — Punjab Urban Estates (Sale of Site) Rules, 1965 — Rule 14 — Housing — Completion of building — Time limit — Possession delayed — Plot not developed as sector in which plot situated was still being developed — Rule 13 of 1995 Rules and Rule 14 of 1965 Rules applicable — In case of non-offer of delivery of possession within reasonable time of payment of 25% of consideration amount, no interest leviable on instalments.

I (2007) CPJ 134 (Punjab)

- **Reallotment in name of complainant — 2 instalments paid — Original file misplaced, OP not allowed him to deposit later ones — Deficiency in service — Complainant to be considered as owner of plot in question — No interest payable on instalments.**

Consumer Protection Act, 1986 — Section 15 — Housing — Reallotment of plot in name of complainant — Balance sale consideration payable in 5 monthly instalments — Two instalments paid — Complainant not allowed to deposit 3rd one, stating original file misplaced, not traceable and such OPs unable to get amount deposited — Fact of misplacing of file supports version of complainant that he visited office of OP several times to deposit 3rd instalment, but was not allowed to do so — Hence, Forum rightly directed OP to consider complainant as owner of plot in question and to get instalment due deposited without any interest.

I (2007) CPJ 32 (Cha.)

- **Shop allotted — Electric connection not released — Responsibility of HVPN to provide electricity — Same not impleaded — OP not at fault — Complaint wrongly allowed.**

Consumer Protection Act, 1986 — Section 15 — Housing — Shop allotted — Electricity connection not released — Complaint seeking direction against O.P. to return excess amount of interest charged from complainant and to release electricity connection — Nowhere alleged that basic amenities in area where shop allotted not provided — Entire controversy relates to non-release of connection — It was responsibility of H.V.P.N. to provide electricity — On failure of said authorities to do so, no fault can be found with O.P. — Surprisingly, HVPN not impleaded as party in case — O.P. not liable — Forum allowed complaint totally ignoring said circumstances — Order patently illegal — Set aside.

I (2007) CPJ 148 (Har.)

IMPLEADMENT OF PARTIES — Electric Connection — Responsibility of HVPN to provide — Having not been impleaded, OP HUDA not liable (see Housing)

I (2007) CPJ 148 (Har.)

- **Goods defective during warranty — Liability to refund price — Dealer vis-a-vis manufacturer (see Goods)**

I (2007) CPJ 69 (NC)

- **Non-necessary parties — Complaint qua them merits rejection — Costs imposed for wrongful impleadment.**

Consumer Protection Act, 1986 — Section 21(b) — Impleadment of parties — Non-necessary parties — Complaint against Company — Respondents 7 in number — R- 2, R-3, R-4 and R-5 were directors and R-6 and R-7 were employees of Company — R-2

and R-4 resigned from Company before arising of cause of action — R-5 paralysed and his mental faculty impaired — R-6 and R-7 merely employees of Company — Complaint *qua* respondents 2, 4, 5, 6 and 7 merited rejection — Forum also directed complainant to pay costs of Rs. 200 for having wrongly impleaded said respondents — Concurrent finding of fact by both lower Fora cannot be disturbed.

I (2007) CPJ 55 (NC)

INSURANCE — Accident benefits — Death due to accident — Sufficient proof — Benefits payable.

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Accident benefits — Cause of death — Road accident — Proof — Certificate of hospital to effect that person who had been brought dead, had head injuries and it was case of accident — Same should have been sufficient for O.P. to conclude that death occurred due to accident — Requisite documents *viz.*, post-mortem report, DDR/FIR and inquest report been sent to O.P. — Death in road accident proved — Insurer liable to pay accident benefits.

I (2007) CPJ 34 (Punjab)

— **Accident benefits — Death due to fall in bathroom — No trace of liquor found, as alleged — Denial of benefits unjustified.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Accident benefits — Denial of — Legality — Death of assured due to accidental fall in bathroom — Double accident benefits repudiated on ground that assured was under influence of liquor at accident time — Post-mortem report not indicated any trace of liquor in him — Nothing in inquiry report to show that under influence of liquor, he fell down and sustained injury — Denial of benefits unjustified — Insurer liable to pay additional sum.

I (2007) CPJ 37 (Ori.)

— **Accident benefits — Leg lost — Permanent disability incurred — Said benefits payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Accident benefit — Award of — Interpretation of terms of policy — As per policy, loss of limb deemed to constitute permanent disability — Complainant, driver by profession, lost one leg — Became unfit for driving vehicle — Accident benefits payable — Ambiguity in terms of policy, if any, should be interpreted in favour of insured.

I (2007) CPJ 48 (NC)

— **Accidental fire — Building, machinery and stock extensively damaged — Assessment of loss — Liability accordingly.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Accidental fire — Building, machinery and stock of textile unit extensively damaged — Assessment of loss — Cause of fire short circuit due to torrential rain — Loss covered under policy — Panchnama conducted soon thereafter indicated loss upto Rs. 29 lakh — Surveyor assessed loss only upto Rs. 3,00,524 — Still insurer repudiated claim — Unjustified — Genuine bills regarding purchase of stock produced on record — Difficult to conclude that said stock not kept in factory premises at relevant time — Books of account and purchase bills fully support claim of complainant — Loss computed at Rs. 24,08,684 as per records — Same to be awarded with interest @ 9% p.a.

I (2007) CPJ 135 (NC)

— **Agents — Duty to disclose full information relevant and advantageous to insured.**

Constitution of India, 1950 — Article 12 — Insurance — LIC is "State" — Its agents

bound to disclose full information relevant and advantageous to insured — Obligation of good faith applies equally to both insured and insurer.

I (2007) CPJ 106 (Raj.)

- **Boiler and pressure plant policy — Boiler tube bulged — No evidence bulging due to overheating — Exclusion clause not applicable — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Indian Boilers Act, 1923 — Section 2(a) — Insurance — Boiler and Pressure Plant Policy — Exclusion clause — Applicability — “Accident” — Bulge on boiler tube plate No. 2 which was exposed to flame — O.P. refused to honour claim on ground that said particular incident not covered by policy — With permission of competent authority, complainant got equipment repaired at cost of Rs. 7.16 lakh — Non-repair could have resulted in accident causing serious injuries to staff of industry — No evidence from side of O.P. that said bulging due to overheating of tubes, so as to make it come under exclusion clause — Under such circumstances, repudiation unjustified — Surveyor assessed loss at Rs. 6,40,000 — This amount payable with interest @ 9% p.a.

I (2007) CPJ 16 (NC)

- **Breach of policy — Non-fundamental — Claim be settled on non-standard basis — Repudiation unjustified.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Vehicle damaged in accident — Failure of complainant to produce documents *viz.*, fitness certificate, permit, etc. — Repudiation of claim *in toto* — Legality — Settling claim on non-standard basis — Contention of insurer, complainant committed breach of policy conditions, as vehicle was without necessary fitness and permit — Nothing to show that said breach in any manner contributed to occurrence of accident — Just and proper to treat claim as non-standard one — Repudiation of whole claim unjustified — Surveyor assessed loss at Rs. 75,217 — Rs. 56,500 payable with interest @ 9% p.a.

I (2007) CPJ 90 (Chhat.)

- **Breach of policy — Vehicle over-loaded beyond reasonable limits — Claim cannot be settled even on non-standard basis — No liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Motor Vehicles Act, 1988 — Sections 88(11) and 149(2) — Insurance — Breach of terms of policy and provisions of law — Carrying more passengers than permitted — Same is offence under Act of 1988 — In case of overloading of vehicles beyond licensed capacity, discretion given to insurer to settle claim on non-standard basis — In instant case, there is under declaration of licence carrying capacity in vehicle — Overloading was beyond reasonable limits — Hence, directing insurer to pay non-standard claim would be unjustified — On account of gross violation of policy and legal provisions by insured, insurer not liable.

I (2007) CPJ 23 (NC)

- **Claim exaggerated — Repudiation — Claim though inflated, not fraudulent — Repudiation unjustified — Loss assessed by Surveyor payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Loss due to fire — Claim exaggerated — Repudiated — justifiability — As per reports of surveyor, Fire brigade and Circle Inspector, present is, at best case of exaggerated claim but certainly not false claim — Inflated claim will not make it case of fraudulent claim, enabling O.P. to repudiate claim — Repudiation unjustified — Loss assessed by surveyor payable.

I (2007) CPJ 32 (NC)

- **Cover not procured by fraud — Insurance, after occurrence of loss, of no consequences — No entitlement for claim — Costs imposed on complainant.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Concealment of vital information — Cover note got issued after loss already occurred — Official of OP issued cover note without abiding by instructions by higher officers not to do same — Complainant committed fraud with OP Insurance Company — Evident from media and other reports that stock extensively damaged prior to 3.00 p.m. — Alleged cover note obtained by fraud, subsequent in time thereto, would be of no consequences — Hence void — Complainant procured alleged cover note through misrepresentation and unfair trade practice — Not entitled for claim — No deficiency in service on part of OP — Complainant to pay Rs. 1 lakh costs to OP.

I (2007) CPJ 81 (NC)

- **Coverage of risk — Loss due to heavy rainfall — Cause of loss covered under risks enumerated in policy i.e., flood and tornado — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Coverage of risk — Roof of insured building collapsed due to heavy rainfall — Denial of liability — Contention, risk on account of which loss happened, not covered under terms of policy, rejected — Admittedly, policy covered risk of loss due to 'flood' and 'tornado' — As per concise Oxford Dictionary, beside others, word 'flood' also means "outpouring of water" and 'tornado' also means "great downpour of rain" — Risks enumerated in policy undoubtedly covers present cause of loss — Insurer liable to pay loss as assessed by Surveyor — Rate of interest modified.

I (2007) CPJ 6 (NC)

- **Driving licence — Fake — No evidence that owner engaged driver despite knowing such fact — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Settlement of claim — Vehicle met with accident, extensive damage caused — Repudiation of claim by insurer — Contention, licence of driver fake — No evidence or affidavit of Surveyor/Investigator filed — Nothing on record to show, owner being aware about driver holding fake licence, still engaged him to drive — Repudiation without any basis in law — Deficiency in service proved — Just and fair compensation allowed by Forum — Same upheld in appeal.

I (2007) CPJ 53 (H.P.)

- **Driving licence — Invalid — Lack of driving skill not primary/fundamental cause of accident — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Absence of effective driving licence at relevant time — Repudiation of claim — Legality — Licence expired on 17.1.1999 — Accident on 24.3.1999 — Licence got renewed shortly thereafter, i.e. on 19.4.1999 — No evidence that lack of driving skill on part of driver was primary or fundamental cause of accident — Insurer liable — Amount spent on repairs payable.

I (2007) CPJ 74 (Punjab)

- **Driving licence — Renewal 2 days after accident — Driver not disqualified to hold valid licence — No breach of policy — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Driving licence — Not valid on date of accident — Renewed subsequently — Violation of terms of policy alleged — Claim repudiated — Driver, not in any manner, disqualified from holding valid and effective licence — Same got renewed just 2 days after accident, without any

disqualification — Mere omission of driver to get licence renewed, cannot amount to violation of policy — Repudiation unjustified — Insurer not exempted from liability — Loss assessed by Surveyor payable with interest @ 9% p.a.

I (2007) CPJ 26 (Raj.)

- **Driving licence — Renewal after lapse of 30 days period — invalid at accident time — Insurer not liable.**

Consumer Protection Act, 1986 — Section 15 — Motor Vehicles Act, 1988 — Sections 14, 15 — Insurance — Driving licence — Expiry and renewal — Validity on date of accident — Licence expired on 14.12.2000 — Same renewed on 12.6.2002 — Accident on 31.1.2001 — As per provisions of Act of 1988, even after expiry of driving licence, if it was renewed within 30 days, its date of validity relates back to date of expiry — Clear in present case that driver did not hold valid licence — Insurer not liable.

I (2007) CPJ 18 (H.P.)

- **Driving licence — Valid, in terms with circular of OP itself — Subsequent circulars, after accident and repudiation of claim, not applicable — Insurer liable.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Driving licence — Validity — Offending vehicle Tata Sumo — Driver had licence to drive car/jeep — Insurer itself in doubt whether such person can drive Tata Sumo — Insurer issued circular clarifying this position — Person holding licence for car/jeep can also drive Tata Sumo provided vehicle registered as private car — Said circular dated 18.11.1997 — Contention of insurer, later circular dated 9.11.2005 supersedes earlier one — Rejected — Accident much prior to 9.11.2005 — Even repudiation of claim was prior to said date — Case of complainant covered by circular dated 18.11.1997 — Licence so held by driver valid — Insurer liable.

I (2007) CPJ 110 (Punjab)

- **Driving licence — Validity — Licence to drive light motor vehicle — Offending vehicle not transport one — Insurer liable.**

Consumer Protection Act, 1986 — Section 15 — Motor Vehicles Act, 1986 — Sections 2(21), 2(33) and 2(47) — Insurance — Driving licence — Validity — Having licence to drive car, complainant considered to be eligible to drive light motor vehicle — Unladen weight of Tata Sumo less than 7500 kgs. — It would be considered light motor vehicle — Offending vehicle was private vehicle, used for private purpose by owner and also insured as such — Vehicle in question comes under definition of 'private service vehicle' — Not 'transport vehicle' — Licence valid — Insurer liable — Loss assessed by Surveyor payable.

I (2007) CPJ 110 (Punjab)

- **Exclusion clause — Availability of benefit — Only when it forms part of contract or disclosed to insured.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Benefit of exclusion clause — Availability — Exclusion clause included in terms of policy was neither part of contract of insurance between parties, nor disclosed by insurer to insured — Former cannot take benefit of exclusion clause.

I (2007) CPJ 106 (Raj.)

- **Fire Policy — Water flooded in insured premises — Building collapsed — Cause of damage, floods, covered under policy — Liability.**

Insurance — Fire policy — Building and stock insured — Risk of floods covered —

Insured property affected by flood, causing damage to building, machinery and stocks — Cause of damage — Contention of insurer, on account of tilting of improperly constructed column, whole building collapsed hence Company not liable to compensate complainant because of structural defect — Stand unjustified — OP itself certified building having first class construction — Defect if any, aggravated due to flooding of water in factory premises, as a result land caved in and one column of building collapsed — Hence, cause of damage of building was flood water — Insurer liable — Consumer Protection Act, 1986 — Section 2(1)(g).

I (2007) CPJ 1 (SC)

- **Goods burgled — Incidents of burglaries false, ingenuine — Complainant failed to take reasonable steps to safeguard property — Repudiation justified.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — False, ingenuine claim — Burglary of goods and machinery from manufacturing unit, on 2 different dates alleged — Occurrence of burglaries doubted — Claim repudiated — Present is case where leather manufacturing unit suspended its operation due to lack of export orders and labour unrest — Difficult to believe necessity of high stock in premises upto Rs. 40-50 lakh, as alleged — Evidence that materials were being regularly removed from factory after its closure — On date of taking policy, practically no goods there in factory — Further, complainant failed to take reasonable steps to safeguard their property — Neutral and unbiased findings of both Surveyors holding reported incidents of burglaries as ingenuine and false — O.P. not liable.

I (2007) CPJ 95 (NC)

- **Marine Policy — Only inland transit covered — Loss beyond shores of India, insurer not liable.**

Consumer Protection Act, 1986 — Section 21 — Insurance — Marine policy — Only limited to inland transit — Goods transited from Delhi to Mumbai, found partly damaged — Cartons damaged with regard to packing only — No damage to contents — Damaged cartons repacked in new packing material and sent to Canada — Upon arrival there, consignment found damaged — For loss beyond shores of India, insurer not responsible — Liability after goods loaded in ship, cannot be fastened upon O.P. — Insurer liable only for amount spent on repacking, change of cartons etc.

I (2007) CPJ 123 (NC)

- **Mediclaim Policy — Heart-ailment of recent nature, not pre-existing — Doctor's certification in support — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Medi-claim Policy — Repudiation — Without any basis — Doctor certified that his health condition before issuance of policy was proper — Never suffered any problems related to heart diseases — Never admitted in hospital for ailment in past — On 28.10.2004, *i.e.*, during continuance of policy, for first time insured came to know of suffering from IHD — Underwent angiography — Can be said that insured not had any pre-existing ailment referable to pre-existing heart ailment when he booked original Mediclaim policy or get it renewed from 3.9.2004 to 2.9.2005 — Ailment of recent nature — No suppression of any disease — Insurer liable.

I (2007) CPJ 69 (Mah.)

- **Mediclaim Policy — Repudiation for non-disclosure of pre-existing disease — Unjustified — No IHD at time of taking policy — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Mediclaim policy — Repudiation of claim — Legality — Policy obtained on 22.2.1993 for period of 1 year —

Insured suffered chest pain, hospitalised on 2.3.1993, discharged after 8 days — Claim repudiated for non-disclosure of relevant information to insurer about pre-existing disease — True that insured underwent hospitalisation within first 30 days of commencement of policy — Apparent that insured not suffered from any IHD at time of taking policy — Moreover, on 8.2.1993, he obtained visa to visit UK — No reason to disbelieve version of complainant — O.P. liable to pay expenses incurred with interest @ 6% p.a. — Compensation also awarded.

I (2007) CPJ 57 (NC)

- **Mobile stolen from duly locked car — Cannot be said, “left unattended” — Repudiation unjustified — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Theft of mobile handset — Mobile stolen from car when allegedly it was parked and locked — Claim repudiated stating mobile kept in car which was unattended — Unjustified — Car was duly locked — Possibility, that somebody removed mobile lying in car by just opening its lock, without using any force or breaking open any door or glass pane, not rule out — Repudiation not well based — Insurer liable to pay insured sum.

I (2007) CPJ 158 (Punjab)

- **Mobile theft — Repudiation based on exclusion clause — Same not formed part of contract, nor disclosed to insured — Clause not applicable — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Theft of insured mobile handset — Claim repudiated on basis of exclusion clause — Legality — Said exclusion clause not formed part of contract between parties, nor disclosed to insured — Clause not applicable — Obligatory on part of insurer to indemnify complainant — Arbitrary repudiation of claim, in very casual and mechanic manner, unjustified — Deficiency in service proved — Insurer liable.

I (2007) CPJ 106 (Raj.)

- **Motor Vehicle Accident — Assessment of damages — Deduction, as per policy and of claim falling within jurisdiction of Motor Accident Claims Tribunal, justified.**

Consumer Protection Act, 1986 — Section 21 — Insurance — Vehicle accident — Assessment of damages — Truck fell on houses of villagers thereby damaging them — Certain amount paid to villagers for getting truck out from there — Same falls within jurisdiction of Motor Vehicle Claims Tribunal — Such part of claim cannot be allowed by Consumer Fora — As per policy conditions and principle of indemnity, certain deductions to be made on amount of repairs and cost of new parts and body — Complainant entitled to Rs. 98,281 with interest @ 18% p.a., as against Rs. 1,43,350 awarded by State Commission.

I (2007) CPJ 33 (NC)

- **Motor vehicle accident — Claim for repair amount — Authentic bills in support — OP liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Theft of duly insured vehicle — Police certificate in support that after vehicle was stolen, it met with accident — Same later recovered by police — Expenses incurred to get vehicle repaired — Bills from repairers filed in proof — Authenticity of bills not disputed — Complainant entitled to repair charges — Interest rate reduced from 12% to 9% p.a.

I (2007) CPJ 98 (Ori.)

- **Policy — Interpretation of terms — Ambiguity, if any, to be interpreted in favour of**

insured.

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Accident benefit — Award of — Interpretation of terms of policy — As per policy, loss of limb deemed to constitute permanent disability — Complainant, driver by profession, lost one leg — Became unfit for driving vehicle — Accident benefits payable — Ambiguity in terms of policy, if any, should be interpreted in favour of insured.

I (2007) CPJ 48 (NC)

— **Premium not paid — Employer duty bound to do so — Fault not attributable to insured — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Employer authorised to deduct premium and remit same to insurer — Fault regarding non-payment of premium cannot be attributed to life assured — Insurer liable.

I (2007) CPJ 153 (Chhat.)

— **Settlement of claim delayed — Deficiency in service — Liability to pay interest @ 2% p.a. above bank rate.**

Consumer Protection Act, 1986 — Sections 2(1)(g) and 14(1)(d) — The Insurance Regulatory and Development Authority (Protection of Policyholders Interest) Regulations, 2002 — Regulation 9 — Insurance — Settlement of claim — Time-limit — Fire accident in insured premises — Extensive damage caused — Surveyor submitted exhaustive list of damaged articles — Despite getting this report, final valuation not done by O.P. — As per Regulation 9, step-by-step procedure given for settlement of claim — Maximum time-limit does not exceed 5-6 months — Same not been done in present case — Deficiency in service proved — Insurer liable to pay interest @ 2% p.a. above bank rate — Complainant entitled to Rs. 9,18,647 with interest @ 12% p.a.

I (2007) CPJ 3 (NC)

— **Suppression of facts, not material — Repudiation unjustified — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Suppression of material facts — Entitlement to claim benefits under policy — Allegedly, assured suffered from lack of appetite and ankelosing spondylitis — Death due to accident while driving scooter — Claim repudiated — Contention of O.P., negligence of deceased himself was sole cause of accident as person suffering with said problem not considered fit to drive vehicle — Not accepted — Nothing to suggest that A. spondylitis affected other joints also, besides spine — Suppression, if any, not material — Insurer liable.

I (2007) CPJ 153 (Chhat.)

— **Surveyor's report, exhaustive — Amount not reimbursed accordingly — Unfair trade practice — Loss assessed by Surveyor payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Delay in reimbursement of sum assured — Amounts to unfair trade practice — Claim not settled as per survey report — No reason to doubt findings of Surveyors — They assessed loss regarding each and every item after deducting value of salvage and undamaged goods — In consideration of exhaustive survey report, no reason not to accept same for assessing loss — Findings of Surveyors just and reasonable — Accepted — Loss as assessed in final survey report payable with interest @ 9% p.a.

I (2007) CPJ 107 (NC)

— **Theft of property — Price awarded with interest — Award of compensation — Sustainability (see Compensation)**

I (2007) CPJ 106 (Raj.)

- **Theft of vehicle — Complainant registered owner — Insurer liable to indemnify — Settlement of claim as per policy.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Theft of vehicle — Claim to be settled as per policy — Claim repudiated — Plea of insurer, on date of alleged theft, complainant was not owner of vehicle and had sold it to one 'B' — No evidence to definitely conclude sale of vehicle to third party — Even assuming that complainant sold vehicle, registration certificate continued to stand in his name — Legally, complainants would remain owners on basis of registration certificate — Insurer not absolved of its liability to indemnify insured — Liable.

I (2007) CPJ 150 (Punjab)

- **Two driving licences — One fake, other valid — Driver competent to drive — Action for keeping 2 licences only against driver — Owner entitled to reimbursement from insurer.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Driving licence — Validity — Vehicle accident — Claim repudiated holding driver not having valid licence — Unjustified — Driver had 2 licences — On verification, one found to be fake and other one genuine and valid — Hence, competent to drive offending vehicle — Reason for keeping such fake licence was to avoid harassment at hands of police — In case any action for keeping 2 licences be taken, same could only be against driver — Owner insured cannot be blamed for that — Insurer liable to indemnify insured.

I (2007) CPJ 137 (Chhat.)

- INSURANCE (AGRICULTURE) — Crops damaged due to drought — Implementation of Crop Insurance Welfare Scheme directed.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Agricultural Insurance — Crops damaged due to drought — Crop insurance welfare schemes — Implementation of — Notification issued by Revenue Department stating damage to crops — Relying upon same, State Commission directed insurer to pay amount to concerned farmers — Hence appeal by O.P. — Rigid stand, as usual, taken — Scheme framed by Central Government not considered — Farmers compelled to litigate and bear cost of Advocates — Such rigid stand of O.P. amounts to welfare schemes not being implemented in spirit in which same are framed — Concerned Secretary filed necessary affidavit stating that improvement of scheme is under consideration — Directions issued — Concerned Minister to take appropriate decision on subject — Welfare schemes to be made flexible so that benefit reaches to concerned persons.

I (2007) CPJ 128 (NC)

- INSURANCE (LIFE) — Accident benefits — Death in road accident — Denial, stating assured minor, incompetent to take insurance — OP itself issued policy, accepted premium — Benefits payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Life Insurance — Accident benefits — Grant of — Undisputedly, death due to injuries suffered in road accident — Denial on ground that life assured minor at time of entering into contract hence not competent to take insurance — Not a case where O.P. pleaded any fraud and misrepresentation on part of life assured at time of taking policy — O.P. itself issued policy in question and accepted premium upto date of death of insured — O.P. not allowed to take benefit of its own wrong — Liable to pay accident benefits.

I (2007) CPJ 30 (Har.)

- **Claim lawful — Repudiated — Death in road accident — No nexus with alleged diseases said to be suppressed — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Life Insurance — Repudiation of lawful claim of complainant — Legality — Suppression of material facts regarding health alleged while repudiating claim — Insured known case of cardiomyopathy, congestive heart failure, NIDDM, etc. — Death due to head injury suffered in accident — No nexus between cause of death and alleged diseases — Withholding of material information should have something to do with cause of death — Insurer deficient in service by repudiating lawful claim of complainant — Liable to pay sum as per policy.

I (2007) CPJ 85 (Punjab)

- **Misstatement regarding health alleged — Repudiation — Diseases in question not serious, can never be cause of death — Non-disclosure of such diseases, no mis-statement — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Life Insurance — Mis-statement regarding health while taking policy alleged — Claim repudiated — Justifiability — Contention of O.P., deceased insured suffering from asthma and hip joint for which treatment taken, but not disclosed in proposal form — Cause of death cardio respiratory failure due to pulmonary embolism in operated case of right side total hip replacement — Evident from hospital records, deceased first admitted on 16.8.1996 — Policy obtained on 28.3.1996 — Further, kind of diseases from which deceased suffered, not serious, can never be cause of death itself — Non-mentioning of such diseases is no mis-statement in real sense — Repudiation unjustified.

I (2007) CPJ 38 (Raj.)

- **Payment of sum insured — Liability agent's vis-a-vis insurer's — Agent at fault, insurer not liable.**

Consumer Protection Act, 1986 — Section 21(b) — Life Insurance — Liability to pay sum insured — Agent's vis-a-vis insurer's — Admittedly, after deducting premium amount from salary of deceased, appellant did not remit same to insurer within reasonable time — Fault is with appellant — Insurer not liable — Appellant liable.

I (2007) CPJ 67 (NC)

- INTEREST — Rate of — Housing — Interest @ 12% p.a. awarded for delayed possession — Plea for enhancement, rejected (see Housing)**

I (2007) CPJ 59 (H.P.)

- IRRIGATION — Complainant farmer — Irrigation charges towards relevant crop paid — Same not a consideration — Complainant not consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Water Services — Breach on bank of canal — Land of complainant flooded, causing damage to his paddy crop — Contention of OP, no breach in embankment of canal occurred, in fact deliberate cut made, for which criminal case also registered against complainant and others — Further, merely because irrigation charges were paid towards relevant crop, it would not make complainants consumer — Said charges cannot be called as consideration — Complainant not consumer — Complaint liable to be dismissed on this ground alone.

I (2007) CPJ 14 (Har.)

- JURISDICTION — Complaint by unregistered voluntary consumer association — Plea of non-maintainability of complaint — Forum refrained to decide — Failure to exercise jurisdiction (See Complaint)**

I (2007) CPJ 10 (U.P.)

- **Electricity supply fluctuated — Equipment damaged — Fora can adjudicate matter after obtaining evidence/expert opinion — Relegation to Civil Court unjustified.**

Consumer Protection Act, 1986 — Sections 11, 17 and 21 — Jurisdiction of Fora — Relegating matter to Civil Court — Legality — Electricity — Supply fluctuated leading to high tension supply — Equipments like refrigerator etc. damaged — Deficiency in service alleged — Forum dismissed complaint — Relegated parties to Civil Court since matter involved disputed questions of facts — Unjustified — Not such case which cannot be decided by Consumer Fora after obtaining evidence/expert opinion — Both lower Fora erred in relegating case of ordinary consumer to Civil Court — Impugned order set aside — Matter remitted.

I (2007) CPJ 64 (NC)

- **MRTP Commission — Entertainment of application (See Power of MRTP Commission)**

I (2007) CPJ 4 (SC)

- **Railway services — Untoward incident — Death of passengers — OP liable to compensate — Jurisdiction of Consumer Fora vis-a-vis Railway Claims Tribunal — Latter alone has jurisdiction.**

Railways Act, 1989 — Sections 123(c) and 124A — Railway Claims Tribunal Act, 1987 — Sections 13 and 15 — Rail Accident and Untoward Incidents (Compensation) Amendment, Rules 1977 — Consumer Protection Act, 1986 — Sections 11, 17 and 21 — Untoward Incident — Liability of Railways to compensate — Jurisdiction — Consumer Fora vis-a-vis Railway Claims Tribunal — Passengers thrown out of train on railway track and were run over by train — Amounts to untoward incident — Compensation regarding same can be decided by Railway Claims Tribunal and none else — Consumer Fora have no power to decide such claims — However, Railways did not dispute its liability to compensate to extent of Rs. 4 lakh — Claimants entitled for same.

I (2007) CPJ 160 (DB) (Bom.)

- **Territorial — Forum has jurisdiction at place where OP has branch office.**

Consumer Protection Act, 1986 — Section 11(2)(a) — Jurisdiction of Forum — Territorial jurisdiction — Case can be filed by person at place where O.P. has branch office.

I (2007) CPJ 34 (Punjab)

- **Theft of electrical energy — Consumer Fora has jurisdiction to settle disputes arising therefrom (See Electricity)**

I (2007) CPJ 1 (Del.)

LIMITATION — Maintainability of claim — Transport services — Consignment not delivered — Cause of action arises on coming to know fact of non-delivery — Complaint within 2 years therefrom — Maintainable.

Consumer Protection Act, 1986 — Section 24(A) — Limitation — Maintainability of claim — Transport services — Refusal of buyer to take delivery — O.P. intimated fact of non-delivery to complainant by notice dated 8.9.1998 and 28.9.1998 respectively — Cause of action for complainant arose only on coming to know said fact — Complaint filed on 31.8.2000 — Is within 2 years from date of cause of action — Claim not time barred.

I (2007) CPJ 45 (Kar.)

— **Sufficient cause absent — Delay cannot be condoned.**

Consumer Protection Act, 1986 — Section 21(b) — Limitation — Absence of sufficient cause — Revision delayed by 1680 days — Contention, order of State Commission dated 10.5.2001 came to be known for first time on 21.3.2006 in execution petition — Rejected — Address of petitioner in cause title of impugned order shown at Jalgaon — Not case of petitioner that he intimated change in address from Jalgaon to 'A' — It was for petitioner to have intimated change in address, if any, to State Commission — In this backdrop, petitioner cannot claim that limitation would run only from date when he learnt of order impugned — No sufficient cause disclosed — Revision not maintainable.

I (2007) CPJ 68 (NC)

- **Time spent *bona fide* in Court without jurisdiction — Exclusion of — Motor vehicles — Allegedly, defective from day one — Cause of action arises on this day itself — Even after excluding abovesaid time, complaint much beyond prescribed period — Time barred.**

I (2007) CPJ 114 (Guj.)

MEDICAL NEGLIGENCE — Angioplasty — Complications — Death of patient — Procedure not violative of normal principles of treatment — No act of omission/commission by OP — Mere unfortunate outcome, not conclusive of medical negligence — No liability.

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Angioplasty — Complications during procedure — Death of patient — Procedural part by O.P., not violative of normal principle of treatment and documentation — Documents indicate that due care and diligence shown in management of case — No evidence to indicate act of omission or commission on part of O.P. — Technical details brought out in oral depositions, documents do not indicate any technical or material flaw in time or procedure of angioplasty — Complications that occurred were duly recognised — Appropriate remedial measures instituted — O.P. qualified cardiologist with enough experience in procedure of angioplasty — Said procedure carried out after due written consent, after explaining all its pros and cons — Mere unfortunate outcome, without evidence, not sufficient to conclude deficiency in service or negligence — Complainant failed to prove her case — O.P. not liable.

I (2007) CPJ 140 (Guj.)

- **ESI Hospital — No doctor on duty at relevant time — Failure of OP to perform “duty of Care” — Deficiency in service — Compensation awarded.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — ESI Hospital — No doctor on duty at relevant time — Patient suffering from severe pain in abdomen — As per material, no treatment or medicine administered despite patient being diagnosed with severe abdomen pain — Instead she was directed to approach some other ESI hospital — Further, no doctor on duty when patient with her husband reached at 6.30 a.m. — Duty doctor came only from 8.00 a.m. onwards — Complete failure on part of O.P. to perform “duty of care” expected from professional doctor as well as hospital — Deficiency in service and medical negligence proved — Compensation awarded.

I (2007) CPJ 61 (NC)

- **Eye operation — Vision lost — Allegation of gross negligence not substantiated — No liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Eye-operation — Vision completely lost — Negligence in performing operation alleged —

Subsequent hospital where patient was referred to, opined operation was unplanned and wrong — Further allegation, lens implant urgently needed but not done by O.P. — Statement that non-implantment of lens is gross negligence, not substantiated — No authoritative medical opinion of any expert opinion produced to prove contention — No negligence attributable to O.P. — No liability.

I (2007) CPJ 70 (NC)

- **Operation — Death soon thereafter — Excessive dosage of drugs alleged, not proved — No medical negligence — No liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Operation — Removal of stones from gall bladder — Death soon thereafter — Excessive dosage of drugs by Anesthetist, leading to brain damage, alleged — As per evidence from various medical authorities, standard drugs used — Wrong use of drugs or excessive uses of dosage not been proved — Present is unfortunate case of development of pulmonary embolism which is rare but major hazard of any surgery — Every effort made to control same — No medical negligence proved — O.Ps. not liable.

I (2007) CPJ 173 (NC)

- **Operation — Puss developed in stitches, condition deteriorated — No evidence that OP conducted said operation — No liability.**

Consumer Protection Act, 1986 — Section 15 — Medical Negligence — Failure to prove negligence — Complainant suffering from enlargement of prostate — Operated upon — Condition deteriorated — Puss developed in stitches — No evidence that complainant ever operated upon for alleged disease by O.P. doctor — True that O.P. conducted ultrasound and found his prostate enlarged — Further, record of hospital where complainant took treatment subsequently, not suggestive of any negligence of O.P. — Complainant failed to prove any negligence on part of O.P. — No liability.

I (2007) CPJ 42 (Cha.)

- **Prostate gland enlarged — Surgery — Part of gland left off — Persistent obstruction, difficulty in urination — Medical negligence — Doctor, alone, not hospital and its Insurance Company liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Enlargement of prostate gland — Surgery conducted — Part of gland left off — No reason assigned for non-removal of same — As a result, persistent obstruction and difficulty in urination — Treating doctor could neither diagnose problem, nor extended proper treatment — Severe problem and great difficulty and inconvenience of replacement of catheter resulted — Adequate and necessary precaution during surgery not taken — Post-operative treatment not careful — Medical negligence proved — O.P. No. 1 and his insurer liable to compensate complainant — For such negligence of O.P. No. 1 doctor, liability, cannot be fastened on O.P. No. 2 Hospital — Accordingly its insurer also not liable — Rs. 80,000 compensation awarded.

I (2007) CPJ 127 (Chhat.)

- **Shoulder dislocation — Operation — Pain persistent — Standard procedure followed — Damage due to accident, not operation — No medical negligence.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Shoulder operation — Negligence in performing operation alleged — Case of shoulder dislocation — Pain persisted even after operation — Standard procedure followed — Close reduction of shoulder though done, did not work due to auxiliary nerve damage — Various doctors opined that such damage and dislocation was caused at time of accident and not due to operation performed by O.P. — No medical negligence proved

— O.P. not liable.

I (2007) CPJ 125 (NC)

- **Throat blockage — Several tests and biopsy conducted — Death — Necessarily, some negligence of OP — Lumpsum compensation awarded.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Throat blockage — Several tests including x-rays, ECG and oesophagoscopy resorted to — In addition biopsy conducted — Patient developed cyanosis and pulmonary edema during tests — Same led to his death — Necessary conclusion that there was some negligence on part of O.Ps. in conducting tests or treatment — Deficiency in service proved — Lump sum compensation awarded.

I (2007) CPJ 76 (Del.)

- **Treatment by quack — Lack of requisite qualification — Patient died same day — Entitled to compensation — Deceased surgeon — In view of age and earning Rs. 12 lacs awarded.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Treatment by quack, impersonating himself as doctor — Lack of requisite qualification — Resulted in death of patient very same day — Medical negligence proved — Entitlement to compensation — Quantum — Deceased surgeon aged 45 years, owned 2 hospitals — Taking income @ Rs. 1 lakh per month, his contribution can be held at Rs. 40,000 p.m. — Annual contribution of Rs. 4 lakh — Taking working span for another 10-15 years, complainant shall be entitled to much larger amount than one awarded — Award of Rs. 12 lakh, not on high side, upheld.

I (2007) CPJ 31 (NC)

- MEDICAL SERVICES — Hospital — Free treatment granted as part of service conditions is 'service' under Act — Recipient consumer.**

Consumer Protection Act, 1986 — Sections 2(1)(d), 2(1)(o) — Consumer — Service — Medical Services — Free treatment provided — Recipient Government servant who was granted medical facilities as part of service conditions — Services rendered by hospital fall within ambit of 'service' under Section 2(1)(o), irrespective of fact that service rendered free of charge to persons who do not pay for it — Free service would also be 'service' and recipient a 'consumer' under Act.

I (2007) CPJ 167 (NC)

- **Treatment records — Not maintained properly — Deficiency in service — Costs imposed — Directions.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Services — Not maintaining proper written record of treatment given to patient — Deficiency in service proved — High time for doctors to write correct notes in operation record and discharge summary — These documents to be made available to patients as matter of right — O.P. liable to pay costs of Rs. 10,000 for said deficiency.

I (2007) CPJ 125 (NC)

- MOBILE — Stolen from duly locked car — Liability of insurer (see Insurance)**

I (2007) CPJ 158 (Punjab)

- **Theft — Insurance coverage — Liability of insurer (see Insurance)**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Theft of insured

mobile handset — Claim repudiated on basis of exclusion clause — Legality — Said exclusion clause not formed part of contract between parties, nor disclosed to insured — Clause not applicable — Obligatory on part of insurer to indemnify complainant — Arbitrary repudiation of claim, in very casual and mechanic manner, unjustified — Deficiency in service proved — Insurer liable.

I (2007) CPJ 106 (Raj.)

MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969 — Scope and Object.

Monopolies and Restrictive Trade Practices Act, 1969 — Scope and Object — Act enacted to provide that operation of economic system does not result in concentration of economic power to common detriment for control of monopolies, prohibition of monopolistic and restrictive trade practices.

I (2007) CPJ 4 (SC)

MOTOR VEHICLES — Defect due to negligence/insufficient care — Vehicle broke down — Not manufacturing defect — No liability.

Consumer Protection Act, 1986 — Section 2(1)(g) — Motor Vehicles — Hydro static locking due to ingress of water in engine — Breakdown of vehicle — Not manufacturing defect — Alleged defect not covered under extended warranty — Present defect caused by misuse/negligence/abnormal use/insufficient care — Failure of engine components, thus, not covered under warranty — No defect or deficiency in vehicle — OP not liable.

I (2007) CPJ 101 (Cha.)

— Excise duty rebate — Manufacturer issued cheque, received by dealer — Still amount not refunded — Liability to pay interest.

Consumer Protection Act, 1986 — Section 2(1)(g) — Motor Vehicles — Excise duty rebate — Cheque towards rebate issued by MVL — Same received by dealer on 6.8.1999 — Despite this, amount not deposited before District Forum — Dealer liable to pay amount to complainant with interest @ 6% p.a.

I (2007) CPJ 36 (NC)

— Manufacturing defects alleged — Cause of action — Commencement (see Limitation)

I (2007) CPJ 114 (Guj.)

— Manufacturing defects alleged — No expert opinion in support — Complaint rightly dismissed.

Consumer Protection Act, 1986 — Section 2(1)(g) — Motor Vehicles — Manufacturing defects alleged — No expert opinion to prove allegation — Petty repairs carried out by complainant by paying Rs. 5 and 40 not at all prove case of complainant — Vehicle had no manufacturing defects — Complaint rightly dismissed — Order upheld.

I (2007) CPJ 2 (NC)

— Manufacturing defects alleged — Vehicles not purchased for self-employment — Complainant not consumer — Complaint wrongly allowed.

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Motor vehicles — Complaint alleging manufacturing defects — Buses purchased, for complainant wanted to take up avocation of running tourist buses — Purchase not for self-employment —

Complainant not consumer — Complaint wrongly allowed by State Commission — Complainant at liberty to approach appropriate Civil Court.

I (2007) CPJ 51 (NC)

- **Mileage — Allegedly, not satisfactory — Defects notified after warranty expired — Evidence to disprove stand of complainant — No liability.**

Consumer Protection Act, 1986 — Section 15 — Motor Vehicles — Consumption of excessive fuel — Not giving desired/assured average — Allegation that because of inherent defects in machinery/engine of vehicle, assured average not been received — Defects notified to O.P. after expiry of warranty period — Stand of complainant discredited on basis of evidence of job cards produced by O.Ps. — Vehicle tested, mileage found satisfactory to satisfaction of complainant — Same recorded in job cards under his signature — No deficiency in service proved.

I (2007) CPJ 123 (Har.)

- **Proof of ownership (See Evidence)**

I (2007) CPJ 34 (NC)

- **Purchase of 4 seater van — Supply of 8 seater by removing bench of 3 seats alleged — Not proved — Claim not maintainable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Motor Vehicles — Purchase of 4 seater van — Supply of 8 seater van by removing one bench consisting of 3 seats alleged — Claim for differential amount — In view of documentary evidence, difficult to hold that complainant was given vehicle so alleged — Hence, not entitled to differential amount.

I (2007) CPJ 36 (NC)

PARTNERSHIP FIRM — Complaint against firm — Partner jointly and severally liable.

Consumer Protection Act, 1986 — Section 21(b) — Complaint against firm — Liability of partners — Petitioner being partner of O.P. No. 2 firm, jointly and severally liable to pay awarded amount.

I (2007) CPJ 68 (NC)

PECUNIARY JURISDICTION — Instant claim within pecuniary jurisdiction of this Commission at relevant time — Maintainable.

Consumer Protection Act, 1986 — Section 11(1) — Pecuniary Jurisdiction — Claim valued at Rs. 6,85,291 — At relevant time, State Commission had pecuniary jurisdiction over Rs. 5 lacs to Rs. 20 lacs — Instant matter comes within its jurisdiction.

I (2007) CPJ 140 (NC)

POWER OF MRTP COMMISSION — Application — Jurisdiction to entertain — Housing — Allottee not paid total amount — OP entitled to forfeit earnest money as per agreement — Case could not be entertained by Commission.

MRTP — Power of Commission — Jurisdiction to entertain application — Housing — Flat buyer's agreement — Inability of allottee to pay total amount — Claim for refund of deposited amount — O.P. not wrong in exercising its right to forfeit earnest money as per agreement — Validity or otherwise of conditions imposed by O.P. is not in question — Present is not a case which could be entertained by Commission — Orders in present proceedings passed on broad consensus arrived at by parties as also in exercise of jurisdiction under Article 142 of Constitution of India — Order not to be treated as precedent — Monopolies and Restrictive Trade Practices Act, 1969 — Section 12.

I (2007) CPJ 4 (SC)

— **Awarding compensation — Power restricted — Loss/damage resulting from monopolistic or restrictive or unfair trade practices to be compensated — No compensation for breach of contract.**

M RTP — Power of Commission — Award of compensation — Power to award compensation restricted to case where loss/damage caused as result of monopolistic or restrictive or unfair trade practice — Application under Section 12B would not lie where complaint is confined to breach of contract — Monopolies and Restrictive Trade Practices Act, 1969 — Sections 12, 12B.

I (2007) CPJ 4 (SC)

PRACTICE AND PROCEDURE — Amendment — Effect of — Provision of substantive, not procedural law — Applicable only with prospective effect.

Consumer Protection Act, 1986 — Section 2(1)(r) — Unfair trade practices — Refusal to sell goods in order to force person to enter into Annual Maintenance Contract — Amounts to unfair trade practices *w.e.f.* 15.3.2003 — Effect of amendment — Prospective — Such provision being that of substantive law and not procedural law, cannot be made applicable with retrospective effect.

I (2007) CPJ 8 (NC)

— **Opportunity to contest case not given — Impugned order unsustainable — Matter remanded.**

Consumer Protection Act, 1986 — Section 15 — Practice and Procedure — Not affording opportunity to O.P. to contest case on merits — Upon notice in complaint, O.Ps. put in appearance — On that very date, Forum decided complaint finally without affording any opportunity to O.P. to contest case — Forum proceeded on basis that O.P. should have filed written statement on day they appeared — Unjustified — Impugned orders not sustainable — Set aside — Matter remanded.

I (2007) CPJ 68 (U.P.)

PRIVITY OF CONTRACT — Goods defective during warranty — Liability to refund price — Dealer *vis-a-vis* manufacturer(see Goods)

I (2007) CPJ 69 (NC)

PROFESSIONAL SERVICES — Advocate — Professional fee not paid — Sufficient cause for withdrawal from engagements — No deficiency in service.

Consumer Protection Act, 1986 — Section 2(1)(g) — Advocates Act — Section 11 Rule 12 — Professional Services — Advocate — Withdrawal from engagements — Complaint alleging O.P. Advocate withdrew his Vakalatnama without any prior intimation to complainant — O.P. had sent 3 notices to complainant indicating his intention to withdraw his appearance mainly on ground that proper instructions not given to him — Professional fee also not been paid — Same provides sufficient cause for him to withdraw from case after giving reasonably sufficient notice — No deficiency in rendering legal services could be imputed on O.P.

I (2007) CPJ 11 (NC)

PUNITIVE DAMAGES — Cheque dishonoured despite sufficient funds — Negligence of bank — Punitive damages payable(see *Banking and Financial Institutions Services*)

I (2007) CPJ 91 (NC)

RAILWAY SERVICES — Liability to ensure safety of passengers' life and property — Failure, amounts to deficiency — Compensation payable.

Consumer Protection Act, 1986 — Sections 2(1)(g) and 14(1)(d) — Railway Services — Train journey — Liability to O.P., *qua* its passengers to ensure safety of their life and property, ultimate — Complainants reserved ticket holders in sleeper class — Mob barged into bogies, shouting slogans, making cat calls, indulging in uncouth behaviour and making their way to seats occupied by complainants — Liability denied stating situation went beyond control of O.P. for want of sufficient police at railway station — Unjustified — No authority can take shelter under plea of situation having gone beyond its control — Sole responsibility of Railways to ensure perfect service being provided to consumers during journey and no harm caused to their life and property — Deficiency in service proved — Rs. 25,000 compensation awarded.

I (2007) CPJ 92 (Del.)

— Untoward incident — Death of passengers — OP liable to compensate — Jurisdiction of Railway Claims Tribunal to adjudicate matter (see *Jurisdiction*)

I (2007) CPJ 160 (DB) (Bom.)

REFUND — Coaching Institute — Unfair trade practice — Fee retained without rendering any service — Unjustified — Refund directed (see *Educational Services*)

I (2007) CPJ 115 (NC)

— Construction agreement — Not fulfilled despite sum deposited — Refund with interest directed (see *Agreement*)

I (2007) CPJ 66 (NC)

— Goods defective — Non-rectification despite repairs — Refund with interest and compensation directed (see *Goods*)

I (2007) CPJ 120 (Cha.)

— Goods defective during warranty — Liability to refund price — Dealer *vis-a-vis* manufacturer (see *Goods*)

I (2007) CPJ 69 (NC)

REVIEW — Scope of — Absence of error apparent on face of record — Impugned order cannot be reviewed.

Consumer Protection Act, 1986 — Sections 20(1A)(ii) and 22(2) — Review — Scope of — Order sought to be reviewed on two grounds — Firstly, Bench of one Member, not duly constituted one — Same no ground of review — As per Section 20(1A)(ii), President of National Commission can constitute Bench with one or more members — Further contention, question of limitation not been properly appreciated — Agreeing with his perspective of word "limitation" would amount to reopening of case and dealing with merits of issue — Not envisaged under powers to review — No error apparent on face of record — Impugned order cannot be reviewed.

I (2007) CPJ 63 (NC)

SECURITY DEPOSIT — Non-refund — Deficiency in service (see *Dealership Agreement*)

I (2007) CPJ 83 (Kar.)

SERVICE — Hospital — Free treatment granted as part of service conditions is 'service'

under Act — Recipient consumer(see *Medical Services*)

I (2007) CPJ 167 (NC)

“STATE” — LIC is State under Article 12 — Constitution of India (see *Insurance*)

I (2007) CPJ 106 (Raj.)

SUCCESSION CERTIFICATE — Death of bank account holder — Money lying in account, to go as per succession certificate (see *Banking and Financial Institutions Services*)

Consumer Protection Act, 1986 — Section 15 — Banking and Financial Services — Death of account holder — Rights of nominee — Non-release of payment by O.P. for want of Succession Certificate — Legality — Nominee does not become owner, holds movable property of deceased as trustee for legal heirs of deceased — In present case, widow obtained Succession Certificate — Money lying in account of deceased has to go as per Succession Certificate — Same done by O.P. — No deficiency in service proved.

I (2007) CPJ 121 (Punjab)

TELEPHONE — Beneficial tariff plan — Grant of benefit — Relevant date — Benefit available from date, same granted by OP.

Consumer Protection Act, 1986 — Section 21(b) — Telephone — Beneficial tariff plan — Grant of benefit — Relevant date — Benefit granted by any authority to be provided and availed from date, such benefit was granted by way of office order or circular or any rule — Duty of authority to give wide publicity of such beneficial circulars.

I (2007) CPJ 41 (NC)

— Instrument defective — Refusal to accept alternative one — OP not deficient in service — No compensation payable.

Consumer Protection Act, 1986 — Section 2(1)(g) — Telephone — Non-functional — Instrument defective — Telephone line not faulty, only instrument had some problem — O.P. tried to replace it with reasonably good working telephone — Complainant objected to same, insisted on new instrument being provided — Refused to accept alternative instrument made available by O.P. department — Complainant himself to blame for his predicament in not having use of telephone for 4½ months — No deficiency in service proved — Regarding compensation, absence of any material substantiating same, Forum rightly refused relief.

I (2007) CPJ 57 (T.N.)

— Mobile Phone — Sim card — Telephone number wrongly indicated — Failure of complainant to get matter corrected immediately — No compensation awarded.

Consumer Protection Act, 1986 — Sections 2(1)(g) and 14(1)(d) — Telephone — Mobile phone — Sim card wrongly indicating telephone number — Complaint claiming compensation for alleged deficiency in service — Case of complainant that police suspected his association with criminals involved in abduction/kidnapping case on basis of alleged wrong number — Admittedly bills sent at number which complainant describes as wrong — Complainant duty bound to get matter corrected immediately — Failure to do so — Complaint merits dismissal.

I (2007) CPJ 43 (U.P.)

— Number of calls — Suddenly inflated — User not been informed — O.P. not complied with its own instructions — Deficiency in service.

Consumer Protection Act, 1986 — Section 2(1)(g) — Telephone — Sudden spurt in number of calls being made — Telephone Department obliged to inform user about same — Bill of complainant gone up from Rs. 32,000 to Rs. 1 lakh in 2 months — Complainant not been informed of such sudden spurt in use of phone — Investigation not completed even after lapse of considerable time — Non-complying of its own instructions on subject of sudden spurt — Deficiency in service proved — O.P. liable.

I (2007) CPJ 12 (NC)

- **PCO — Bills allegedly excessive — Failure to establish — Demand in terms with what was metered — No deficiency in service.**

Consumer Protection Act, 1986 — Section 15 — Telephone — PCO — Bills disputed as excessive — Agreement that PCO holder will guarantee minimum revenue @ Rs. 1,600 for each STD — In terms of agreement, liability of complainant to pay Rs. 1,600 per STD cannot be ignored — Complainant failed to establish that demand made in bill was excessive than what was metered — No deficiency in service of O.P. proved.

I (2007) CPJ 95 (Har.)

- **PCO holder not consumer (see Consumer)**

I (2007) CPJ 95 (Har.)

TERRITORIAL JURISDICTION — Where cause of action arises.

Consumer Protection Act, 1986 — Section 11(2)(c) — Territorial Jurisdiction — Erection and installation of machinery — O.P. undertaken to erect and instal machinery at premises of complainant at Kerala — Cause of action arose there itself — Forum at Kerala has jurisdiction to entertain matter.

I (2007) CPJ 140 (NC)

TRANSPORT SERVICE — Consignment belatedly delivered — Delay on part of complainant, beyond OP's control — No deficiency in service.

Consumer Protection Act, 1986 — Section 2(1)(g) — Transport Services — Delayed delivery of consignment — Delay on account of complainant's failure to hand over all relevant documents at time of handing over consignment — Same beyond control of O.P. — No deficiency in service could be attributed to O.P. carrier.

I (2007) CPJ 43 (NC)

- **Consignment delivered without written instructions — Documents by invoice not retired — Deficiency in service — Compensation awarded.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Transport Services — Delivery of consignment, not as per instructions — Instead, delivered without retirement of documents by invoicee — Contention of O.P., verbal instructions of complainant to deliver same without retirement of documents — Such instructions not obtained in writing — Act of so delivering comes within deficiency in service — Amount of consignment credited in account of invoicee parties — O.P. ought not to have delivered consignments without receiving written instructions — Rs. 20,000 compensation awarded.

I (2007) CPJ 55 (Del.)

- **Consignment not delivered — Cause of action — Commencement (see Limitation)**

I (2007) CPJ 45 (Kar.)

- **Consignment not delivered — Notice as required by Section 10 of Carriers Act duly**

served — OP Liable.

Consumer Protection Act, 1986 — Section 15 — Carriers Act, 1865 — Section 10 — Transport Services — Non-delivery of consignment — Requirement to serve notice before filing of complaint — Complainants, after waiting for sufficiently long time, issued legal notice asking OP to pay their claim — Said notice is to be treated as notice under Section 10 — Cannot be said no notice given to OP — OP liable.

I (2007) CPJ 19 (Cha.)

- **Consignment reached destination — Caught fire before delivery — OP liable to reimburse — Value of goods payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Transport Services — Non-delivery of consignment — Denial of liability — Contention, goods reached destination, were stored in godown which caught fire and reduced to ashes — No evidence to prove that godown caught fire due to reasons beyond its control — Since delivery not been made to consignee, OPs liable to reimburse complainants to value of goods — Further contention that consignee failed to take delivery within 5 days, hence OPs not liable, rejected — Duty of OP to account for goods — Even if consignee not taken delivery within 5 days, at most OP could have charged demurrage.

I (2007) CPJ 19 (Cha.)

- **Delivery on production of original consignee's copy of GR — Absence of suspicious circumstances — Genuineness of person taking delivery not doubted — No deficiency in service.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Transport Services — Consignment delivered on production of original consignee's copy of GR — Carrier not duty-bound to enquire that person presenting such copy is actually consignee or its authorised agent — No suspicious circumstances for O.P. to doubt genuineness of person taking delivery — No deficiency in service proved — O.P. not liable.

I (2007) CPJ 27 (NC)

- **Short delivery of consignment — Insurer settled claim — Filed complaint after obtaining subrogation letter, etc. — Maintainability(see Consumer)**

I (2007) CPJ 148 (NC)

UNFAIR TRADE PRACTICES — Bogus advertisement — Treatment to reduce body weight without dieting — Failed — Such tempting advertisements giving misleading statements to be controlled — Compensation awarded.

- Consumer Protection Act, 1986 — Section 2(1)(r) — Unfair Trade Practices — Bogus advertisement — Reduction of body weight without dieting — After taking treatment, weight of complainant did not reduce — Unfair trade practices proved — Such tempting advertisements giving misleading statements required to be controlled — Forum awarded Rs. 25,000 compensation besides refund of amount paid towards alleged treatment — Upheld.

I (2007) CPJ 44 (NC)

- **Coaching Institute — Unfair trade practice — Fee retained without rendering any service — Unjustified — Refund directed(see Educational Services)**

I (2007) CPJ 115 (NC)

- **Goods purchased — Demand of some part, after warranty expired — O.P. not under obligation to supply — No liability.**

Consumer Protection Act, 1986 — Section 2(1)(r) — Unfair Trade Practices — Goods —

PC system purchased, carrying one year warranty — Complaint that system remained idle on account of non-supply of 'toner' by O.P. — Allowed — O.P. held guilty of unfair trade practices — System purchased on 14.3.1991 — Toner demanded on 25.4.1993 — Warranty had expired — Complainant open to procure toner from any source including O.P. — Even if O.P. refused to sell same, that could not come under the then existing definition of unfair trade practice — Deal between parties came to end after expiry of warranty — O.P. not under any obligation to supply toner — Liability so imposed, set aside.

I (2007) CPJ 8 (NC)

— **Insurance — Settlement of claim — Surveyor's report not followed — Unjustified**
... .(see *Insurance*)

I (2007) CPJ 107 (NC)

— **Liquor advertisement — Misleading and surrogate — Attempt to induce young generation to switch over from cold drinks to beer(see *Advertisement*)**

Consumer Protection Act, 1986 — Sections 2(1)(g), 2(1)(r) and 14(1)(hc) — Bombay Prohibition Act, 1929 — Section 24 — Unfair Trade Practices — Advertisement — Misleading and surrogate — Prominent display of false, misleading and surrogate liquor advertisements on coaches of Western Railway trains — Attempt to induce young generation to switch over from cold drinks to beer — General policy guidelines of Railway Administration for commercial advertising prohibit advertisements of alcoholic drinks and various types of drugs — Railway Department contravened its own guidelines — Contention of O.P. that 'Soda' not covered by said prohibitions and impugned advertisement not violative of any law — Rejected — Description made in advertisement matches with whisky and not Soda — Slogan "Ab Cold drink Out" certainly misleading, for soda could not be replacement of ordinary cold drinks — Adoption of unfair trade practices proved — O.P. who took advantage of such practices by publishing surrogate advertisement, not absolved of its liability to issue corrective advertisement to neutralise effect of misleading one — Order of State Commission upheld.

I (2007) CPJ 102 (NC)

— **Sale of goods — Refused, to force person to enter into annual maintenance contract — Unfair trade practices proved.**

Consumer Protection Act, 1986 — Section 2(1)(r) — Unfair trade practices — Refusal to sell goods in order to force person to enter into Annual Maintenance Contract — Amounts to unfair trade practices *w.e.f.* 15.3.2003 — Effect of amendment — Prospective — Such provision being that of substantive law and not procedural law, cannot be made applicable with retrospective effect.

I (2007) CPJ 8 (NC)

WELFARE SCHEMES — Crop Insurance — Damage due to drought — Welfare schemes to be made flexible, for benefit of concerned persons — Directions issued.

Consumer Protection Act, 1986 — Section 2(1)(g) — Agricultural Insurance — Crops damaged due to drought — Crop insurance welfare schemes — Implementation of — Notification issued by Revenue Department stating damage to crops — Relying upon same, State Commission directed insurer to pay amount to concerned farmers — Hence appeal by O.P. — Rigid stand, as usual, taken — Scheme framed by Central Government not considered — Farmers compelled to litigate and bear cost of Advocates — Such rigid stand of O.P. amounts to welfare schemes not being implemented in spirit in which same are framed — Concerned Secretary filed necessary affidavit stating that

improvement of scheme is under consideration — Directions issued — Concerned Minister to take appropriate decision on subject — Welfare schemes to be made flexible so that benefit reaches to concerned persons.

I (2007) CPJ 128 (NC)

WORDS AND PHRASES — “Ankylosing Spondylitis” — Meaning of disease.

Sudha Shrivastava v. LIC of India Chhattisgarh S.C.D.R.C. 153

— **“Flood”, “Tornado” — Meaning**

Words and Phrases — “Flood”, “Tornado” — Meaning as per Oxford Dictionary.

I (2007) CPJ 6 (NC)

— **“Industrial Goods”.**

Words and Phrases — “Industrial goods” — Meaning as given in Black’s Law Dictionary.

I (2007) CPJ 140 (NC)

— **“Medical Care”, “Medicare” and “treatment”.**

— Words and Phrases — “Medical care”, “Medicare” and “treatment” — Meaning of words, as per Black’s Law Dictionary.

I (2007) CPJ 167 (NC)

— **“Subsidence” — Meaning of.**

I (2007) CPJ 1 (SC)

CONTRACT ACT, 1872

— Consumer Protection Act, 1986 — Section 15 — **Contract Act, 1872 — Section 28** — Agreements in restraint of legal proceedings — Void — Agreement containing clause regarding abandonment of claim if same not filed within 3 months — *Prima facie*, such condition in agreement would be void in view of declaratory nature of Section 28 — Dismissal of complaint on this ground, set aside — Matter remanded.

I (2007) CPJ 158 (NC)

ELECTRICITY ACT, 2003

— Consumer Protection Act, 1986 — Sections 2(1)(c), 2(1)(d), 2(1)(e) and 2(1)(o) — **Electricity Act, 2003 — Section 135** — Electricity — Theft of energy — Jurisdiction of Consumer Courts to settle disputes relating to theft/dishonest abstraction of electrical energy — Supply of electrical energy falls within definition of ‘service’ as defined under Section 2(1)(o) of Act — Any dispute arising under provisions of Electricity Act, is ‘Consumer dispute’ — Further, every registered consumer of energy is ‘consumer’ as defined under Section 2(1)(d) of Act — Has right to challenge allegations of theft of energy — Denial of or disputing such allegations by O.P. is itself ‘consumer dispute’ — Consumer Fora have jurisdiction to try such dispute.

I (2007) CPJ 1 (Del.)

INDIAN BOILERS ACT, 1923

— Consumer Protection Act, 1986 — Section 2(1)(g) — **Indian Boilers Act, 1923 — Section 2(a)** — Insurance — Boiler and Pressure Plant Policy — Exclusion clause — Applicability — “Accident” — Bulge on boiler tube plate No. 2 which was exposed to flame — O.P. refused to honour claim on ground that said particular incident not

covered by policy — With permission of competent authority, complainant got equipment repaired at cost of Rs. 7.16 lakh — Non-repair could have resulted in accident causing serious injuries to staff of industry — No evidence from side of O.P. that said bulging due to overheating of tubes, so as to make it come under exclusion clause — Under such circumstances, repudiation unjustified — Surveyor assessed loss at Rs. 6,40,000 — This amount payable with interest @ 9% p.a.

I (2007) CPJ 16 (NC)

LIMITATION ACT, 1963

- Consumer Protection Act, 1986 — Section 24A — **Limitation Act, 1963 — Section 14** — Limitation — Exclusion of time spent in proceeding *bona fide* in Court without jurisdiction — Motor Vehicles — Complaint alleging manufacturing defects — Delivery of vehicle taken on 5.9.1992 — Defects in vehicle noticed from day one — Cause of action for purpose of filing complaint arises on this day itself — Warranty period 18 months — Even if cause of action deemed to accrue after expiry of warranty and giving benefit of Section 14(1) of Limitation Act excluding time spent in prosecuting complaint in wrong Forum, still complaint filed on 16.10.2003, is much beyond prescribed period of 2 years — Complaint time barred — Not maintainable.

I (2007) CPJ 114 (Guj.)

MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969

- MRTTP — 'Trade practice', 'restrictive trade practice', 'service' and 'unfair trade practice' — Defined — **Monopolies and Restrictive Trade Practices Act, 1969 — Sections 2(u), 2(o), 2(r), 36A.**

I (2007) CPJ 4 (SC)

- MRTTP — Power of Commission — Jurisdiction to entertain application — Housing — Flat buyer's agreement — Inability of allottee to pay total amount — Claim for refund of deposited amount — O.P. not wrong in exercising its right to forfeit earnest money as per agreement — Validity or otherwise of conditions imposed by O.P. is not in question — Present is not a case which could be entertained by Commission — Orders in present proceedings passed on broad consensus arrived at by parties as also in exercise of jurisdiction under Article 142 of Constitution of India — Order not to be treated as precedent — **Monopolies and Restrictive Trade Practices Act, 1969 — Section 12.**

I (2007) CPJ 4 (SC)

- MRTTP — Power of Commission — Award of compensation — Power to award compensation restricted to case where loss/damage caused as result of monopolistic or restrictive or unfair trade practice — Application under Section 12B would not lie where complaint is confined to breach of contract — **Monopolies and Restrictive Trade Practices Act, 1969 — Sections 12, 12B.**

I (2007) CPJ 4 (SC)

- Scope and Object — Act enacted to provide that operation of economic system does not result in concentration of economic power to common detriment for control of monopolies, prohibition of monopolistic and restrictive trade practices.

I (2007) CPJ 4 (SC)

MOTOR VEHICLES ACT, 1988

- Consumer Protection Act, 1986 — Section 15 — **Motor Vehicles Act, 1988 — Sections 2(21), 2(33) and 2(47)** — Insurance — Driving licence — Validity — Having licence to

drive car, complainant considered to be eligible to drive light motor vehicle — Unladen weight of Tata Sumo less than 7500 kgs. — It would be considered light motor vehicle — Offending vehicle was private vehicle, used for private purpose by owner and also insured as such — Vehicle in question comes under definition of 'private service vehicle' — Not 'transport vehicle' — Licence valid — Insurer liable — Loss assessed by Surveyor payable.

I (2007) CPJ 110 (Punjab)

- Consumer Protection Act, 1986 — Section 15 — **Motor Vehicles Act, 1988 — Sections 14, 15** — Insurance — Driving licence — Expiry and renewal — Validity on date of accident — Licence expired on 14.12.2000 — Same renewed on 12.6.2002 — Accident on 31.1.2001 — As per provisions of Act of 1988, even after expiry of driving licence, if it was renewed within 30 days, its date of validity relates back to date of expiry — Clear in present case that driver did not hold valid licence — Insurer not liable.

I (2007) CPJ 18 (H.P.)

- Consumer Protection Act, 1986 — Section 2(1)(g) — **Motor Vehicles Act, 1988 — Sections 88(11) and 149(2)** — Insurance — Breach of terms of policy and provisions of law — Carrying more passengers than permitted — Same is offence under Act of 1988 — In case of overloading of vehicles beyond licensed capacity, discretion given to insurer to settle claim on non-standard basis — In instant case, there is under declaration of licence carrying capacity in vehicle — Overloading was beyond reasonable limits — Hence, directing insurer to pay non-standard claim would be unjustified — On account of gross violation of policy and legal provisions by insured, insurer not liable.

I (2007) CPJ 23 (NC)
