

BOMBAY PROVINCIAL MUNICIPAL CORPORATION ACT, 1949

Consumer Protection Act, 1986 — Section 2(1)(g) — **Bombay Provincial Municipal Corporation Act, 1949 — Section 66** — Joy ride boating facility — Accommodating passengers beyond seating capacity of boat — Accident — Death of 22 passengers — Liability of Municipal Corporation *vis-a-vis* contractor M/s. Aqua Sports — Carrying passengers in excess, resulted in catastrophe of boat being capsized in lake — Undoubtedly 'Aqua Sports' liable for damages — Primary liability is of 'Aqua Sports' — Boating activity carried out by 'Aqua Sports' on behalf of Corporation — Entire control regarding same vested in Corporation — Contractor was only permitted to charge fixed amount for each ticket — Rate of tickets also fixed by Corporation, that too in prescribed form — Entire boating equipment belonged to it — Licence to operate boating club given to 'Aqua Sports' only for limited period — Corporation cannot disown its liability in case of deficiency by licensee — Corporation and 'Aqua Sports' jointly and severally liable.

IV (2006) CPJ 146 (NC)

CARRIAGE BY AIR ACT, 1972

O.P. No. 217/97

Consumer Protection Act, 1986 — Sections 2(1)(g), 14(1)(d) — **Carriage by Air Act, 1972 — Rules 22(2), 25** — Cargo Services — Release of consignment without original documents — Liability of carrier — Extent of — Goods in question released by OP No. 1 carrier on basis of alleged fax copy of release note — Price of goods not collected by OP No. 3 Bank from notified party — Price remained unpaid to complainants — Complainant handed over package to carrier with special declaration of interest in delivery at destination and has paid 200% of normal freight charge — Carrier liable to pay sum not exceeding declared sum — Carrier cannot contend that its liability is limited — OP No. 3 Bank also negligent and deficient in service — Established by its own admission that documents were lost — Bank liable for deficiency in service in not protecting valuable documents — Bank directed to pay rupees equivalent to 5,000 Pounds — Carrier liable to pay value of consignment with interest @ 12% p.a.

IV (2006) CPJ 276 (NC)

OP No. 296/98 and OP No. 47/98 :

Consumer Protection Act, 1986 — Sections 2(1)(g), 14(1)(d) — **Carriage by Air Act, 1972 — Rules 22(2), 25** — Cargo Services — Release of insured consignment without original documents — Liability of carrier *vis-a-vis* Insurer — Carrier delivered consignment without obtaining documents of title and Bank release from Bank — Act and omission on part of employees of carrier reckless — Primary liability to reimburse complainants is that of carrier — Even if insurer reimburses complainant, insurer entitled to recover same from carrier — Assessment of liability on similar terms as in OP No. 217/97.

IV (2006) CPJ 276 (NC)

COAL MINES PROVIDENT FUND AND PROVISIONS ACT, 1948

Consumer Protection Act, 1986 — Sections 21(b) and 27 — **The Coal Mines Provident Fund and Provisions Act, 1948 — Para 23(2)** — Provident Funds — Deduction of amount towards provident fund — Same not credited to Commissioner — Recovery of damages for default in payment of contributions — Forum allowed complaint, directed O.P. to remit amount deducted from arrears paid to complainant — Complainant applied under Section 27 claiming payment of damages in light of para 23 — Executing Court cannot go behind order

passed in original complaint — Forum in its order not even remotely mentioned about recovery of damages — Same cannot be awarded in present petition arising out of proceedings under Section 27.

IV (2006) CPJ 193 (NC)

CONSUMER PROTECTION ACT, 1986

AGREEMENT — Construction agreement — Breach of — Principal amount refunded — Interest amount retained — O.P. liable to pay interest @ 9% on this amount also, if not paid within 4 weeks.

Consumer Protection Act, 1986 — Section 2(1)(g) — Agreement to construct house — Construction delayed — Refund of deposited amount — Rate of interest thereon — O.P. refunded principal amount of Rs. 4,30,000 on 13.9.2000 — Liability to pay interest — Complainants entitled to only simple interest @ 18% p.a. w.e.f. date of deposit till date of refund — Amount of interest, so calculated comes to Rs. 3,57,975 — Since such amount retained by O.P., they are liable to pay interest @ 9% p.a. on this amount also, in case interest @ 18% not paid within 4 weeks.

IV (2006) CPJ 175 (NC)

— **Construction of house — Work left incomplete — Plea of O.P., balance outstanding against complainant, rejected — O.P. liable.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Agreement — Construction of house — Work left incomplete — Both lower Fora accepted case of complainant — Hence revision petition by O.P. — Contention, construction done was 311.40 sq. mtrs. cost whereof was Rs. 15,05,000 out of which complainant paid only Rs. 7,75,000 leaving balance of Rs. 7,30,000, rejected — Agreement notices measurement of construction as 196.64 sq. mtrs. — Stand taken by O.P., in application for appointment of Civil Engineer as Local Commissioner to take measurement of construction, that it constructed building measuring 196.64 sq. mtrs. — In view of agreement and above statement, pleas taken by O.P. regarding his having constructed 311.40 sq. mtrs. of building false — Complaint rightly allowed.

IV (2006) CPJ 201 (NC)

— **Construction work not completed — Incomplete building valued — Amount paid by O.P. with interest @ 18% p.a. — Sufficient compensation — Award of Rs. 1 lakh compensation set aside.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Agreement — Non-completion of construction work — Entitlement to compensation — Quantum — Agreement for construction of house — Work not found to be progressing satisfactorily, incomplete — Admittedly, Rs. 5,15,000 received by O.P. — Valuation of incomplete building arrived at Rs. 3,97,391 — State Commission directed O.P. to pay remainder amount of Rs. 1,17,690 with interest @ 18% p.a. and Rs. 1,00,000 compensation — In view of return of excess amount with interest @ 18% p.a., Rs. 1 lac compensation would not stand — Interest @ 18% p.a., sufficient compensation.

IV (2006) CPJ 202 (NC)

— **Tripartite Agreement — Bank failed to comply with terms thereof — Breach of obligation arising out of agreement — Compensation payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Tripartite agreement — Non-observance of terms thereof — Loan for purchase of land for plantation and maintenance of eucalyptus trees — Bank undertaken obligation of not only granting loan but also of inspection and ultimately sale of trees — Failure of bank to ensure sale of trees in terms of agreement — Breach of obligation arising out of agreement — Complainant had to pay Rs. 64,000 for loan of Rs. 32,525, requires to be compensated — Award of Rs. 25,000 compensation by State Commission justified.

IV (2006) CPJ 165 (NC)

AIRLINES — Consignment delivered to unauthorised person — FIR sufficient document — Deficiency in service — OP liable.

Consumer Protection Act, 1986 — Section 2(1)(g) — Airlines — Consignment delivered to unauthorised person — FIR lodged by O.P. on representation of complainant itself showed that consignment was not delivered to complainant — Deficiency in service on part of O.P. proved — Issuance of non-delivery certificate by O.P., a condition precedent for settlement of insurance claim — Non-production of such certificate not disentitled the insured from claim against Insurance Policy as F.I.R. copy itself sufficient document in form of non-delivery of consignment to complainant — O.P.s. liable — Directions given.

IV (2006) CPJ 207 (Del.)

O.P. No. 217/97

AIRLINES SERVICES — Consignment released without original documents — Price of goods not collected by bank — Liability of carrier and Bank — Extent of.

Consumer Protection Act, 1986 — Sections 2(1)(g), 14(1)(d) — Carriage by Air Act, 1972 — Rules 22(2), 25 — Cargo Services — Release of consignment without original documents — Liability of carrier — Extent of — Goods in question released by OP No. 1 carrier on basis of alleged fax copy of release note — Price of goods not collected by OP No. 3 Bank from notified party — Price remained unpaid to complainants — Complainant handed over package to carrier with special declaration of interest in delivery at destination and has paid 200% of normal freight charge — Carrier liable to pay sum not exceeding declared sum — Carrier cannot contend that its liability is limited — OP No. 3 Bank also negligent and deficient in service — Established by its own admission that documents were lost — Bank liable for deficiency in service in not protecting valuable documents — Bank directed to pay rupees equivalent to 5,000 Pounds — Carrier liable to pay value of consignment with interest @ 12% p.a.

IV (2006) CPJ 276 (NC)

ALTERNATIVE REMEDY — Electricity — Demand disputed — Remedy provided by PSEB availed of — Consumer Forum cannot be approached.

Consumer Protection Act, 1986 — Section 15 — Electricity — Demand disputed — Complainant approached Disputes Settlement Committee of PSEB — Filed complaint pending that matter — Once complainant chooses to avail remedy provided by PSEB, he cannot approach District Forum under C.P. Act — Complaint wrongly allowed by Forum — Order set aside in appeal.

IV (2006) CPJ 222 (Punjab)

APPEAL — Maintainability — Order passed without considering documents or conduct of OP — Approach of Forum mechanical — Appeal maintainable — Matter remanded.

Consumer Protection Act, 1986 — Section 15 — Appeal — Maintainability — Order of Forum, dismissing complaint, under challenge — Forum simply repeated averments made in written version in its order — It failed to see conduct of OP — Various documents produced by complainant not taken into account — Approach of Forum quite mechanical — Fit case to order remand of matter back to Forum for its decision afresh.

IV (2006) CPJ 301 (T.N.)

BANKING AND FINANCIAL INSTITUTIONS SERVICES — Bank locker — Broken open — Theft of valuables and jewellery — Fraud committed by previous allottee in connivance with bank officers — Deficiency in service — Liability to pay damages as per valuation by valuer.

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Bank

locker — Broken open by previous allottee in connivance with Bank officials — All valuables and golden jewellery taken away — O.P. bank admitted that mistake committed by official inadvertently — Previous allottee admitted theft — His statement leaves no doubt that fraud was committed in connivance with Bank officers — Clear case of fraud played on complainants — Further, O.P. flouted guidelines of RBI by not maintaining locker register, locker key register, non-payment of rent dues, etc. — Deficiency in service proved — Bank liable — Damages as per valuation of loss by valuer.

IV (2006) CPJ 231 (NC)

- **Cheque deposited for encashment — O.P. bank sent same at wrong branch of issuing bank — Petitioner being beneficiary of service, suffered loss due to such mishandling — Hence consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Banking and Financial Services — Consumer — Beneficiary of service — Cheque handed over by petitioner to O.P. No. 2 — Latter had account with Canara Bank — Cheque deposited for encashment — O.P. No. 1 Canara Bank, sent cheque at wrong branch — Because of such wrong handling, petitioner suffered loss — Petitioner was beneficiary of services required to be rendered by Canara Bank — Petitioner consumer.

IV (2006) CPJ 274 (NC)

- **Cheque deposited for encashment — Presented to wrong branch — Deficiency in service — Compensation payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Cheque — Presentation for encashment — Presented to wrong branch — Complainant issued cheque drawn on PNB, Chandigarh — Impugned cheque presented by O.P. No. 1 to wrong branch of PNB — Because of such wrong handling of cheque by O.P. No. 1, complainant suffered loss — O.P. No. 1 bank liable to pay compensation of Rs. 10,000.

IV (2006) CPJ 274 (NC)

- **Company wound up — Repayment of maturity amount with interest — O.P.'s application before BIFR pending — After inquiry completed sale proceeds of company be distributed.**

Consumer Protection Act, 1986 — Section 21(b) — Banking and Financial Services — Repayment of amount with interest — O.P. had already refunded principal amount and also amount of interest due upto filing of complaint — Only dispute remains to be decided is regarding interest from date of filing complaint till payment of principal amount — O.P. filed application before BIFR, inquiry was pending there — State Commission took view that after completion of inquiry by BIFR, distribution of sale proceeds of assets of wound up Company could only be under supervision of Company Court — No interference required with impugned order, upheld.

IV (2006) CPJ 179 (NC)

O.P. No. 217/97

- **Consignment released without original documents — Price of goods not collected by bank — Liability of carrier and Bank — Extent of.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 14(1)(d) — Carriage by Air Act, 1972 — Rules 22(2), 25 — Cargo Services — Release of consignment without original documents — Liability of carrier — Extent of — Goods in question released by OP No. 1 carrier on basis of alleged fax copy of release note — Price of goods not collected by OP No. 3 Bank from notified party — Price remained unpaid to complainants — Complainant handed over package to carrier with special declaration of interest in delivery at destination and has paid 200% of normal freight charge — Carrier liable to pay sum not exceeding declared sum — Carrier cannot contend that its liability is limited — OP No. 3 Bank also negligent and deficient in service — Established by its own admission that documents were lost — Bank

liable for deficiency in service in not protecting valuable documents — Bank directed to pay rupees equivalent to 5,000 Pounds — Carrier liable to pay value of consignment with interest @ 12% p.a.

IV (2006) CPJ 276 (NC)

- **Credit limit reduced — Complainant's conduct disintitled him to avail sanctioned credit facilities — No deficiency in service.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Reduction of credit limit, non-issuance of Bank guarantee sought for — Conduct of complainant borrower questionable — Several irregularities committed by complainant, disintitling him to avail sanctioned credit facilities — Credit facilities renewed subject to certain conditions — Same not complied with by complainant till 20.11.1993 — Specific charge asked to be created by executing mortgage, delayed for about 6 months — Bank not deficient in rendering appropriate banking services sought for — No deficiency in service proved.

IV (2006) CPJ 328 (NC)

- **Deposits not paid — Week financial position of bank no ground to deny payment — Amount payable with interest and compensation.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Deposits — Non-payment of — Contention, Bank incurring loss, amount due to depositors would be returned as soon as financial position of bank improved — Contention not acceptable — Payment of due amount with interest together with compensation and cost directed.

IV (2006) CPJ 224 (T.N.)

- **Hire Purchase Agreement — Loan towards vehicle purchase — Repayment defaulted — Vehicle repossessed — Sold — OP to refund amount towards price of vehicle after adjusting unpaid instalment.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Loan towards purchase of vehicle — Forcible repossession of vehicle on default in making payments of instalments — O.Ps. willing to release vehicle subject to payment of balance outstanding amount — O.P. directed to refund amount towards contribution made by consumer as to price of vehicle and all cheques issued subsequent to period of possession, after adjusting unpaid instalments upto date at the time vehicle was repossessed.

IV (2006) CPJ 194 (Del.)

- **Hire Purchase Agreement — Vehicle forcibly repossessed — Sold at much lower price than market price — Dubious and mischievous practice — Compensation awarded.**

Consumer Protection Act, 1986 — Sections 2(1)(g) and 14(1)(d) — Banking and Financial Services — Hire purchase agreement — Forcibly taking possession of vehicle back — Sale at much lower price than market value — Dubious and mischievous practice proved — O.P. not permitted to execute agreement terms in unlawful manner by sending its employees to complainant's house and take forcible possession of vehicle — Forum directed Rs. 1 lac compensation — Amount on higher side — Same reduced to Rs. 50,000.

IV (2006) CPJ 351 (Del.)

- **Hire Purchase Agreement — Vehicle loan — Repayment defaulted — Vehicle seized — Act of seizure in unison with agreement — No deficiency in service.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Hire purchase agreement — Purchase of vehicle after availing car loan — Default in payment of instalments — Vehicle seized, repossessed by OP — Complaint alleging deficiency in service — Complainant earlier filed writ petition against seizure — Dissatisfied from

decision whereof *i.e.* present complaint filed only after exhausting civil procedure — Act of seizure of vehicle in unison with terms of agreement between parties — Parties bound by terms of contract — No merit in complaint.

IV (2006) CPJ 309 (W.B.)

- **Letter of Credit — Liability to pay amount thereof — Documents negotiated by O.P. only as advising bank — No liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Letter of credit — Liability to pay amount thereof — Letter of credit issued by Standard Chartered Bank — Dispute whether O.P. bank acted either as “nominated bank” or “advising bank” — Manifest from both letters of credit that there was no nominated bank — No evidence that O.P. bank was at any time authorised by said issuing bank to act as nominated bank on its behalf — Case of complainant consignor regarding O.P. being nominated bank cannot be accepted — Documents negotiated by O.P. only as advising bank — Responsibility for payment of LCs only of issuing bank — O.P. not liable to make payment of amount of LCs in question to complainant.

IV (2006) CPJ 184 (NC)

- **Loan — Sanction of — Security and process money received — Neither loan sanctioned nor money refunded — Deficiency in service — Liability to refund with interest.**

Consumer Protection Act, 1986 — Sections 25, 27 — Execution Proceedings — Non-compliance of Order — Banking and Financial Services — Sanction of loan — Amount towards security and process money received — O.P. neither sanctioned loan nor refunded money — This Commission directed refund of Rs. 27,000 with interest — Appeal and miscellaneous petition against order dismissed — Order of Commission became final — O.Ps. bound to comply with it — Order not been complied with even after passing of more than 13 years — Defaulting and unsuccessful O.Ps. evading compliance of order, taking advantage of provisions of Act — Compliance of order directed failing which warrants of arrest to be issued against O.Ps.

IV (2006) CPJ 236 (Ori.)

- **Maturity amount not paid — Case of fraud on *bona fide* depositor — Deficiency in service — OP liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Non-payment of deposited amount on maturity — Case of fraud committed by OP on *bona fide* depositor — Deposit of sum of Rs. 1 lakh in FD with OP not disputed — Denial to pay maturity value — Ground, complainant borrowed sum of Rs. 80,000 from OP on security of said Fixed Deposit — On basis of documents, cannot be concluded that complainant has borrowed such loan — If case of OP true, it was open for it to initiate proceedings against complainant either in Civil Court or by way of dispute under Karnataka Co-operative Societies Act — Not open to OP to retain amount payable to complainant — Deficiency in service proved — OP liable.

IV (2006) CPJ 322 (Kar.)

- **Travellers cheque lost — O.Ps. duly informed — Lost cheques not utilised — Complainant entitled to get back money.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Travellers cheque — Loss of — Issuance of duplicate cheques — Undisputedly, information regarding loss of cheques, sent to O.Ps. after informing police — Purchase agreement for travellers cheque provided for refund after its loss — Contentions of O.P., due care and caution not been taken by complainant as prudent person — Rejected — Present is not case of isolated loss of travellers cheque alone — Complainant also lost his passport and other valuables — Cheques not been utilised — Complainant entitled to get back money.

IV (2006) CPJ 161 (NC)

— **Tripartite Agreement — Bank failed to comply with terms thereof — Breach of obligation arising out of agreement — Compensation payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Tripartite agreement — Non-observance of terms thereof — Loan for purchase of land for plantation and maintenance of eucalyptus trees — Bank undertaken obligation of not only granting loan but also of inspection and ultimately sale of trees — Failure of bank to ensure sale of trees in terms of agreement — Breach of obligation arising out of agreement — Complainant had to pay Rs. 64,000 for loan of Rs. 32,525, requires to be compensated — Award of Rs. 25,000 compensation by State Commission justified.

IV (2006) CPJ 165 (NC)

BENEFICIARY OF SERVICE — Banking and Financial Institutions Services — Cheque deposited for encashment — O.P. bank sent same at wrong branch of issuing bank — Petitioner being beneficiary of service, suffered loss due to such mishandling — Hence consumer.

Consumer Protection Act, 1986 — Section 2(1)(d) — Banking and Financial Services — Consumer — Beneficiary of service — Cheque handed over by petitioner to O.P. No. 2 — Latter had account with Canara Bank — Cheque deposited for encashment — O.P. No. 1 Canara Bank, sent cheque at wrong branch — Because of such wrong handling, petitioner suffered loss — Petitioner was beneficiary of services required to be rendered by Canara Bank — Petitioner consumer.

IV (2006) CPJ 274 (NC)

BROKER — Transport Services — Consignment not delivered — Services of OPs 1 and 2, lorry brokers, hired for consideration — Further entrustment of consignment to OPs 3 and 4, would not absolve them from liability.

Consumer Protection Act, 1986 — Section 2(1)(g) — Transport Services — Consignment not delivered — Consignment entrusted to O.Ps. 1 and 2 for transportation, further entrusted to O.Ps. 3 and 4 (lorry owner and driver) — Liability for non-delivery of consignment denied by O.Ps. 1 and 2 on ground of their being lorry brokers only — Complaint against them dismissed by Forum — Award passed against O.Ps. 3 and 4 — Hence appeal — Complainants hired services of O.Ps. 1 and 2 on payment of consideration — Forum erred in holding that broker could not be held liable — O.Ps. 1 and 2 cannot escape liability, jointly liable to pay compensation.

IV (2006) CPJ 200 (T.N.)

CIVIL CONTRACT — Hire purchase agreement is civil contract(See Hire Purchase Agreement)

IV (2006) CPJ 351 (Del.)

CIVIL COURT DECREE — Adjudication of dispute by Civil Court — It no longer remains consumer dispute — Complainant to seek execution of decree, instead of filing complaint.

Consumer Protection Act, 1986 — Sections 2(1)(e) and 3 — Consumer Dispute — Jurisdiction of Consumer Fora — Delay in compliance of decree passed by Civil Court — Instead of executing decree, complaint filed before State Commission — After adjudication of dispute by Civil Court, same no longer remains consumer dispute — Provision under Section 3 cannot be involved for execution of decree — Complainant at liberty to approach Civil Court for relief.

IV (2006) CPJ 164 (NC)

COACHING CENTRES — Personal attention lacking — Quality of training unsatisfactory — Course left in between — Balance fees to be refunded.

Consumer Protection Act, 1986 — Sections 2(1)(g), 2(1)(r) — Educational Services — Coaching Centres — Lack of personalised attention — Quality of training being imparted unsatisfactory — Course being completed in hurried manner — Course left in between — Claim for refund of balance fees — Contention of OP, fees once paid not refundable, not acceptable — No service provider like OP, allowed to forfeit fees or consideration received in advance, in case student not availed service — Term that “fees once paid not refundable”, unconscionable as well as voidable and hence not actionable — Forum directed refund of balance fee and Rs. 5,000 compensation — Order upheld — Further cost of Rs. 25,000 imposed in appeal.

IV (2006) CPJ 255 (Del.)

COMMERCIAL ACTIVITY — Securities — Amount invested in UTI scheme — Investor consumer — Has no role to play in management, business or commercial activity of UTI — Such investment not commercial activity.

Consumer Protection Act, 1986 — Sections 2(1)(d), 2(1)(o) — Consumer — Investment of amount in UTI Scheme — Commercial activity — UTI corporation established to acquire holding, management and dispose of securities — Investor hires or avails of service to be rendered by UTI — Consideration is deposit or investment of money — Investor consumer — Service of any description rendered by Bank or financial institution covered under Act — Person investing amount with UTI or Bank for earning interest or dividend, not carrying out any commercial activity — He only invests amount — He has no role to participate in management, business or commercial activity of UTI — Investing amount with UTI not commercial activity.

IV (2006) CPJ 301 (NC)

COMMERCIAL PURPOSE — Machine purchased for self employment and for earning livelihood — Not a commercial purpose — Purchaser consumer.

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Allegation, machine purchased for commercial purposes — Rejected — Unrebutted fact that machine purchased for self-employment and for earning livelihood — Purchaser consumer.

IV (2006) CPJ 172 (NC)

COMPENSATION — Adequate relief — Award of 6% interest substituted by Rs. 25,000 compensation.

Consumer Protection Act, 1986 — Sections 14(1), 15 — Insurance — Adequate relief — Award of 6% interest along with insured sum — Challenge against — Appeal by insurer — Contention, complainants not completed all formalities, award of interest not sustainable — Accepted — Rs. 25,000 compensation in place of interest so awarded, sufficient compensation.

IV (2006) CPJ 298 (Punjab)

— **Award of interest — Relevant date — 3 months period to be allowed for settlement of claim by insurer — Awarding interest and compensation both — Double benefits — Unsustainable.**

Consumer Protection Act, 1986 — Section 14(1) — Compensation — Award of interest — Insurance — Interest awarded from date of preferring claim with Insurer — Unjustified — 3 months period to be allowed for settlement of claims by Insurer — Order of Forum modified — Interest to be awarded @ 9% p.a. — Grant of double benefits in form of interest and compensation also not sustainable — Award of compensation set aside.

IV (2006) CPJ 281 (Utt.)

— **Construction work not completed — Incomplete building valued — Amount paid by O.P. with interest @ 18% p.a. — Sufficient compensation — Award of Rs. 1 lakh**

compensation set aside.

Consumer Protection Act, 1986 — Section 14(1)(d) — Agreement — Non-completion of construction work — Entitlement to compensation — Quantum — Agreement for construction of house — Work not found to be progressing satisfactorily, incomplete — Admittedly, Rs. 5,15,000 received by O.P. — Valuation of incomplete building arrived at Rs. 3,97,391 — State Commission directed O.P. to pay remainder amount of Rs. 1,17,690 with interest @ 18% p.a. and Rs. 1,00,000 compensation — In view of return of excess amount with interest @ 18% p.a., Rs. 1 lac compensation would not stand — Interest @ 18% p.a., sufficient compensation.

IV (2006) CPJ 202 (NC)

- **Defective goods sold — Option with OP either to replace goods or refund purchase price with interest.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 14 and 15 — Compensation — Sale of defective goods — Direction either for replacement of goods or refund of purchase money — O.P. deficient in service for selling defective computer system — O.P. prepared to replace same by new one under renewed warranty of 1 year — Despite this, Forum straightaway ordered for refund of price with interest — Impugned order set aside — Option to O.P. to replace goods or else pay purchase price with interest.

IV (2006) CPJ 324 (M.P.)

- **Expeditious disposal of matters — Failure of — Government of NCT of Delhi deficient in not providing requisite number of District Fora, Benches of State Commission — Rs. 10,000/- compensation payable if complaint not decided within 1 year.**

Consumer Protection Act, 1986 — Section 13(3A) — Expeditious disposal of matters — Statutory period as prescribed by Section 13(3A), for decision of consumer disputes is 3 to 5 months — Government of NCT of Delhi guilty for deficiency in service in not providing service of arranging decision within prescribed period, by not providing requisite number of District Fora, Benches of State Commission — Direction issued, entitling consumer to compensation of Rs. 10,000 payable by Government of NCT of Delhi, if complaint not decided within period of 1 year.

IV (2006) CPJ 246 (Del.)

- **Eye operation — Treatment improper — Vision lost — Entitlement to compensation — Quantum — Rs. 1,25,000 awarded in accordance with provisions of Workmen's Compensation Act.**

Consumer Protection Act, 1986 — Sections 2(1)(g) and 14(1)(d) — Medical Negligence — Eye operation — Treatment improper, vision lost — Compensation — Quantum — Finding of State Commission holding O.Ps. medically negligent upheld — However, award of Rs. 2,20,000, without any basis — Complainant peon, salary presumed at Rs. 2,000 p.m. — As per provisions of Workmen's Compensation Act, for loss of one eye, 40% loss of income has to be considered — Annual loss Rs. 9,600 — For 10 years, Rs. 96,000 — Rounding it off, compensation comes to Rs. 1,00,000 — Rs. 25,000 towards medical expenses, etc. — Complainant entitled to Rs. 1,25,000.

IV (2006) CPJ 213 (NC)

- **Housing — Short fall in area, deficient construction — O.P. liable to pay Rs. 10,000 compensation besides cost incurred in removing defects.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Housing — Builder — Short fall in area, deficient construction — Deficiency in service proved — O.P. liable to pay Rs. 10,000 compensation, Rs. 14,625 towards cost of less area and Rs. 50,000 towards cost incurred in removing defects with interest @ 12% p.a.

IV (2006) CPJ 207 (NC)

- **Insurance — Loss due to flood — Rs. 50,000 awarded without any foundation — Unjustified.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Contractors All Risk Policy — Loss due to flood — State Commission awarded Rs. 50,000 against claim which estimated loss of over Rs. 16,68,997 — Award without any foundation — No ground shown to arrive at said figure — Grant of Rs. 50,000 not justified — This part of impugned order unsustainable.

IV (2006) CPJ 325 (NC)

- **Interest — Rate of — Granted @ 12% p.a. — Claim for enhancement — Prevailing rates even lower than awarded one — No scope for enhancement.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Compensation — Interest — Rate of — Prayer of complainant, to increase interest to 18% p.a. instead of 12% p.a. and also allow compensation — No merit in pleas — Prevailing interest rates even lower than awarded one *i.e.* 12% p.a. — In view of such award, no ground exists for granting any compensation.

IV (2006) CPJ 170 (NC)

- **Joy ride boating facility — Death of passengers — Quantum of compensation — Minors — No definite criteria — Formulae given by Second Schedule of Motor Vehicles Act can be adopted.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Compensation — Death of passengers while riding on boat — Quantum of compensation — Minors — No definite criteria — Just and proper to adopt formulae given by Second Schedule of Motor Vehicles Act — In case of minor or non-earning persons, notional income to be taken at Rs. 15,000 p.a. — For minors upto age of 15, multiplier of 15 prescribed — Compensation comes to Rs. 2,25,000 — Deducting 1/3rd therefrom towards self maintenance, amount comes to Rs. 1,50,000 — State Commission erred in awarding Rs. 50,000 or Rs. 60,000 on assumption that girls, after marriage, would not contribute anything to assets of parents — Assumption erroneous — Girls too are assets to parents — Act of 1988, clearly provides that compensation shall not be less than Rs. 1 lac — Accordingly, compensation in case of minor girls fixed at Rs. 1 lakh — Enhancement accordingly — Compensation in other cases enhanced to Rs. 1,25,000 and Rs. 1,50,000 based on age of victim.

IV (2006) CPJ 146 (NC)

- **Machinery broke down — Disproportionate relief awarded besides actual loss — Unjustified.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Compensation — Insurance — Breakdown of machinery covered — Compressor damaged — State Commission awarded disproportionate relief besides actual loss — Hence appeal by opposite party — State Commission awarded 12% interest on sum payable, 18% p.a. interest for same period as compensation and further sum of Rs. 25,000 towards loss as compensation sustained by complainant — Double compensation has been awarded — Order directing interest @ 12% p.a. for delayed settlement sustained, award of interest @ 18% p.a. set aside — No evidence to prove that complainant suffered loss and injury on account of failure of opposite party to settle claim — Award of Rs. 25,000 set aside.

IV (2006) CPJ 217 (NC)

- **Meaning, scope and object of.**

Words and Phrases — “Compensation “ — Meaning, scope, object and principles governing award of just compensation.

IV (2006) CPJ 219 (Raj.)

- **Quantum — Pecuniary and non-pecuniary damages — Patient subjected to operation of**

gall bladder — Death — Medical negligence proved — Rs. 1,50,000/- payable.

Consumer Protection Act, 1986 — Section 14(1)(d) — Compensation — Quantum — Case of medical negligence — Forum awarded Rs. 2,25,000 — Deceased aged 50 years, subjected to operation of gall bladder for stomach pain — Compensation awarded included damages for pecuniary loss suffered and damages for non-pecuniary loss — Forum awarded Rs. 70,000 towards pecuniary loss — Amount bifurcated under various heads — Award need not be interfered on this point — Towards non-pecuniary loss and negligence of doctors, Forum awarded Rs. 1,50,000 — Amount of Rs. 80,000 under this head is just, equitable and reasonable — O.Ps. liable to pay Rs. 1,50,000 instead of Rs. 2,25,000 — Order modified accordingly.

IV (2006) CPJ 219 (Raj.)

COMPLAINT — Maintainability — Bill towards arrears of water charges — Validly raised — Liability to pay — Complaint not maintainable.

Consumer Protection Act, 1986 — Section 2(1)(c) — Complaint — Maintainability — Bill issued towards arrears of water charges — Complainant was issued bill along with other residents of locality — Same not in contravention of any rules/regulations of appellant — Cannot, by any stretch of imagination, be called arbitrary or unjustified — Further, consequent to decision in CWP No. 1575, appellant entitled to raise arrears of bill pertaining to disputed period and also add surcharge on due amount — Complaint not maintainable — Liability to pay bill in question.

IV (2006) CPJ 296 (Cha.)

— Maintainability — Securities — Shares — Apparently stolen — Dispute be resolved by making introducing member, a necessary party — In its absence, complaint not maintainable.

Consumer Protection Act, 1986 — Section 2(1)(c) — Complaint — Maintainability — Impleadment of parties — Securities — Transfer of shares — Dispute as to who is introducing member — Shares appear to be stolen — Complainant paid amount to one 'SN' — M/s. Innova Securities credited amount to account of complainant consequent on transfer of shares to it — Contention of OP, M/s. Innova Securities is introducing member — In order to resolve dispute, it is necessary party — No relief can be granted to complainant in absence of it being made party to proceedings — Complaint liable to be dismissed.

IV (2006) CPJ 286 (Kar.)

CONSUMER — Banking and Financial Institutions Services — Cheque deposited for encashment — O.P. bank sent same at wrong branch of issuing bank — Petitioner being beneficiary of service, suffered loss due to such mishandling — Hence consumer.

Consumer Protection Act, 1986 — Section 2(1)(d) — Banking and Financial Services — Consumer — Beneficiary of service — Cheque handed over by petitioner to O.P. No. 2 — Latter had account with Canara Bank — Cheque deposited for encashment — O.P. No. 1 Canara Bank, sent cheque at wrong branch — Because of such wrong handling, petitioner suffered loss — Petitioner was beneficiary of services required to be rendered by Canara Bank — Petitioner consumer.

IV (2006) CPJ 274 (NC)

— Electricity — Connection sold — Not got transferred in name of purchaser — Legal heir of original owner and actual user, both consumers — Civil suit pending — Rights of parties subject to judgment therein.

Consumer Protection Act, 1986 — Sections 2(1)(d), 15 — Consumer — Electricity — Transfer of connection — Rights of legal heirs *vis-a-vis* actual users — Electricity connection existed in name of T — Same sold to 'S' — However, connection not got transferred in name of S from PSEB authorities — After death of T, connection inherited by his legal heirs — Complaint by

J, for direction to shift connection in his name — Same objected to by S — Civil suit between J and S pending — 'J' consumer, being legal heir of owner of connection — 'S' consumer being actual user of connection — Forum allowed complaint of J subject to judgment of Civil Court in said suit — Order upheld.

IV (2006) CPJ 304 (Punjab)

- **Housing — Reallotment — Subsequent allottee consumer — Entitled to all benefits available to original allottee.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Housing — Subsequent allottee — Plot initially allotted to 'C', purchased by complainant — Plot re-allotted to him, possession also offered — Subsequent allottee steps into shoes of original allottee — Entitled to all benefits of services, available to original allottee — Complainant consumer.

IV (2006) CPJ 250 (Har.)

- **Machine purchased for self employment and for earning livelihood — Not commercial purpose — Purchaser consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Allegation, machine purchased for commercial purposes — Rejected — Unrebutted fact that machine purchased for self-employment and for earning livelihood — Purchaser consumer.

IV (2006) CPJ 172 (NC)

- **Securities — Amount invested in UTI scheme — Investor consumer — Has no role to play in management, business or commercial activity of UTI — Such investment not commercial activity.**

Consumer Protection Act, 1986 — Sections 2(1)(d), 2(1)(o) — Consumer — Investment of amount in UTI Scheme — Commercial activity — UTI corporation established to acquire holding, management and dispose of securities — Investor hires or avails of service to be rendered by UTI — Consideration is deposit or investment of money — Investor consumer — Service of any description rendered by Bank or financial institution covered under Act — Person investing amount with UTI or Bank for earning interest or dividend, not carrying out any commercial activity — He only invests amount — He has no role to participate in management, business or commercial activity of UTI — Investing amount with UTI not commercial activity.

IV (2006) CPJ 301 (NC)

- **Telephone — Subscriber — Installation for use of HUF — Family members authorised to use, operate and maintain phone — Consumers.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Telephone — Subscriber thereof — Contention, not complainant, rather his NRI son, is subscriber of phone, complainant not consumer — Rejected — Telephone installed for use of HUF, headed by father — Family members authorised to use, operate and maintain phone — In such situation, plea that complainant not consumer, not acceptable specially when son is NRI — Complainant consumer — Complaint by him maintainable.

IV (2006) CPJ 253 (Bih.)

- **Transport Services — Consignment damaged — Claim settled by insurer — Complaint by consignor and insurer — Complainant not consumer.**

Consumer Protection Act, 1986 — Sections 2(1)(c) and 2(1)(d) — Consumer — Transport Services — Consignment damaged in fire accident — Claim settled by insurer by paying Rs. 14,68,110 — Complaint by consignor and insurer after obtaining letter of subrogation, assignment and General Power of Attorney — Complainant could not fall within definition of 'consumer' — Complaint by them, not maintainable.

IV (2006) CPJ 204 (NC)

— **Transport Services — Consignment damaged — Insurer settled claim — Joint complaint by insurer and consignor against OP — Lack of privity of contract — Insurer not consumer — OP not liable.**

Consumer Protection Act, 1986 — Section 15 — Transport Services — Consignment damaged during transit — Appeal against liability — Consignment insured — Insurer settled claim of consignor who in turn executed letter of subrogation in favour of insurer — Joint complaint filed by insurer and consignor — Allowed, carrier held liable — Hence present appeal — Contention, insurer not its consumer, no privity of contract existed between them, accepted — Complaint filed by insurer, even after making consignor as co-complainant not maintainable — No order could have been passed against appellant — impugned order set aside.

IV (2006) CPJ 302 (M.P.)

CONSUMER DISPUTE — Adjudication of dispute by Civil Court — It no longer remains consumer dispute — Complainant to seek execution of decree, instead of filing complaint.

Consumer Protection Act, 1986 — Sections 2(1)(e) and 3 — Consumer Dispute — Jurisdiction of Consumer Fora — Delay in compliance of decree passed by Civil Court — Instead of executing decree, complaint filed before State Commission — After adjudication of dispute by Civil Court, same no longer remains consumer dispute — Provision under Section 3 cannot be involved for execution of decree — Complainant at liberty to approach Civil Court for relief.

IV (2006) CPJ 164 (NC)

CONTRACTORS — Tubewell installed — Functioning defective — OP engaged only for boring and installation — No shortcomings noticed in excavation of bore and installation — OP not liable.

Consumer Protection Act, 1986 — Section 15 — Contractors — Installation of tubewell — Excavation of bore — Tubewell worked properly for 2-3 months, defects developed thereafter — Duty of complainant to have examined expert evidence to establish exact cause of non-functioning of tubewell — Services of O.P. only engaged for boring and installation — Not concerned with purchase of tubewell material or functioning of air compressor or submersible pumps — No evidence to establish that any shortcomings were noticed in excavation of tubewell bore and in its installation — O.P. not liable — No deficiency in service proved.

IV (2006) CPJ 325 (Har.)

CONTRACTUAL SERVICES — Joy ride boating facility — Passengers beyond seating capacity accommodated — Boat capsized — 22 passengers died — Liability of Municipal Corporation and contractor joint and several.

Consumer Protection Act, 1986 — Section 2(1)(g) — Bombay Provincial Municipal Corporation Act, 1949 — Section 66 — Joy ride boating facility — Accommodating passengers beyond seating capacity of boat — Accident — Death of 22 passengers — Liability of Municipal Corporation *vis-a-vis* contractor M/s. Aqua Sports — Carrying passengers in excess, resulted in catastrophe of boat being capsized in lake — Undoubtedly 'Aqua Sports' liable for damages — Primary liability is of 'Aqua Sports' — Boating activity carried out by 'Aqua Sports' on behalf of Corporation — Entire control regarding same vested in Corporation — Contractor was only permitted to charge fixed amount for each ticket — Rate of tickets also fixed by Corporation, that too in prescribed form — Entire boating equipment belonged to it — Licence to operate boating club given to 'Aqua Sports' only for limited period — Corporation cannot disown its liability in case of deficiency by licensee — Corporation and 'Aqua Sports' jointly and severally liable.

IV (2006) CPJ 146 (NC)

**EARTHQUAKE — Insurance — Damage to property — Not direct result of earthquake
.....(see Insurance)**

IV (2006) CPJ 238 (Cha.)

EDUCATIONAL SERVICES — Coaching Centres — Personal attention lacking — Quality of training unsatisfactory — Course left in between — Balance fees to be refunded.

Consumer Protection Act, 1986 — Sections 2(1)(g), 2(1)(r) — Educational Services — Coaching Centres — Lack of personalised attention — Quality of training being imparted unsatisfactory — Course being completed in hurried manner — Course left in between — Claim for refund of balance fees — Contention of OP, fees once paid not refundable, not acceptable — No service provider like OP, allowed to forfeit fees or consideration received in advance, in case student not availed service — Term that “fees once paid not refundable”, unconscionable as well as voidable and hence not actionable — Forum directed refund of balance fee and Rs. 5,000 compensation — Order upheld — Further cost of Rs. 25,000 imposed in appeal.

IV (2006) CPJ 255 (Del.)

— **Exam — Permission to sit denied — Admission form and fee not forwarded to Education Board — Deficiency in service.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Educational Services — Denial of permission to sit in exam — O.P. failed to forward admission form and deposited fee to Education Board — Resultantly Roll Number was not issued — Loss of one precious year of student — Clear-cut deficiency in service proved — Complaint rightly allowed — Compensation awarded.

IV (2006) CPJ 224 (NC)

— **Fees — Charging in advance for period for which service yet to be provided — Unfair trade practice — Directions issued.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 2(1)(r) — Educational Services — Charging fees in advance — OP charged fee/consideration in lump sum for period for which service was yet to be provided — Same highly unethical, unscrupulous and amounts to unfair trade practice — It is indirect way for OP to earn large amount of money and to earn undue profit by exploiting poor students — Direction issued to all training imparting institutes, educational centres, etc., not to charge fee for whole duration of course in advance by way of lump sum payment.

IV (2006) CPJ 255 (Del.)

— **Fees — Charging maintenance and development fund — Same not directly related to imparting of education — Practice uncalled for.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Educational Services — Receiving fees towards purpose not directly related to imparting of education — Charging of maintenance fund or development charges — Such practice uncalled for — To charge such funds is unfair, unethical and unscrupulous practice — Sole responsibility of school to set up full-fledged institute before starting it — School can only charge consideration for imparting education and not for maintenance or building fund or any other kind of fund or charge not directly related to service of imparting education.

IV (2006) CPJ 246 (Del.)

— **School leaving certificate — Student entitled to, as matter of right — No amount to be charged for its issuance.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Educational Services — School leaving certificate — Issuance of — Charging of amount therefor — No rule produced, entitling OP school to charge fee from student for issuance of school leaving certificate — Same is matter

of right for student to obtain such certificate free of charge — Consideration for issuing said certificate, inherent in fees and other charges paid by students during period when he obtained education — OP rightly held liable to refund same.

IV (2006) CPJ 246 (Del.)

- **School picnic on river bank — Student died by drowning — Teachers failed to make arrangements for safety — Negligence — Compensation awarded.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Educational Services — School picnic — Negligence — Failure to make adequate arrangements to ensure that no untoward incident takes place — Entitlement to compensation — School students taken on picnic on bank of river — Death of one student due to drowning — Sheer negligence on part of teachers who accompanied students — Opponents failed to take any steps to verify and check safety aspect before taking number of students for picnic — Majority of students went in water — Deceased with one more student slipped away and went ahead, leaving other students and teachers at place where water was knee deep — Place where student drowned was more than 6 feet deep— Teachers not even aware that deceased went ahead, farther away in water — Teachers supervising only those students who were nearby place where they were standing in water — Teachers ought to have kept their vigil on all students — In instant case, possibility of untoward incident was more, looking to age group of students — Failure to take precaution, suggests negligence of school authorities — It was their duty to have safeguarded lives of students — Opponents liable — Compensation assessed at Rs. 3,38,000.

IV (2006) CPJ 275 (Guj.)

- **ELECTRICITY — Bill illegal — Issued for period even when complainant's factory, having seasonal business, remained closed — Demand bad in law — Quashed.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Electricity — Bill illegal — Quashment of — Complainant running ice factory, had seasonal business — O.P. was informed that factory will remain closed from 1.11.1990 to 31.3.1991 — Still bill towards minimum charges raised for month of March, 1991 — No such bill raised for period 1.11.1990 to 28.2.1991 — Same indicates that O.P. treated factory as seasonal industry — Demand in question thus bad in law — Bill rightly quashed.

IV (2006) CPJ 177 (NC)

- **Charges not paid — Supply disconnected — Liability to pay minimum charges even during period of disconnection.**

Consumer Protection Act, 1986 — Section 21(b) — Electricity — Connection disconnected — Liability to pay minimum charges during period of disconnection — As per board order, concession of proportionate reduction in minimum charges not to be extended to customer whose electricity supply gets disconnected for not having cleared electricity charges — Admittedly, complainant was in arrears of dues — Liability to pay minimum charges even during said period.

IV (2006) CPJ 320 (NC)

- **Connection sold — Not got transferred in name of purchaser — Legal heir of original owner and actual user, both consumers — Civil suit pending — Rights of parties subject to judgment therein.**

Consumer Protection Act, 1986 — Sections 2(1)(d), 15 — Consumer — Electricity — Transfer of connection — Rights of legal heirs *vis-a-vis* actual users — Electricity connection existed in name of T — Same sold to 'S' — However, connection not got transferred in name of S from PSEB authorities — After death of T, connection inherited by his legal heirs — Complaint by J, for direction to shift connection in his name — Same objected to by S — Civil suit between J and S pending — 'J' consumer, being legal heir of owner of connection — 'S' consumer being actual user of connection — Forum allowed complaint of J subject to judgment of Civil

Court in said suit — Order upheld.

IV (2006) CPJ 304 (Punjab)

- **Demand disputed — Remedy provided by PSEB availed of — Consumer Forum cannot be approached.**

Consumer Protection Act, 1986 — Section 15 — Electricity — Demand disputed — Complainant approached Disputes Settlement Committee of PSEB — Filed complaint pending that matter — Once complainant chooses to avail remedy provided by PSEB, he cannot approach District Forum under C.P. Act — Complaint wrongly allowed by Forum — Order set aside in appeal.

IV (2006) CPJ 222 (Punjab)

- **Farmer suffered loss of crops — Poles broken — Supply stopped — Not restored — Deficiency in service proved — Compensation awarded.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Electricity — Poles broken — Supply stopped — Failure to restore — Complainant farmer, required electricity for running of tubewell — Due to non-supply he suffered loss of crops — Details of damages disclosed — Deficiency in service proved — Award of compensation upheld.

IV (2006) CPJ 331 (NC)

- **Limitation — Continuous power not supplied — Permanent disconnection at request of complainant on 22.9.1998 — Cause of action arose on said date — Complaint in 1995, time barred.**

Consumer Protection Act, 1986 — Section 24A — Limitation Act, 1963 — Article 44 — Limitation — Electricity — Complaint alleging non-supply of continuous power to unit of complainant — Connection permanently disconnected at request of complainant, on 22.9.1988 — Cause of action, if any, to file complaint arose on 22.9.1988 itself — This date has to be taken as starting point of limitation — Complaint filed in August, 1995, hopelessly barred by limitation — Complainant prayed for condonation of delay — No reasons therefor, been disclosed — On relevant date, *i.e.* 22.9.1988, no limitation for filing complaint was prescribed — Suit for recovery of compensation amount could have been filed within 3 years of accrual of cause of action on analogy of Article 44 of Schedule of Act of 1963 — Complaint, being time-barred, not maintainable.

IV (2006) CPJ 264 (NC)

- **Theft of energy — Load used unauthorisedly, in excess of sanctioned one — Liability to pay penalty.**

Consumer Protection Act, 1986 — Sections 2(1)(g) and 15 — Electricity — Theft of energy — Imposition of penalty — Complainant, having installed tubewell, was sanctioned load of 5 BHP for operating same — Found that complainants were running load of 10 BHP unauthorisedly instead of sanctioned one and were having direct supply — Accordingly penalty imposed — Complaint partly allowed by Forum, O.Ps. directed to recover only 50% of penalty amount imposed — Order not justified — Once proved that complainants used unauthorised load to extent of 5 BHP, they are liable to pay whole of penalty.

IV (2006) CPJ 320 (Cha.)

- **Theft of energy — Tampering of meter seals alleged — Theft not proved — Penalty quashed.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Electricity — Theft of energy — Failure to prove — Meter seals alleged to have been tampered with — Merely because M & T seals tampered with and terminal seal missing, case of theft of energy not made out — Incumbent

upon opposite party to instal parallel meter and not difference in energy consumed in both meters — Meter not got checked from M & T Laboratory that it ran slow or improperly — Theft of energy not proved — Penalty imposed by opposite party quashed.

IV (2006) CPJ 193 (Cha.)

EMPLOYEES' STATE INSURANCE — Complaint by employee — Medical reimbursement claimed — Case covered by Act of 1948 — Forum lacks jurisdiction.

Consumer Protection Act, 1986 — Sections 11, 17, 21 — Employees' State Insurance Act, 1948 — Section 75(3) — Jurisdiction of Fora — Complaint alleging non-payment of medical reimbursement bills under Act of 1948 — Allowed by Forum — Hence appeal — As per Section 75(3), in matters relating to cases covered by Act of 1948, Consumer Fora have no jurisdiction — Complaint wrongly allowed — Impugned order set aside.

IV (2006) CPJ 312 (H.P.)

ENTERTAINMENT — Joy ride boating facility — Death of passengers (see Compensation)

IV (2006) CPJ 146 (NC)

— **Joy ride boating facility — Passengers beyond seating capacity accommodated — Boat capsized — 22 passengers died — Liability of Municipal Corporation and contractor joint and several.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Bombay Provincial Municipal Corporation Act, 1949 — Section 66 — Joy ride boating facility — Accommodating passengers beyond seating capacity of boat — Accident — Death of 22 passengers — Liability of Municipal Corporation *vis-a-vis* contractor M/s. Aqua Sports — Carrying passengers in excess, resulted in catastrophe of boat being capsized in lake — Undoubtedly 'Aqua Sports' liable for damages — Primary liability is of 'Aqua Sports' — Boating activity carried out by 'Aqua Sports' on behalf of Coporation — Entire control regarding same vested in Corporation — Contractor was only permitted to charge fixed amount for each ticket — Rate of tickets also fixed by Corporation, that too in prescribed form — Entire boating equipment belonged to it — Licence to operate boating club given to 'Aqua Sports' only for limited period — Corporation cannot disown its liability in case of deficiency by licensee — Corporation and 'Aqua Sports' jointly and severally liable.

IV (2006) CPJ 146 (NC)

EVIDENCE — Motor Vehicles — Manufacturing defects — Proof of — Evidence of unqualified mechanic not reliable.

Evidence — Motor Vehicles — Manufacturing defects — Proof of — Evidence of mechanic, who is not qualified and has not undergone any training programme to repair vehicles, cannot be relied upon.

IV (2006) CPJ 339 (Pond.)

EXCISE DUTY — Motor Vehicles — Vehicle purchased — Excise duty concession available at relevant time — Liability to refund — Dealer's-manufacturer not necessary party.

Consumer Protection Act, 1986 — Section 2(1)(g) — Motor Vehicles — Liability to refund excise duty — Dealer *vis-a-vis* manufacturer — Purchase of van under taxi quota — Excise duty concession available at relevant time — Complaint against dealer seeking refund of same — Contention, manufacturer Maruti Udyog Ltd. necessary party in this case, amount to be refunded by them only, rejected — Contract between dealer and purchaser — Not necessary to make MUL as party — Responsibility of dealer to obtain refund of excise duty concession from it — Deficiency in service proved — Order of Fora below directing refund of same along with interest, upheld.

IV (2006) CPJ 270 (NC)

EXECUTION PROCEEDINGS — Order directing refund — No compliance even after 13 years — Compliance directed — Failing which, arrest warrants be issued.

Consumer Protection Act, 1986 — Sections 25, 27 — Execution Proceedings — Non-compliance of Order — Banking and Financial Services — Sanction of loan — Amount towards security and process money received — O.P. neither sanctioned loan nor refunded money — This Commission directed refund of Rs. 27,000 with interest — Appeal and miscellaneous petition against order dismissed — Order of Commission became final — O.Ps. bound to comply with it — Order not been complied with even after passing of more than 13 years — Defaulting and unsuccessful O.Ps. evading compliance of order, taking advantage of provisions of Act — Compliance of order directed failing which warrants of arrest to be issued against O.Ps.

IV (2006) CPJ 236 (Ori.)

EXPEDITIOUS DISPOSAL OF MATTERS — Failure of — Government of NCT of Delhi deficient in not providing requisite number of District Foras, Benches of State Commission — Rs. 10,000 compensation payable if complaint not decided within 1 year (see Practice and Procedure)

IV (2006) CPJ 246 (Del.)

GOODS — Defective — Option with OP either to replace goods or refund purchase price with interest.

Consumer Protection Act, 1986 — Sections 2(1)(g), 14 and 15 — Compensation — Sale of defective goods — Direction either for replacement of goods or refund of purchase money — O.P. deficient in service for selling defective computer system — O.P. prepared to replace same by new one under renewed warranty of 1 year — Despite this, Forum straightaway ordered for refund of price with interest — Impugned order set aside — Option to O.P. to replace goods or else pay purchase price with interest.

IV (2006) CPJ 324 (M.P.)

— Machine purchased — Inordinate delay in installing — Improper functioning — Deficiency in service — Refund of price with interest and compensation awarded.

Consumer Protection Act, 1986 — Section 2(1)(g) — Goods — Blow moulding and injection moulding machine — Inordinate delay in installing — Machine not working properly despite several visits by O.P. to rectify defects — Non-performance and improper functioning of machine admitted — Deficiency in service proved — Refund of cost of machine and expenditure on octroi and transportation along with interest directed — Rs. 20,000 compensation awarded.

IV (2006) CPJ 172 (NC)

GOVERNMENT ORDER — Insurance — Property destructed as per Government order — Exclusion clause applicable — Insurer not liable.

Consumer Protection Act, 1986 — Section 15 — Insurance — Exclusion clause — Applicability — Destruction of property as per Government order — In view of exclusion clause under policy, complainant not entitled for compensation in case there is any destruction by order of Government or any lawfully constituted Authority — In present case, property demolished since construction not in accordance with law and bye-laws — Forum right in dismissing complaint — Order upheld.

IV (2006) CPJ 227 (Kar.)

HUF — Telephone — Subscriber — Installation for use of HUF — Family members authorised to use, operate and maintain phone — Consumers.

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Telephone — Subscriber thereof — Contention, not complainant, rather his NRI son, is subscriber of phone, complainant not consumer — Rejected — Telephone installed for use of HUF, headed by father — Family members authorised to use, operate and maintain phone — In such situation, plea that complainant not consumer, not acceptable specially when son is NRI —

Complainant consumer — Complaint by him maintainable.

IV (2006) CPJ 253 (Bih.)

HIRE PURCHASE AGREEMENT — Civil Contract — Dispute to be settled through civil remedy, not through musclemen.

Hire Purchase Agreement — Is civil contract — Dispute arising therefrom has to be settled by way of civil remedy, not through musclemen.

IV (2006) CPJ 351 (Del.)

— **Vehicle forcibly repossessed — Sold at much lower price than market price — Dubious and mischievous practice — Compensation awarded.**

Consumer Protection Act, 1986 — Sections 2(1)(g) and 14(1)(d) — Banking and Financial Services — Hire purchase agreement — Forcibly taking possession of vehicle back — Sale at much lower price than market value — Dubious and mischievous practice proved — O.P. not permitted to execute agreement terms in unlawful manner by sending its employees to complainant's house and take forcible possession of vehicle — Forum directed Rs. 1 lac compensation — Amount on higher side — Same reduced to Rs. 50,000.

IV (2006) CPJ 351 (Del.)

— **Vehicle loan — Repayment defaulted — Vehicle seized — Act of seizure in unison with agreement — No deficiency in service.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Hire purchase agreement — Purchase of vehicle after availing car loan — Default in payment of instalments — Vehicle seized, repossessed by OP — Complaint alleging deficiency in service — Complainant earlier filed writ petition against seizure — Dissatisfied from decision whereof *i.e.* present complaint filed only after exhausting civil procedure — Act of seizure of vehicle in unison with terms of agreement between parties — Parties bound by terms of contract — No merit in complaint.

IV (2006) CPJ 309 (W.B.)

HOUSING — Allotment — Amenities not provided even after 10 years — Interest on deposited amount payable as per HUDA rules and regulations.

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Allotment — Possession to be delivered on completion of development work — Admittedly, 40% of total sale price *i.e.* Rs. 1,68,000 paid to opposite party — Development not been made and possession not offered within reasonable time — Allotment in 1988 — Amenities not provided till 1998 — Forum justified in directing opposite party to pay interest on deposited amount as per HUDA rules and regulations and to charge balance sale consideration from complainant along with interest on delayed payments — Order upheld.

IV (2006) CPJ 203 (Cha.)

— **Allotment — Cancelled after 33 years — No notice served — Not only unfair trade practice, also deficiency in service — Either allotment or payment of Rs. 25 lacs directed.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 2(1)(r) — Unfair Trade Practices — Housing — Allotment cancelled after 33 years despite having accepted various payments towards illegal demands of OP in form of External Development Charges — Allotment cancelled without serving notice upon complainant — Not only unfair trade practices but also deficiency in service on part of OP proved — OP directed either to allot plot in name of complainant or to pay Rs. 25 lacs compensation.

IV (2006) CPJ 289 (Del.)

— **Allotment — Conveyance deed executed — Complainant being plot owner, entitled to sell.**

Consumer Protection Act, 1986 — Section 15 — Housing — Allotment — Physical possession handed over — Conveyance-Deed executed in favour of complainant — Right to sell plot in question — Denied by OP, since dispute relating to certain demands was pending before State Commission — Forum rejected stand of OP — Directed OP to grant necessary permission to complainant for transfer of plot, after latter furnished indemnity bond — Complainant being owner of plot is entitled to sell — OP cannot unreasonably refuse such permission — Stand of OP meritless — Directions of Forum upheld.

IV (2006) CPJ 258 (Har.)

- **Allotment — Site changed — Allotted property not in conformity with original one — Action of O.P. illegal and arbitrary — Refund of amount with interest and costs directed.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Selection for allotment at particular site — Allotment changed to another sector — Estimated cost and payment schedule also changed — Allotted property not in conformity with original allotment — Complainant not willing to accept same — Action of O.P. in changing allotment, illegal and arbitrary — State Commission directed refund of deposited amount with interest 18% p.a. and to pay costs of Rs. 50,000 — Order upheld.

IV (2006) CPJ 225 (NC)

- **Builder — Construction deficient — Deficiency in service — Cost towards removal of deficiencies payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Builder — Deficient construction — Inspection report of architect noted item wise details of deficiency and also reflected cost of removing said deficiencies — Report remains unrebutted — Deficiency in service proved — State Commission awarded only Rs. 50,000 against claim of Rs. 66,600 — Award upheld.

IV (2006) CPJ 207 (NC)

- **Builder — Excess charging alleged — No receipt on record — No compensation awardable on such count.**

Consumer Protection Act, 1986 — Section 15 — Housing — Builder — Excess charging of amount — Proof — Contention of complainant having made payment of Rs. 5,000 — No receipt on record — In absence of receipt, contention not acceptable — Further allegation of having paid Rs. 5,000, supported by receipt — Signatures of O.P. on said receipt not at all matching with signatures on other receipts — Authenticity of receipt doubted — State Commission awarded Rs. 10,000 on such count — This part of order not sustainable for want of proof and lack of evidence.

IV (2006) CPJ 207 (NC)

- **Builder — Short fall in area agreed upon — Deficiency in service — Cost of less area payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Builder — Short-fall in area — Liability of builder — As per agreement, complainant entitled to 713 sq. ft. built-up area — Area of flat handed over, measured 648 sq. ft. — Same contrary to terms of agreement — Deficiency in service proved — O.P. liable to pay Rs. 14,625 towards cost of less area.

IV (2006) CPJ 207 (NC)

- **Builder — Short fall in area, deficient construction — O.P. liable to pay Rs. 10,000 compensation besides cost incurred in removing defects.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Housing — Builder — Short fall in area, deficient construction — Deficiency in service proved — O.P. liable to pay Rs. 10,000 compensation, Rs. 14,625 towards cost of less area and Rs. 50,000 towards cost incurred in removing defects with interest @ 12% p.a.

IV (2006) CPJ 207 (NC)

- **Draw of lots for allotment — Complainant's name not included — No allotment even after 19 years — Deficiency in service — Adequate compensation to be awarded.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 14(1)(d) — Housing — Non-inclusion of complainant's name in draw of lots for allotment — No allotment even after 19 years — Deficiency in service proved — Complainant entitled to compensation — Forum awarded Rs. 3 lakh compensation — Complainant been liberally compensated — Award not justified — Undoubtedly, there should be award for escalation in costs of construction — In absence of evidence in this regard, award cannot be sustained — Said part of order set aside — Matter remanded to Forum to decide adequate compensation.

IV (2006) CPJ 219 (NC)

- **Plot allotted — Overhead high tension electric line — Inability to carry out construction — Deficiency in service — Refund of amount with interest directed.**

Consumer Protection Act, 1986 — Sections 2(1)(g) and 15 — Housing — Allotment — Plot covered with overhead high tension electric line — Letter offering possession rendered meaningless as complainant could not carry out any construction over plot, on account of existence of said line — No evidence to establish on which date overhead lines were removed — Deficiency in service proved — Forum allowed complaint — Directed to issue fresh offer of possession of plot in question and to refund amount of interest and extension fee with interest @ 10% p.a. — No fault can be found with order of Forum — Upheld.

IV (2006) CPJ 250 (Har.)

- **Possession delayed — Deficiency in service — Entitlement to compensation.**

Consumer Protection Act, 1986 — Sections 2(1)(g) and 14(1)(d) — Housing — Delay in handing over possession — Entitlement to compensation — O.P. explained delay by stating that complainant belatedly furnished certain documents required to be submitted by him — Documents and challan of last instalment furnished on 22.1.1996 — Conveyance papers issued by O.P. in year 1999 — Deficiency in service proved — Rs. 30,000 compensation awarded.

IV (2006) CPJ 225 (Del.)

- **Possession inordinately delayed — Deficiency in service — Entitlement to compensation.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Inordinate delay in delivery of flat — Entitlement to compensation — Complainant underwent mental agony due to belated delivery — Same swelled due to unexpected and unilateral escalation of price — Deficiency in service proved — Rs. 20,000 compensation awarded.

IV (2006) CPJ 218 (Ori.)

- **Reallotment — Subsequent allottee consumer — Entitled to all benefits available to original allottee.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Housing — Subsequent allottee — Plot initially allotted to 'C', purchased by complainant — Plot re-allotted to him, possession also offered — Subsequent allottee steps into shoes of original allottee — Entitled to all benefits of services, available to original allottee — Complainant consumer.

IV (2006) CPJ 250 (Har.)

- **IMPLEADMENT OF PARTIES — Motor Vehicles — Vehicle purchased — Excise duty concession available at relevant time — Liability to refund — Dealer's-manufacturer not necessary party.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Motor Vehicles — Liability to refund excise duty — Dealer *vis-a-vis* manufacturer — Purchase of van under taxi quota — Excise

duty concession available at relevant time — Complaint against dealer seeking refund of same — Contention, manufacturer Maruti Udyog Ltd. necessary party in this case, amount to be refunded by them only, rejected — Contract between dealer and purchaser — Not necessary to make MUL as party — Responsibility of dealer to obtain refund of excise duty concession from it — Deficiency in service proved — Order of Fora below directing refund of same along with interest, upheld.

IV (2006) CPJ 270 (NC)

- **Securities — Shares — Apparently stolen — Dispute be resolved by making introducing member, a necessary party — In its absence, complaint not maintainable.**

Consumer Protection Act, 1986 — Section 2(1)(c) — Complaint — Maintainability — Impleadment of parties — Securities — Transfer of shares — Dispute as to who is introducing member — Shares appear to be stolen — Complainant paid amount to one 'SN' — M/s. Innova Securities credited amount to account of complainant consequent on transfer of shares to it — Contention of OP, M/s. Innova Securities is introducing member — In order to resolve dispute, it is necessary party — No relief can be granted to complainant in absence of it being made party to proceedings — Complaint liable to be dismissed.

IV (2006) CPJ 286 (Kar.)

- **INSURANCE — Accident benefits — Available only when disability comes strictly under policy clauses.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Accident benefits — Available in case of permanent disability and death resulting from accident — Strict construction of policy clauses — Insured met with accident, left arm amputated — Claim declined — Contention, as per policy, to bring case under clause, permanent disability deemed to have taken place if one hand at or above wrist and one foot at or above ankle are amputated or cut simultaneously, accepted — Not so in present case — Injury of complainant not comes under "permanent disability" — Accident benefits available only when disability comes strictly under definition as provided in policy — Insurer not liable.

IV (2006) CPJ 292 (Punjab)

- **Accident claim — Double benefits — Relief granted beyond terms and conditions of policy — Order erroneous — Double benefits not available.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Double accident benefits — Granting relief beyond terms and conditions of policy — Legality — Policy provided for payment of additional sum equal to sum assured if bodily injury causes death of assured within period of 120 days of its occurrence — In present case accident occurred on 14.9.1997 — Assured suffered severe head injury — Went into coma — Ultimately died on 7.5.1999 *i.e.*, more than 120 days after deceased suffered head injury — Forum observed clause of 120 days not applicable to brain injury — Not explainable as to how such interpretation was made — Said clause did not speak of body injury regarding any particular portion of body — Forum cannot rewrite contract of insurance and direct insurer to act in violation of terms of policy — Further, fact that policy lapsed on account of non-payment of premium due under it, cannot be ignored — O.P. fully justified in paying *ex gratia* payment — Double benefit not available to complainant — Forum erred in granting reliefs beyond terms and conditions of policy — Order set aside.

IV (2006) CPJ 344 (Har.)

- **Accident claims — Extent of award — No ceiling fixed in policy — Sum assured payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Personal Accident Policies — Award of claims thereunder — Extent of — 2 policies taken — Sum assured was Rs. 5 lacs and Rs. 10 lacs — Claims of assignees not accepted — Contention of OPs, maximum limit of single or more than one policy was Rs. 10 lacs only, assignees cannot avail benefit of assured

sum more than that limit — No ceiling fixed in policy regarding sum assured under said policies — No contract between parties about combined liability — Contention that there was ceiling of Rs. 10 lacs, demolished — Insurer liable to pay sum assured under policies.

IV (2006) CPJ 281 (Utt.)

- **Accident due to boating activity — Death of 22 passengers — Liability of insurer — Extent of — Rs. 20 lacs payable for single accident, maximum liability Rs. 80 lacs — For 22 accidents, latter amount payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Liability of Insurer — Extent of — Insurer, while issuing first policy, committed mistake regarding printed terms and conditions in prescribed form — No mistake regarding material part of insurance coverage in case of accident due to boating activity — As per policy, insurer liable to pay Rs. 20 lacs for any one accident and Rs. 80 lakh in one year — In instant case, 22 persons died in alleged accident — *i.e.* 22 accidents occurred — Insurer liable to indemnify Rs. 20 lakh to claimants in respect of every single death — However, since maximum liability undertaken for one year is Rs. 80 lakh, Insurer liable upto that extent only.

IV (2006) CPJ 146 (NC)

- **Accident of stationary vehicle — Question of validity of driving licence of driver wholly irrelevant.**

Consumer Protection Act, 1986 — Section 15 — Motor Vehicles Act, 1988 — Sections 122, 126 — Insurance — Accident while vehicle remained stationary — Relevance of issue regarding validity/invalidity of driving licence of driver — If stationary vehicle is hit by any vehicle, question of validity of licence of driver of stationary vehicle, wholly irrelevant.

IV (2006) CPJ 261 (Punjab)

- **Assessment of loss — Surveyor not permitted to enter premises — Complainant failed to render possible assistance — Claimed amount cannot be awarded.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Failure to establish quantum of loss — Surveyor not permitted to enter premises to assess loss — Insured, by not helping insurers, failed to discharge his obligations to render all possible assistance to enable him to assess loss — Further, no evidence about quantity of stocks at accident time — State Commission exceeded its jurisdiction in awarding claimed amount — Order set aside — Complainant liable to refund amount already paid by insurer.

IV (2006) CPJ 210 (NC)

- **Assured died — Payment of sum insured — Entitlement of proposer/assignee/nominee.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Payment of insured sum — Entitlement of proposer/assignees/nominees as case may be — Policy taken by father in name of minor son — Death of insured after having attained majority — In present case, admittedly, there is no nominee — Entire policy amount payable to proposer father.

IV (2006) CPJ 298 (Punjab)

- **Award of interest — Relevant date — 3 months period to be allowed for settlement of claim by insurer — Awarding interest and compensation both — Double benefits — Unsustainable.**

Consumer Protection Act, 1986 — Section 14(1) — Compensation — Award of interest — Insurance — Interest awarded from date of preferring claim with Insurer — Unjustified — 3 months period to be allowed for settlement of claims by Insurer — Order of Forum modified — Interest to be awarded @ 9% p.a. — Grant of double benefits in form of interest and compensation also not sustainable — Award of compensation set aside.

IV (2006) CPJ 281 (Utt.)

- **Burglary in factory — Insurer was belatedly informed — Surveyor could not carry out investigation in time — Complainant negligent — O.P. not liable.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Factory insured — Burglary — Late intimation to insurer — Complainant took over 3½ months to inform episode of theft — Same deprived insurer to appoint Surveyor in time to carry out investigation of loss on spot — Negligence/deficiency on part of complainant proved.

IV (2006) CPJ 210 (NC)

- **Damage to stationed vehicle — Cleaner died — Cannot be said vehicle left unattended — Insurer liable.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Damage to insured truck, death of cleaner — Repudiation of claim — Justifiability — Truck in question stationed on extreme left side after its shaft broke down — Another truck came from behind and banged into it — Extensive damage caused to truck, cleaner also died — Claim repudiated on ground that truck left unattended after its breaking down — Unjustified — Since cleaner died at spot, can be said that he was very much attending to it — Insurer liable.

IV (2006) CPJ 261 (Punjab)

- **Double accident benefits — Entitlement — Death in rail accident established — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Life Insurance — Double accident benefits — Award of — Repudiation of claim — Legality of — Death of assured in rail accident — Contention of O.P., deceased suffered from brain disorder, concealed same, death not due to rail accident, suicide clause as per terms of policy will operate — Rejected — Definite stand of complainant that driver of train did not stop train resultantly deceased met with fatal accident — Death in said accident fully established — No justification to disregard statement of complainant — O.Ps. failed to produce any acceptable evidence to establish deceased suffered from any mental agony — Forum rightly allowed complaint — Insurer liable.

IV (2006) CPJ 337 (Har.)

- **Driving licence — Validly renewed at accident time — Insurer liable to compensate claimants**

Consumer Protection Act, 1986 — Section 21(b) — Insurance — Driving licence — Validity — Original driving licence issued in year 1999 — Validly renewed for period 1992-95 and further for period 1995-98 by DTO, Bathinda — Accident on 26.10.1996 — In view of ratio of Supreme Court judgments in *Lehru's* and *Harbhajan Lal's* case, insurer liable to compensate claimants.

IV (2006) CPJ 269 (NC)

- **Exclusion Clause — Applicability — Policy terms not made known to insured within reasonable time — Clause not applicable — Whole of assessed amount payable.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Contractors All Risk Policy — Exclusion clause — Applicability — Life of policy for period from 6.7.1988 to 5.4.1989 — Admittedly policy issued only on 13.11.1990, after 1 year 8 months — Accident causing loss of insured property already occurred in September 1988 — Surveyor assessed loss at Rs. 2,38,000 — Insurer paid Rs. 1,38,000 and deducted Rs. 1,00,000 on account of exclusion clause — Action unjustified — Terms and conditions of policy not applicable in present situation since same not made known to complainant within reasonable time — Exclusion clause not applicable — Insurer liable to pay whole of assessed amount along with interest @ 12% p.a.

IV (2006) CPJ 325 (NC)

- **Factory insured — Closed — Such material change not disclosed to insurer — No liability.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Factory insured — Closing of functionary factory — Material change — Non-disclosure of same to insurer — Insured failed to discharge his duty enjoined upon him under policy conditions — Claim not maintainable.

IV (2006) CPJ 210 (NC)

- **Fire Policy — Earthquake — Property damaged — Loss not direct consequence of earthquake — Cracks in walls prior to tremors — Repudiation justified.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Fire Policy — Damage to property — Not direct consequence of earthquake — Repudiation of claim — Justifiability — Clear from report of Geologists that cracks in inner and outer walls of house were common and formed even prior to earthquake tremors — Detailed certificate issued by Meteorological Department that there were no tremors due to earthquake at place where house of complainant situated — No evidence that alleged damage was direct consequence of earthquake — Repudiation justified — Complaint rightly dismissed.

IV (2006) CPJ 238 (Cha.)

- **Fitness certificate, not required for vehicle in question registered as “Rig” — Repudiation unjustified.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Motor Vehicles Act, 1988 — Sections 2(47), 56 — Insurance — Insured vehicle caught fire, damaged — Claim repudiated on ground that vehicle did not have fitness certificate as on date of accident — Vehicle in question registered as “Rig” — Since it is neither public service vehicle nor goods carriage nor educational institution bus nor private service bus, hence not transport vehicle — Under Section 56 of Act of 1988, fitness certificate required only in respect of transport vehicle, not for other types — Repudiation of claim on said ground unjustified — Vehicle beyond repairable condition — OP liable to pay accepted estimated market value of vehicle subject to surrendering of salvage.

IV (2006) CPJ 317 (Kar.)

- **Full and final settlement — Amount paid as per policy clauses — Execution proceedings closed — No further claim awardable.**

Consumer Protection Act, 1986 — Section 21 — Insurance — Policy clauses — Interpretation of — Settlement of claim to satisfaction of complainant — As per “excess” and “average” clauses, State Commission rightly held that complainant entitled to Rs. 98,824 with interest @ 18% p.a. — Such amount paid, claim settled, execution proceedings regarding same closed — Complainants’ claim for Rs. 1,40,111, in present proceedings not awardable.

IV (2006) CPJ 319 (NC)

- **Full and final settlement — Deductions by insurer, relying upon Chartered Accountant’s report — Justified — Settlement, so arrived at, upheld.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Full and final settlement — Contention, complainant was forced to accept Rs. 5,45,827 towards settlement, as against Rs. 13,95,827 assessed by Surveyor — Deductions made by insurer justified, relying upon report of chartered accountants appointed after Surveyor’s report — There was manipulation in accounts submitted by complainant — Cannot be said complainant had been coerced to sign settlement — Settlement of claim at above said amount, justified — No deficiency in service proved.

IV (2006) CPJ 241 (NC)

- **Full and final settlement — Machinery damaged in fire — Claim partly withheld on ground of deficient payment of premium — Such matter cannot be linked with insurance claim — Amount towards loss payable with interest.**

Consumer Protection Act, 1986 — Sections 2(1)(g) and 14(1)(d) — Insurance — Full and final settlement — Interest on awarded sum — Heavy loss to plant, machinery and building of insured factory due to fire — Insurer partly accepted claim — Withheld claim under certain heads — *Vide* interim orders, insurer paid undisputed amounts — Insurer deducted Rs. 1,73,044 on ground of deficient payment of premium — Contention, inadvertent mistake made in levying wrong rate of premium — Irrespective of merits of contention, no justification of linking up matter of short payment of premium with insurance claim — O.P. to pay such amount with interest @ 18% p.a. — Amounts paid earlier shall also carry interest @ 18% p.a. — Deduction of Rs. 2,22,453 towards alleged loss of calender roles and felt roles rubber and man power, reasonable — Evidence that said purchases were made subsequent to fire — Complainant entitled to Rs. 1,73,044 and amount already received with interest @ 18% p.a.

IV (2006) CPJ 195 (NC)

- **Jewellery shop burgled — Assessment of loss — Difference in stock — Fully reconciled except 1 gm. gold — Loss as assessed by Surveyor payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Jewellery shop burgled — Repudiation of claim on ground of difference in stock — Surveyor assessed loss at Rs. 5,72,721.80 — Taking into account value of 19.5 gm. of gold jewellery recovered, net loss assessed at Rs. 5,42,161 — Apparent difference in stock of gold and silver jewellery on date of burglary noticed by Chartered Accountant of O.P. — Such differences fully reconciled except to extent of 1 gm of gold — Repudiation unjustified — Amounts to deficiency in service — Payment of Rs. 5,42,161 with interest @ 8% p.a. and cost awarded.

IV (2006) CPJ 322 (NC)

- **Limitation — Claim repudiated — Complaint within 2 years thereafter — Not time barred — Maintainable.**

Consumer Protection Act, 1986 — Section 24A — Limitation — Two years limitation period provided — Insurance — Complaint filed on 21.10.1993, after repudiation of claim on 7.2.1991, being within limitation period, maintainable.

IV (2006) CPJ 325 (NC)

- **Limitation — Repudiation *vide* letter — Time starts running from date of receipt thereof.**

Consumer Protection Act, 1986 — Section 24A — Limitation — Insurance — Claim repudiated *vide* letter — Dispute as to when letter actually delivered or received by complainant — Complaint filed on 6.4.2002 — Contention, repudiation letter having been received on 17.8.2000, complaint not time barred — In view of contention, Forum bound to record finding that complaint time barred, otherwise to proceed on merits as per law — Impugned order of Forum set aside — Matter remanded.

IV (2006) CPJ 217 (H.P.)

- **Loss due to flood — Rs. 50,000 awarded without any foundation — Unjustified.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Contractors All Risk Policy — Loss due to flood — State Commission awarded Rs. 50,000 against claim which estimated loss of over Rs. 16,68,997 — Award without any foundation — No ground shown to arrive at said figure — Grant of Rs. 50,000 not justified — This part of impugned order unsustainable.

IV (2006) CPJ 325 (NC)

- **Machinery broke down — Disproportionate relief awarded besides actual loss — Unjustified.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Compensation — Insurance — Breakdown of machinery covered — Compressor damaged — State Commission awarded disproportionate relief besides actual loss — Hence appeal by opposite party — State

Commission awarded 12% interest on sum payable, 18% p.a. interest for same period as compensation and further sum of Rs. 25,000 towards loss as compensation sustained by complainant — Double compensation has been awarded — Order directing interest @ 12% p.a. for delayed settlement sustained, award of interest @ 18% p.a. set aside — No evidence to prove that complainant suffered loss and injury on account of failure of opposite party to settle claim — Award of Rs. 25,000 set aside.

IV (2006) CPJ 217 (NC)

- **Marine-cum-erection policy — Loss to machine during trial and testing period — Covered — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Marine-cum-erection policy — Installation of kiln with furniture — Risk during transit, storage, erection, trial and testing period covered — Exclusion clause — Applicability — Contention of O.P., loss occurred during 'operation' of machine and not during 'trial' period — Not accepted — Endorsement in policy clearly mentioned that during period from 11.9.1986 to 10.3.1987, risk covered was relatable to "trial and testing" — Loss occurred on 17.9.1986 — Cannot be said that loss occurred during operation period — No option, but to infer that loss occurred during trial and testing period only, within period covered by policy — Insurer liable.

IV (2006) CPJ 316 (NC)

- **Marine Hull Policy — Actual total loss of vessel — Various steps taken to prevent further loss — Still, vessel could not be salvaged and went beyond repair — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Marine Insurance Act, 1963 — Section 57 — Insurance — Marine Hull Policy — Actual total loss of vessel — Vessel damaged during its operation, could not be salvaged, went beyond repair/redemption — Repudiation of claim — Contention, insured required to establish actual total loss and unless there is total loss as per policy, insured not entitled to any reimbursement — In present case, vessel damaged in such way that it stranded in sand in beach and could not be moved out of it — Assured was irretrievably deprived of vessel — Surveyor's report also to same effect — Further contention that complainant deliberately not taken action to prevent actual total loss of vessel, rejected — Said submission, against evidence on record — Survey report narrates various steps taken by complainant to prevent any further loss — Claim of insured fully justified — Insurer liable.

IV (2006) CPJ 250 (NC)

- **Medicclaim policy — Exclusion clause — Not applicable — Disease not pre-existing — No evidence that it occurred within 30 days of policy — Repudiation unjustified.**

Consumer Protection Act, 1986 — Section 21(b) — Insurance — Medicclaim policy — Exclusion clause — Applicability — Repudiation of claim — Contention, pre-existing disease of throat irritation not revealed while taking policy — Further contention that disease was contracted within 30 days of commencement of cover, hence no liability — Evidence that both patient and treating doctor unaware of existence of any disease — Cannot be said material fact supported — No evidence as to when serious disease *i.e.*, Cancer started— Merely because tests got done within 30 days, cannot be construed to mean that same was within knowledge of insured — Both exclusion clauses not applicable — Insurer liable to reimburse medical expenses.

IV (2006) CPJ 228 (NC)

- **Medicclaim policy — Interpretation of terms — As per policy, reimbursement not warranted — Insurer not liable.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Interpretation of terms of policy — Medi-claim Policy — Entitlement to reimbursement of money spent on treatment only when insured hospitalised for period of 24 hours or more — In present case, insured suffered from some heart problem — Remained admitted in hospital for period less than 24 hours —

As per policy, no reimbursement should have been made — Forum wrongly allowed complaint — Order set aside.

IV (2006) CPJ 242 (H.P.)

- **Mediclaim policy — Mouth cancer operation — Earlier, insured took treatment for "chhala" in cheek — Prior knowledge of cancer cannot be presumed — Insurer liable.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Medi-claim Policy — Insured underwent operation for mouth cancer — Medi-claim expenses repudiated on ground, complainant cancer patient prior to issuance of policy — No single document revealing fact that complainant taken any treatment for *chhala* in cheek, prior to issuance of policy — Simply because of *chhala* in mouth, cannot be presumed that complainant had knowledge of cancer — Test of biopsy conducted for first time on 10.3.1999, after issuance of policy — Not case of misstatement by insured — Findings of Forum that insured was not having knowledge of having cancer, confirmed — Claim wrongly repudiated — Insurer liable.

IV (2006) CPJ 231 (Raj.)

- **Mediclaim policy — Repudiation on ground of pre-existing disease — No symptom of alleged disease before issuance of policy — Repudiation unjustified.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Medi-claim policy — Repudiation of claim on ground of pre-existing disease — Justifiability — Policy effective from 9.6.2000 to 8.6.2001 — Before its issuance, complainant underwent complete medical check up by doctors of O.P. — Chest pain and uneasiness developed on 11.8.2000 — Insured unaware of this disease till said date — He had no symptoms of heart disease prior to that date — O.P. erroneously relied on certificate of Dr. Aggarwal — Assured not examined or seen by him — His report, based on standard text, assumptions and presumptions of experts, cannot be relied upon — Cannot be said insured suppressed pre-existing disease — Repudiation unjustified— Insurer liable.

IV (2006) CPJ 189 (NC)

- **Ownership of vehicle transferred — Transfer of policy applied for, within 14 days — It dates back to date of vehicle transfer — Insurer liable.**

Consumer Protection Act, 1986 — Section 15 — Motor Vehicles Act, 1988 — Section 157 — Insurance — Transfer of certificate of insurance — Vehicle damaged in accident — Claim repudiated on ground that policy not transferred from name of original owner to name of complainant, as on date of accident — Ownership of vehicle transferred on 3.6.2003 — Accident on 6.7.2003 — Policy transferred on 17.7.2003 — Not case of OP that complainant has not made application within 14 days, seeking transfer of policy in his name — Transfer of policy dates back to date of transfer of vehicle as per Section 157 of Act of 1988 stating that deemed transfer of policy takes effect from date of transfer of vehicle — OP cannot avoid its liability to compensate claimants.

IV (2006) CPJ 264 (Kar.)

- **Plant and machinery insured — Total breakdown — Loss accidental, not due to wear and tear — Covered — Insurer liable — Loss assessed by Surveyor payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Plant and machinery insured — Total breakdown of plant — Certain parts totally damaged, could not be got repaired — Parts got replaced by complainant — Claim repudiated stating, loss resulted from normal wear and tear, such risk not covered under policy — Repudiation unjustified — Case of total breakdown — Cannot be said that loss was due to wear and tear and not accidental loss — Claim repudiated in arbitrary manner and without any reasonable basis — Deficiency in service proved — Insurer liable to indemnify loss — Surveyor assessed loss on basis of correct appreciation of materials on record — Same appears to be reliable piece of evidence — Loss as assessed by Surveyor payable with interest @ 9% p.a.

IV (2006) CPJ 328 (Raj.)

- **Policy — Interpretation — One favouring and beneficial to insured to be accepted.**

Consumer Protection Act, 1986 — Section 15 — Insurance Policy — Two interpretations possible — One favouring and beneficial to insured should be accepted.

IV (2006) CPJ 281 (Utt.)

- **Policy terms — Applicability of average clause — Assessment of loss, as per policy, after adjusting loss on basis of rateable proportion.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Assessment of loss — Applicability of terms of policy — Average clause — As per said clause, complainant was co-insurer and loss to be determined by Surveyor after adjusting loss on basis of rateable proportion — On this basis, Surveyor assessed loss payable to complainant at Rs. 2,48,900 — Order of State Commission directing insurer to pay Rs. 4,88,000 unjustified — Insurer liable to pay Rs. 2,48,900 with interest @ 12% p.a.

IV (2006) CPJ 272 (NC)

- **Policy terms — Interpretation of — Award of benefits — Entitlement — Insurer liable to release balance amount with bonus etc.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — “Asha Deep Policy” — Interpretation of terms of policy — Award of benefits under policy — Benefit B (i) contemplated payment of 50% of sum assured in case where assured undergoes open heart by-pass surgery, hemodialysis etc. — B (ii)(iii) and (iv) deal with payment of balance of 50% of sum assured — Latter payment is to be made in event of life assured surviving stipulated date or at his death, if earlier — Admittedly, policy taken *w.e.f.* 28.10.1995, assured expired on 7.11.2003 — No question of not paying balance 50% of sum assured — Once payment or eligibility for first part *i.e.*, under B (i) is finalised between parties, not open to insurer to contend that remaining 50% is not payable — Insurer liable to release balance payment along with bonus, etc.

IV (2006) CPJ 245 (NC)

- **Property destructed as per Government order — Exclusion clause applicable — Insurer not liable.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Exclusion clause — Applicability — Destruction of property as per Government order — In view of exclusion clause under policy, complainant not entitled for compensation in case there is any destruction by order of Government or any lawfully constituted Authority — In present case, property demolished since construction not in accordance with law and bye-laws — Forum right in dismissing complaint — Order upheld.

IV (2006) CPJ 227 (Kar.)

- **Shop broken open — Goods pilfered, missing — Affidavit of Surveyor not filed — Claim of complainant allowed — Interest reduced.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Loss due to fire — Shop broken open by police in absence of complainant — Same resulted in pilferage and missing of goods — Forum allowed complaint — Hence appeal — Shop insured for Rs. 3,00,000 — Claim of Rs. 2,50,000, allowed by Forum — Contention of appellant insurer, important documents *viz.*, affidavits of Senior Divisional Manager of appellant and Surveyor, not been taken note of, rejected — Affidavit of Surveyor never filed — Affidavit of Manager there, but he did not conduct survey — Contention meritless — Forum rightly allowed complaint — Interest @ 12% p.a. excessive, reduced to 9% p.a.

IV (2006) CPJ 226 (H.P.)

- **Theft of goods — Liability as per Surveyor's report.**

Consumer Protection Act, 1986 — Section 21(b) — Insurance — Surveyor's report — Liability accordingly — Theft of goods in general store — Surveyor assessed loss at Rs. 17,047 — Complainant not filed any objections to this report — Insurer could have been directed only to pay such amount — State Commission not justified in awarding Rs. 45,000 towards loss, as against Surveyor's report — Order modified — Insurer liable to pay Rs. 17,047.

IV (2006) CPJ 199 (NC)

- **Total loss of vehicle — Assessment of loss — Loss as assessed by Surveyor, less salvage value, payable with interest.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Total loss of vehicle — Claim not settled for want of documents — Assessment of loss — Loss assessed at Rs. 5,48,500 as per second survey report — Salvage value, which can be claimed as right, assessed at Rs. 1,25,000 — Salvage being retained by complainant itself — Insurer entitled to get such amount adjusted from total claim to be paid — Complainant entitled for Rs. 4,23,500 — On account of denial of rightful claim of complainant, interest @ 6% p.a. also payable.

IV (2006) CPJ 235 (U.P.)

- **Transport Services — Consignment damaged — Claim settled by insurer — Complaint by consignor and insurer — Complainant not consumer.**

Consumer Protection Act, 1986 — Sections 2(1)(c) and 2(1)(d) — Consumer — Transport Services — Consignment damaged in fire accident — Claim settled by insurer by paying Rs. 14,68,110 — Complaint by consignor and insurer after obtaining letter of subrogation, assignment and General Power of Attorney — Complainant could not fall within definition of 'consumer' — Complaint by them, not maintainable.

IV (2006) CPJ 204 (NC)

- **INSURANCE (AGRICULTURE) — Crop failed — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Agricultural Insurance — Failure of crop — Repudiation of claim — Contention, complainant during season in question has not at all grown any potato crop in his land, hence not entitled to any crop claim compensation — Rejected — Submission totally misconceived — Forum and State Commission arrived at same conclusion that revenue records clearly establish that crop, as stated, for taking policy was cultivated — Insurer liable.

IV (2006) CPJ 313 (NC)

- **INSURANCE (LIFE) — Policy lapsed — Revival of — New contract not constituted — 2 years period under Section 45 of Insurance Act calculated from date when policy originally affected.**

Consumer Protection Act, 1986 — Section 15 — Insurance Act, 1938 — Section 45 — Life Insurance — Revival of lapsed policy — Claim repudiated alleging suppression of existing ailment at time of revival — Justifiability — Policy revived upon payment of requisite premium with penalty/interest in January, 2004 — Death due to cancer of rectum on 30.5.2004 — Deceased was medically examined by panel physician of OP before granting revival — At this time, no symptom of his having suffering with cancer — Diagnosis for first time made on 25.5.2004, i.e. after 4 months of revival — Same cannot be related back to its revival — Further, revival of old policy does not constitute new contract — Period of 2 years, for purposes of Section 45, has to be calculated from date when policy was originally affected — Not case of suppression of ailment — Repudiation unjustified — Insurer liable.

IV (2006) CPJ 306 (M.P.)

- **Suppression of facts — Falsely representing age — Insured illiterate, representation not intentional — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Life Insurance — Suppression of fact regarding age — Repudiation of claim — Death within 12 days of commencement of policy — Allegedly, insured made false statement about his age, stating it as 49 years — As per evidence, age could not be less than 56-57 years — Deceased illiterate person — Could not have estimation of his own age — Cannot be said he intentionally made false statement — Further, insurer charged extra amount for assessment of age based on information — Age by appearance or otherwise not disputed — Insurer liable.

IV (2006) CPJ 270 (Cha.)

- **Suppression of facts regarding health alleged — No nexus between cause of death and alleged ailment — Suppression not fraudulent — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Life Insurance — Suppression of facts regarding health — Death within 12 days of commencement of policy, due to cardio respiratory arrest — Repudiation of claim — Justifiability — Insured got examined from insurance doctor, found healthy — Deceased allegedly suffered from chronic obstructive pulmonary disease and chronic asthma — No nexus between cause of death and alleged ailment of deceased — Fraudulent suppression of material facts not proved — Insurer liable.

IV (2006) CPJ 270 (Cha.)

- **Suppression of material facts — Insured diabetic for last 20 years — Same not disclosed — Repudiation justified.**

Consumer Protection Act, 1986 — Section 21(b) — Life Insurance — Suppression of material facts — Repudiation of claim — Fact of hospitalisation due to glossitis, diabetes caused by alcoholic hepatitis for last 20 years, suppressed — Repudiation justified — Well reasoned judgment of State Commission upheld.

IV (2006) CPJ 239 (NC)

- **Suppression of material facts alleged — Fact of illness known only after policy commenced — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Life Insurance — Repudiation of claim — Contention, deceased withheld material information regarding health, at time of effecting insurance — Policy commenced *w.e.f.* 14.10.1995 — Death on 1.9.1998 — Cause of death, heart attack — Life assured not aware of fact of suffering from diabetes mellitus at time of submitting proposal — He could know about it only in 1996 after commencement of policy — Ground of repudiation by O.P. untenable — Repudiation unjustified — O.P. liable to pay sum assured under policy.

IV (2006) CPJ 229 (Ori.)

- INTEREST — Award of — Insurance — Relevant date — 3 months period to be allowed for settlement of claim by insurer — Awarding interest and compensation both — Double benefits — Unsustainable.**

Consumer Protection Act, 1986 — Section 14(1) — Compensation — Award of interest — Insurance — Interest awarded from date of preferring claim with Insurer — Unjustified — 3 months period to be allowed for settlement of claims by Insurer — Order of Forum modified — Interest to be awarded @ 9% p.a. — Grant of double benefits in form of interest and compensation also not sustainable — Award of compensation set aside.

IV (2006) CPJ 281 (Utt.)

- **Construction agreement — Breach of — Principal amount refunded — Interest amount retained — O.P. liable to pay interest @ 9% on this amount also, if not paid within 4 weeks.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Agreement to construct house — Construction delayed — Refund of deposited amount — Rate of interest thereon — O.P.

refunded principal amount of Rs. 4,30,000 on 13.9.2000 — Liability to pay interest — Complainants entitled to only simple interest @ 18% p.a. w.e.f. date of deposit till date of refund — Amount of interest, so calculated comes to Rs. 3,57,975 — Since such amount retained by O.P., they are liable to pay interest @ 9% p.a. on this amount also, in case interest @ 18% not paid within 4 weeks.

IV (2006) CPJ 175 (NC)

— **Rate of — Granted @ 12% p.a. — Claim for enhancement — Prevailing rates even lower than awarded one — No scope for enhancement.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Compensation — Interest — Rate of — Prayer of complainant, to increase interest to 18% p.a. instead of 12% p.a. and also allow compensation — No merit in pleas — Prevailing interest rates even lower than awarded one *i.e.* 12% p.a. — In view of such award, no ground exists for granting any compensation.

IV (2006) CPJ 170 (NC)

JAL BOARD — Billing dispute — Bills not raised for 10 years — Sent at once with penalty — Unjustified — Penalty chargeable on failure to pay bill duly raised.

Consumer Protection Act, 1986 — Section 2(1)(g) — Jal Board — Bills — Failure to raise monthly or bi-monthly bills — Imposition of penalty — Legality of — O.P. not raised bill for more than 10 years — Bill for 10 years sent by imposing penalty for those years — Unjustified — Penalty cannot be charged until and unless consumer is asked to pay bill — Only upon his failure to pay bill by due date that he is liable to pay amount towards penalty — Imposition of penalty quashed.

IV (2006) CPJ 241 (Del.)

JOINT AND SEVERAL LIABILITY — Joy ride boating facility — Passengers beyond seating capacity accommodated — Boat capsized — 22 passengers died — Liability of Municipal Corporation and contractor joint and several.

Consumer Protection Act, 1986 — Section 2(1)(g) — Bombay Provincial Municipal Corporation Act, 1949 — Section 66 — Joy ride boating facility — Accommodating passengers beyond seating capacity of boat — Accident — Death of 22 passengers — Liability of Municipal Corporation *vis-a-vis* contractor M/s. Aqua Sports — Carrying passengers in excess, resulted in catastrophe of boat being capsized in lake — Undoubtedly 'Aqua Sports' liable for damages — Primary liability is of 'Aqua Sports' — Boating activity carried out by 'Aqua Sports' on behalf of Corporation — Entire control regarding same vested in Corporation — Contractor was only permitted to charge fixed amount for each ticket — Rate of tickets also fixed by Corporation, that too in prescribed form — Entire boating equipment belonged to it — Licence to operate boating club given to 'Aqua Sports' only for limited period — Corporation cannot disown its liability in case of deficiency by licensee — Corporation and 'Aqua Sports' jointly and severally liable.

IV (2006) CPJ 146 (NC)

JURISDICTION — Adjudication of dispute by Civil Court — It no longer remains consumer dispute — Complainant to seek execution of decree, instead of filing complaint.

Consumer Protection Act, 1986 — Sections 2(1)(e) and 3 — Consumer Dispute — Jurisdiction of Consumer Fora — Delay in compliance of decree passed by Civil Court — Instead of executing decree, complaint filed before State Commission — After adjudication of dispute by Civil Court, same no longer remains consumer dispute — Provision under Section 3 cannot be involved for execution of decree — Complainant at liberty to approach Civil Court for relief.

IV (2006) CPJ 164 (NC)

— **Complaint by employee — Medical reimbursement claimed — Case covered by Act of**

1948 — Forum lacks jurisdiction.

Consumer Protection Act, 1986 — Sections 11, 17, 21 — Employees' State Insurance Act, 1948 — Section 75(3) — Jurisdiction of Fora — Complaint alleging non-payment of medical reimbursement bills under Act of 1948 — Allowed by Forum — Hence appeal — As per Section 75(3), in matters relating to cases covered by Act of 1948, Consumer Fora have no jurisdiction — Complaint wrongly allowed — Impugned order set aside.

IV (2006) CPJ 312 (H.P.)

- **Electricity — Demand disputed — Remedy provided by PSEB availed of — Consumer Forum cannot be approached.**

Consumer Protection Act, 1986 — Section 15 — Electricity — Demand disputed — Complainant approached Disputes Settlement Committee of PSEB — Filed complaint pending that matter — Once complainant chooses to avail remedy provided by PSEB, he cannot approach District Forum under C.P. Act — Complaint wrongly allowed by Forum — Order set aside in appeal.

IV (2006) CPJ 222 (Punjab)

- **Railways Services — Consignment not delivered — Jurisdiction of Fora barred by Central Statute *i.e.*, Railway Claims Tribunal Act, 1987.**

Consumer Protection Act, 1986 — Sections 11, 17, 21 — Railway Claims Tribunal Act, 1987 — Sections 13, 15 — Jurisdiction of Consumer Fora — Railway services — Non-delivery of booked cartons to consignee — Deficiency in service alleged — Consumer Fora have no jurisdiction in case of loss, destruction, damage, deterioration or non-delivery of goods by Railways — Jurisdiction of other Courts barred by Central Statute *viz.* Sections 13 and 15 of Act of 1987 — Forum wrongly allowed complaint — Order set aside — Complainants to have recourse under Act of 1987.

IV (2006) CPJ 266 (Punjab)

- **Territorial — Transport services — Jurisdiction only where cause of action arises, bill of lading issued or OP had branch office — No cause of action arises at place of manufacturing of goods or from where same sent for loading.**

Consumer Protection Act, 1986 — Section 17(2) — Territorial Jurisdiction — Transport services — Complaint alleging failure to deliver consignment — Contention, no part of cause of action had arisen within jurisdiction of this commission, accepted — Opposite party had no branch office situated there — Bill of lading issued at Delhi — Mere manufacturing of goods at, or sending them from Ludhiana for loading, will not mean that part of cause of action had arisen at Ludhiana — Present State Commission has got no territorial jurisdiction to try complaint — Returned for presentation to proper Forum.

IV (2006) CPJ 213 (Cha.)

- **Territorial jurisdiction — Section 11 of Act determines jurisdiction — Words used in invoice, would not oust jurisdiction of Consumer Forum.**

Consumer Protection Act, 1986 — Section 11(2)(b) — Jurisdiction of Forum — Territorial jurisdiction — Undisputedly, O.P. had branch office in Kolkata — This office played active role in obtaining order, receiving part of money — Cause of action arisen in Kolkata — Section 11 of Act determines jurisdiction — Words 'subject to Barodara Jurisdiction' used in invoice would not oust jurisdiction of Consumer Forum — Same Contrary to Section 11(2) of Act — Forum at Kolkata has jurisdiction.

IV (2006) CPJ 172 (NC)

LETTER OF SUBROGATION — Consignment damaged — Insured(see Transport Services)

IV (2006) CPJ 302 (M.P.)

LIMITATION — Electricity — Continuous power not supplied — Permanent disconnection at request of complainant on 22.9.1998 — Cause of action arose on said date — Complaint in 1995, time barred.

Consumer Protection Act, 1986 — Section 24A — Limitation Act, 1963 — Article 44 — Limitation — Electricity — Complaint alleging non-supply of continuous power to unit of complainant — Connection permanently disconnected at request of complainant, on 22.9.1988 — Cause of action, if any, to file complaint arose on 22.9.1988 itself — This date has to be taken as starting point of limitation — Complaint filed in August, 1995, hopelessly barred by limitation — Complainant prayed for condonation of delay — No reasons therefor, been disclosed — On relevant date, *i.e.* 22.9.1988, no limitation for filing complaint was prescribed — Suit for recovery of compensation amount could have been filed within 3 years of accrual of cause of action on analogy of Article 44 of Schedule of Act of 1963 — Complaint, being time-barred, not maintainable.

IV (2006) CPJ 264 (NC)

— Insurance — Claim repudiated — Complaint within 2 years thereafter — Not time barred — Maintainable.

Consumer Protection Act, 1986 — Section 24A — Limitation — Two years limitation period provided — Insurance — Complaint filed on 21.10.1993, after repudiation of claim on 7.2.1991, being within limitation period, maintainable.

IV (2006) CPJ 325 (NC)

— Insurance — Repudiation *vide* letter — Time starts running from date of receipt thereof.

Consumer Protection Act, 1986 — Section 24A — Limitation — Insurance — Claim repudiated *vide* letter — Dispute as to when letter actually delivered or received by complainant — Complaint filed on 6.4.2002 — Contention, repudiation letter having been received on 17.8.2000, complaint not time barred — In view of contention, Forum bound to record finding that complaint time barred, otherwise to proceed on merits as per law — Impugned order of Forum set aside — Matter remanded.

IV (2006) CPJ 217 (H.P.)

***MALA FIDE* ACTION — Hospital — Patient referred to private clinic — Facilities not available in clinic — *Mala fide* action to squeeze out money from poor patient — Deficiency in service proved.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Reference of patient from hospital to private clinic — Non-availability of facilities in clinic — Deceased patient needed immediate dialysis — Patient could have been treated in hospital itself, where all facilities including dialysers available — However, Assistant Casualty Officer of hospital referred patient to private nursing home of appellant doctor — O.P. fully aware of fact of non-availability of facilities there — Present is not only case of negligence but of intentional and *mala fide* action on part of O.P. to squeeze money from helpless patient — Patient rendered uncared in nursing home for whole day and night — Nothing to suggest dialysis performed even on following day — Deficiency in service proved — Forum allowed meagre amount of Rs. 1 lakh only — Same not in any way excessive.

IV (2006) CPJ 210 (Jhar.)

MEDICAL NEGLIGENCE — Allopathic treatment administered by Homeopath — Deficiency in service and negligence proved.

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Administration of allopathic treatment by Homeopath doctor — Deceased patient suffering from gastroenteritis — Admittedly, O.P. Homeopath doctor — Necessary evidence to establish that O.P. administered allopathic treatment including glucose drip and injections — Fees of Rs. 35 also charged — O.P. not trained for such treatment — Deficiency in service and

negligence proved — Award of compensation upheld.

IV (2006) CPJ 182 (NC)

- **Eye operation — Treatment improper — Vision lost — Entitlement to compensation — Quantum — Rs. 1,25,000 awarded in accordance with provisions of Workmen's Compensation Act.**

Consumer Protection Act, 1986 — Sections 2(1)(g) and 14(1)(d) — Medical Negligence — Eye operation — Treatment improper, vision lost — Compensation — Quantum — Finding of State Commission holding O.Ps. medically negligent upheld — However, award of Rs. 2,20,000, without any basis — Complainant peon, salary presumed at Rs. 2,000 p.m. — As per provisions of Workmen's Compensation Act, for loss of one eye, 40% loss of income has to be considered — Annual loss Rs. 9,600 — For 10 years, Rs. 96,000 — Rounding it off, compensation comes to Rs. 1,00,000 — Rs. 25,000 towards medical expenses, etc. — Complainant entitled to Rs. 1,25,000.

IV (2006) CPJ 213 (NC)

- **Eye operation — Voluntary abandonment of services of O.P. — Advice to take injection in time not adhered to — No pre or post-operative care by O.P. — No deficiency in service.**

Consumer Protection Act, 1986 — Section 21(b) — Medical Negligence — Voluntarily abandoning services of OPs — Eye-operation for cataract — Redness developed and eye swelled at post operation stage — Vision lost — OP found it to be case of uveitis and prescribed steroid injection — After taking one injection, she did not turn up for second one — No evidence that uveitis caused due to surgical trauma — Admittedly, complainant voluntarily approached other hospitals of her choice, thereby abandoning services of OP — Not adhering to advice of OP to take injection in time amounts to carelessness on her part — No deficiency in pre or post operative care by OP — No medical negligence.

IV (2006) CPJ 259 (NC)

- **Homeopath administered injection — Complications — Breach of duty, not to practise any other system of medicine — Medical negligence — Compensation awarded.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Administration of injection by medical practitioner of Homeopathy — Statutory duty on practitioner not to practise any other system of medicine — Tetramycin injection administered — Complications developed — Complainant had to take further corrective measures under regular Allopathic practitioners — Medical negligence proved — O.P. liable — Rs. 25,000 compensation awarded with costs.

IV (2006) CPJ 239 (T.N.)

- **Hospital — Patient referred to private clinic — Facilities not available in clinic — Mala fide action to squeeze out money from poor patient — Deficiency in service proved.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Reference of patient from hospital to private clinic — Non-availability of facilities in clinic — Deceased patient needed immediate dialysis — Patient could have been treated in hospital itself, where all facilities including dialysers available — However, Assistant Casualty Officer of hospital referred patient to private nursing home of appellant doctor — O.P. fully aware of fact of non-availability of facilities there — Present is not only case of negligence but of intentional and *mala fide* action on part of O.P. to squeeze money from helpless patient — Patient rendered uncared in nursing home for whole day and night — Nothing to suggest dialysis performed even on following day — Deficiency in service proved — Forum allowed meagre amount of Rs. 1 lakh only — Same not in any way excessive.

IV (2006) CPJ 210 (Jhar.)

- **Injection — Administered without giving test dose — Death of patient — Autopsy report**

ruled out possibility of death due to such administration — No deficiency in service.

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Administering injection without giving test dose — Cause of death — Contention of complainant, injection given without test dose, reacted, causing death of patient — As per autopsy report, no poisoning was detected in viscera of deceased — Stand of O.P. that only test dose of injection was given, supported by MLC report — Reaction due to test dose could not have caused death — Final opinion as per report, completely ruled out possibility of death of patient due to administration of said injection — No deficiency in service proved — Complainants miserably failed to prove case of medical negligence.

IV (2006) CPJ 222 (NC)

- **Knee operation — Removal of patella required — Standard treatment provided — Post operative stiffness not attributable to treatment by O.P. — No medical negligence.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Knee operation — Requirement to remove patella — Failure to prove negligence — Allegation, that in such cases of operation, plastering unnecessarily done and patella not required to be removed for it could be joined — Nothing in support of allegation — Treatment provided to complainant seems to be standard one for such type of fractures — Complication of post-operative stiffness not attributable to treatment by O.P. — Standard under professional skill and care adopted by doctor is that of reasonable average professional — No medical negligence or deficiency in service of O.P. proved.

IV (2006) CPJ 332 (NC)

- **Operation — Intestine perforated — Severe pain — Second operation arranged immediately — Patient died — Nothing to show wilful negligence — OP not liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Perforation of intestine during operation — Patient complaining of severe pain after operation for removal of uterus — Pain coupled with falling blood pressure — OP immediately arranged for second operation to give relief to patient — Perforations caused during first operation also repaired — Condition critical — Patient put on ventilator, transferred to ICCU, but could not survive — All possible measures taken by OP to combat situation — Nothing to show wilful negligence on part of OP — No medical negligence proved — No liability — Forum erred in awarding compensation — Impugned order set aside.

IV (2006) CPJ 314 (W.B.)

- **Spine operation failed — Negligence of operating doctor cannot be inferred — O.P. not liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Failure of operation — Negligence of operating surgeon alleged — Spine operation — Control over both limbs lost thereafter — Complainant had to undergo second operation — Stand of OP, operation conducted after informing its pros and cons to, and after obtaining consent of complainant — Doctor who conducted second surgery examined by complainant — Such witness himself speaks that no negligence on part of OP, second operation was conducted since it was required — Mere failure of operation does not mean negligence of operating doctor — No medical negligence proved — OP not liable.

IV (2006) CPJ 273 (Kar.)

- **Stomach pain — Operation of gall bladder — Death — Entitlement to compensation — Quantum (see Compensation)**

IV (2006) CPJ 219 (Raj.)

MOTOR VEHICLES — Autorickshaw purchased — Delayed delivery of auto fare meter alleged — Case not consistent — No compensation awardable.

Consumer Protection Act, 1986 — Section 2(1)(g) — Motor Vehicles — Purchase of auto — Complaint alleging delay in delivering auto fare meter — Allegation that meter delivered after 1 month — In proof affidavit, delayed period stated to be 15 days — In evidence, same stated to be 20 days — Complainant issued notice to O.P. alleging certain defects — Not stated in notice that there was delay in delivering meter — Case of complainant not consistent — Version of O.P. that there was no such delay, appears to be acceptable — No deficiency in service proved — Complainant not entitled to any compensation under this head.

IV (2006) CPJ 339 (Pond.)

- **Defects repaired — Complainant refused to take delivery — No evidence to show that vehicle had any manufacturing defects — Refund of price not justified.**

Consumer Protection Act, 1986 — Section 21(b) — Motor Vehicles — Manufacturing defects — Failure to prove — Claim for refund of price of vehicle — Vehicle been in use for one year and five months and had run over 9808 kms. — Difficult to believe that it suffered from manufacturing defects — Further, vehicle repaired by O.P. and was kept ready for delivery, still complainant refused even to test ride vehicle — Refusal to take delivery leads to conclusion that complainant only interested in refund of amount— Absolutely no evidence to show that vehicle had any manufacturing defects — No justification for refund of price of vehicle.

IV (2006) CPJ 257 (NC)

- **Manufacturing defects — Battery defective — No manufacturing defect — Deficiency in service not proved.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Motor Vehicles — Manufacturing defects — Defects in battery — Defects in batteries, bulbs, tyres, etc. not covered under warranty — Moreover, defective battery cannot tantamount to manufacturing defect in vehicle — Battery replaced apparently as gesture of goodwill, though not covered by warranty — No deficiency in service proved.

IV (2006) CPJ 167 (NC)

- **Manufacturing defects — Proof of — Evidence of unqualified mechanic not reliable.**

Evidence — Motor Vehicles — Manufacturing defects — Proof of — Evidence of mechanic, who is not qualified and has not undergone any training programme to repair vehicles, cannot be relied upon.

IV (2006) CPJ 339 (Pond.)

- **Manufacturing defects alleged — Failure to prove — Vehicle not sent to laboratory test — Minor defects rectified during free service — OP not liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Motor Vehicles — Manufacturing defects — Failure to establish — Not sending vehicle to laboratory test — Allegation that fork of auto pulling towards right side, complainant unable to ply vehicle and that it was kept in workshop for 20 days for repair — Fitness Certificate shows vehicle not defective — Documentary evidence to show minor defects rectified when vehicle brought for free service — Complainant failed to take steps to send vehicle for laboratory tests — After lapse of 4 years, claim for sending same for testing, cannot be awarded being highly belated — Admittedly, auto had run for not less than 25,000 kms. and is being plied till date — No manufacturing defects proved — Complainant not entitled to any compensation for injury and mental agony.

IV (2006) CPJ 339 (Pond.)

- **Mileage — False, exaggerated claim regarding mileage — Unfair trade practices proved — Directions to stop — Compensation awarded.**

Consumer Protection Act, 1986 — Sections 2(1)(g) and 2(1)(r) — Unfair Trade Practices — Motor Vehicles — False claim regarding mileage — Complainant, being encouraged by advertisement that vehicle gives mileage of 87 KMPL, purchased it — Vehicle failed to fulfil promise — Gave mileage of 65 KMPL — Said claim exaggerated — Contention of O.P., reported mileage is always one in “ideal conditions” — Rejected — Not clarified in advertisement as to what are ideal conditions — Unfair trade practices proved — Directions to stop — Compensation awarded.

IV (2006) CPJ 267 (NC)

- **Sale of second hand car alleged — Not proved — Order directing its replacement or refund of price, not sustainable — No unfair trade practices.**

Consumer Protection Act, 1986 — Section 2(1)(r) — Motor Vehicles — Unfair Trade Practices — Allegation, sold car not original one — Failure to prove — Allegation based on report of Auto Workshop that paint of car not original — Said report is undated not mentioning any defect in car — Affidavit of person issuing this report not filed — Report not acceptable — Cannot be concluded, car second hand — Order passed by State Commission, directing replacement of car or refund price with interest, not legally sustainable, set aside.

IV (2006) CPJ 167 (NC)

- **Unauthorised fitment of AC in non AC car — Engine overheated — Complainant himself responsible — No deficiency in service.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Motor Vehicles — Manufacturing defects — Over heating of engine — Complainant himself responsible — Car non AC, unauthorised fitment of AC got done, after its purchase — No deficiency in service of O.P. proved.

IV (2006) CPJ 167 (NC)

- **Vehicle mishandled — Defects caused — Not manufacturing defects — No liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Motor Vehicles — Vehicle defective — Defects caused by misuse and bad handling of vehicle, not manufacturing defects — Liability — Routine change of mobil oil, gear oil and gear adjustment, without any major repair or change of part, made during warranty — No question of vehicle having any manufacturing defects — Alleged breaking of gear box caused by mishandling of tempo — No deficiency in service of O.P. — Further, vehicle repaired — Complainant not took back delivery of vehicle in spite of repeated requests — O.P. not liable.

IV (2006) CPJ 196 (Ori.)

- **Vehicle purchased — Excise duty concession available at relevant time — Liability to refund — Dealer's-Manufacturer not necessary party.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Motor Vehicles — Liability to refund excise duty — Dealer *vis-a-vis* manufacturer — Purchase of van under taxi quota — Excise duty concession available at relevant time — Complaint against dealer seeking refund of same — Contention, manufacturer Maruti Udyog Ltd. necessary party in this case, amount to be refunded by them only, rejected — Contract between dealer and purchaser — Not necessary to make MUL as party — Responsibility of dealer to obtain refund of excise duty concession from it — Deficiency in service proved — Order of Fora below directing refund of same along with interest, upheld.

IV (2006) CPJ 270 (NC)

- **MUNICIPALITIES — Joy ride boating facility — Passengers beyond seating capacity accommodated — Boat capsized — 22 passengers died — Liability of Municipal Corporation and contractor joint and several.**

IV (2006) CPJ 146 (NC)

NECESSARY PARTY — Motor Vehilces — Liability to refund excise duty — Dealer's — Manufacturer not necessary party (see Motor Vehicles).

IV (2006) CPJ 270 (NC)

NEGLIGENCE — School Picnic — Teachers duty bound to ensure safety of lives of students — Failure of — Liability(See Educational Services)

IV (2006) CPJ 275 (Guj.)

PENALTY — Billing dispute — Bills not raised for 10 years — Sent at once with penalty — Unjustified — Penalty chargeable on failure to pay bill duly raised — Penalty quashed.

Consumer Protection Act, 1986 — Section 2(1)(g) — Jal Board — Bills — Failure to raise monthly or bi-monthly bills — Imposition of penalty — Legality of — O.P. not raised bill for more than 10 years — Bill for 10 years sent by imposing penalty for those years — Unjustified — Penalty cannot be charged until and unless consumer is asked to pay bill — Only upon his failure to pay bill by due date that he is liable to pay amount towards penalty — Imposition of penalty quashed.

IV (2006) CPJ 241 (Del.)

PRACTICE AND PROCEDURE — Execution proceedings — Executing Court cannot go behind order passed.

Practice and Procedure — Execution proceedings — Executing Court cannot go behind order passed in original complaint.

IV (2006) CPJ 193 (NC)

— **Expeditious disposal of matters — Failure of — Government of NCT of Delhi deficient in not providing requisite number of District Foras, Benches of State Commission — Rs. 10,000 compensation payable if complaint not decided within 1 year.**

Consumer Protection Act, 1986 — Section 13(3A) — Expeditious disposal of matters — Statutory period as prescribed by Section 13(3A), for decision of consumer disputes is 3 to 5 months — Government of NCT of Delhi guilty for deficiency in service in not providing service of arranging decision within prescribed period, by not providing requisite number of District Fora, Benches of State Commission — Direction issued, entitling consumer to compensation of Rs. 10,000 payable by Government of NCT of Delhi, if complaint not decided within period of 1 year.

IV (2006) CPJ 246 (Del.)

— **Proof of case by evidence — Complainant filed affidavit — Absence of any counter affidavit — Case stands proved.**

Consumer Protection Act, 1986 — Section 13 — Practice and Procedure — Proof of case by evidence — As per Section 13, if matter is contested in written version, then parties have to prove their case by evidence — Cross-examination also permitted — Admittedly, complainant filed affidavit by way of evidence — O.Ps. neither filed any affidavit nor cross-examined deponents — Allegations of complainant remained uncontroverted — In absence of any counter affidavit, case of complainant stands proved.

IV (2006) CPJ 213 (NC)

— **Validity of order — Compliance of Rules — Order duly signed, dated — Rule complied with.**

Consumer Protection Act, 1986 — Section 15 — Haryana Consumer Protection Rules, 2004 — Rule 4(9) — Practice and Procedure — Impugned order signed by President as well as Member of District Forum — Date of pronouncement of order mentioned on left side of order, below word 'Announced' — Cannot be said Rule 4(9) not complied with.

IV (2006) CPJ 258 (Har.)

PRIVITY OF CONTRACT — Transport Service — Consignment damaged — Insurer settled claim — Joint complaint by insurer and consignor against OP — Lack of privity of contract — Insurer not consumer — OP not liable.

Consumer Protection Act, 1986 — Section 15 — Transport Services — Consignment damaged during transit — Appeal against liability — Consignment insured — Insurer settled claim of consignor who in turn executed letter of subrogation in favour of insurer — Joint complaint filed by insurer and consignor — Allowed, carrier held liable — Hence present appeal — Contention, insurer not its consumer, no privity of contract existed between them, accepted — Complaint filed by insurer, even after making consignor as co-complainant not maintainable — No order could have been passed against appellant — impugned order set aside.

IV (2006) CPJ 302 (M.P.)

PROVIDENT FUNDS — Amount deducted towards provident fund not credited to Commissioner — Complaint allowed — Amount directed to be remitted — No order for damages — Same cannot be now awarded.

Consumer Protection Act, 1986 — Sections 21(b) and 27 — The Coal Mines Provident Fund and Provisions Act, 1948 — Para 23(2) — Provident Funds — Deduction of amount towards provident fund — Same not credited to Commissioner — Recovery of damages for default in payment of contributions — Forum allowed complaint, directed O.P. to remit amount deducted from arrears paid to complainant — Complainant applied under Section 27 claiming payment of damages in light of para 23 — Executing Court cannot go behind order passed in original complaint — Forum in its order not even remotely mentioned about recovery of damages — Same cannot be awarded in present petition arising out of proceedings under Section 27.

IV (2006) CPJ 193 (NC)

RAILWAY SERVICES — Concessional ticket — Issuance refused — Complainant handicapped — Entitled to concessional fare.

Consumer Protection Act, 1986 — Section 2(1)(g) — Railway Services — Concessional ticket — Refusal to issue, on trivial ground — Complainant physically handicapped — Certificate of doctor produced — Concession refused on ground that date of certificate did not tally with date mentioned in seal of hospital — Allegedly, same amounted to alteration in certificate — Date of certificate 7.5.1999, seal dated 14.11.2000 — Latter date refers to date of subsequent renewal of certificate — Such aspect totally overlooked by Forum while dismissing complaint — Further, no change effected in dates so as to make case of alteration in certificate — Act of OP in not issuing concessional ticket, unjustified — Deficiency in service proved — OP liable to pay concession in fare and compensation.

IV (2006) CPJ 268 (Kar.)

— Confirmed tickets issued by charging excess fare — However name figured in waiting list — Deficiency in service — Compensation awarded.

Consumer Protection Act, 1986 — Section 2(1)(g) — Railways Services — Charging excess fare and issuing confirmed tickets — Complainant shocked to see that their names figured in waiting list — Also revealed that several persons whose names figured in reservation chart, have booked their seats subsequently to that of complainants — Complainants had to stay at Delhi for one day as they got reservation in 2nd Class the following day — Whole

programme of complainants got disturbed — Deficiency in service proved — OP liable — Difference of railway fare and compensation awarded.

IV (2006) CPJ 311 (NC)

- **Consignment not delivered — Jurisdiction of Fora barred by Central Statute i.e., Railway Claims Tribunal Act, 1987.**

Consumer Protection Act, 1986 — Sections 11, 17, 21 — Railway Claims Tribunal Act, 1987 — Sections 13, 15 — Jurisdiction of Consumer Fora — Railway services — Non-delivery of booked cartons to consignee — Deficiency in service alleged — Consumer Fora have no jurisdiction in case of loss, destruction, damage, deterioration or non-delivery of goods by Railways — Jurisdiction of other Courts barred by Central Statute viz. Sections 13 and 15 of Act of 1987 — Forum wrongly allowed complaint — Order set aside — Complainants to have recourse under Act of 1987.

IV (2006) CPJ 266 (Punjab)

- **Reserved accommodation — Requirement ticket and prescribed identification — Complainant failed to carry charging of excess fare and penalty justified — No deficiency in service.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Railways Act, 1989 — Section 60(2)(a) — Railway Services — Providing reserved accommodation to passengers — Framing of rules therefor — Complainant purchased journey-cum-reservation ticket under “Tatkal Sewa Journey Scheme” — As per Rule 17 of scheme, passenger required to carry ticket and same authority on which it was booked during journey and has to be produced while ticket checking, failing which passenger will be treated as travelling without ticket — Complainant did not carry requisite identification as prescribed — Act of O.P. in insisting complainant for production of original identity card, not unauthorised — Act of O.P. in levying penalty and collecting excess fare, not illegal — No deficiency in service proved — Complainant liable to pay penalty.

IV (2006) CPJ 333 (Pond.)

- **REFUND — Housing — Plot allotted — Overhead high tension electric line — Inability to carry out construction — Deficiency in service — Refund of amount with interest directed.**

Consumer Protection Act, 1986 — Sections 2(1)(g) and 15 — Housing — Allotment — Plot covered with overhead high tension electric line — Letter offering possession rendered meaningless as complainant could not carry out any construction over plot, on account of existence of said line — No evidence to establish on which date overhead lines were removed — Deficiency in service proved — Forum allowed complaint — Directed to issue fresh offer of possession of plot in question and to refund amount of interest and extension fee with interest @ 10% p.a. — No fault can be found with order of Forum — Upheld.

IV (2006) CPJ 250 (Har.)

- **Machine purchased — Inordinate delay in installing — Improper functioning — Deficiency in service — Refund of price with interest and compensation awarded.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Goods — Blow moulding and injection moulding machine — Inordinate delay in installing — Machine not working properly despite several visits by O.P. to rectify defects — Non-performance and improper functioning of machine admitted — Deficiency in service proved — Refund of cost of machine and expenditure on octroi and transportation along with interest directed — Rs. 20,000 compensation awarded.

IV (2006) CPJ 172 (NC)

OP No. 296/98 and OP No. 47/98 :

RES IPSA LOQUITUR — Applicability of doctrine.

Doctrine of *Res ipsa loquitur* — Applicability — Principles behind maxim — Discussed by Supreme Court in case of *Shyam Sunder & Ors. v. The State of Rajasthan*.

IV (2006) CPJ 276 (NC)

SECURITIES — Amount invested in UTI scheme — Investor consumer — Has no role to play in management, business or commercial activity of UTI — Such investment not commercial activity.

Consumer Protection Act, 1986 — Sections 2(1)(d), 2(1)(o) — Consumer — Investment of amount in UTI Scheme — Commercial activity — UTI corporation established to acquire holding, management and dispose of securities — Investor hires or avails of service to be rendered by UTI — Consideration is deposit or investment of money — Investor consumer — Service of any description rendered by Bank or financial institution covered under Act — Person investing amount with UTI or Bank for earning interest or dividend, not carrying out any commercial activity — He only invests amount — He has no role to participate in management, business or commercial activity of UTI — Investing amount with UTI not commercial activity.

IV (2006) CPJ 301 (NC)

— **NSCs — Issued in contravention of Rules — Having accepted amount, O.P. liable to pay amount equal to interest payable on maturity of same.**

Consumer Protection Act, 1986 — Section 2(1)(g) — NSC 6th Issue Rules, 1989 — Rules 4, 11 — Contract Act, 1872 — Sections 72, 73 — Securities — NSCs — Issuance of certificates in contravention of Rules — Entitlement to interest — NSCs issued to Town Area Committee — Transaction invalid — However amount was retained by opposite party — Having accepted amount in contravention of Rules and not refusing to issue NSCs, opposite parties guilty of deficiency in service — Liable to compensate complainant for loss occasioned on such account — Provisions of Sections 72, 73 of Act of 1872 attracted — Opposite party liable to pay principal amount — Towards compensation, no option but to award sum equivalent to interest payable on maturity of NSCs.

IV (2006) CPJ 215 (NC)

— **Shares — Apparently stolen — Dispute be resolved by making introducing member, a necessary party — In its absence, complaint not maintainable.**

Consumer Protection Act, 1986 — Section 2(1)(c) — Complaint — Maintainability — Impleadment of parties — Securities — Transfer of shares — Dispute as to who is introducing member — Shares appear to be stolen — Complainant paid amount to one 'SN' — M/s. Innova Securities credited amount to account of complainant consequent on transfer of shares to it — Contentions of OP, M/s. Innova Securities is introducing member — In order to resolve dispute, it is necessary party — No relief can be granted to complainant in absence of it being made party to proceedings — Complaint liable to be dismissed.

IV (2006) CPJ 286 (Kar.)

— **UTI scheme — Amount invested — Maturity amount paid — Claim for additional amount — Interpretation of clauses of scheme — Claim not sustainable.**

Consumer Protection Act, 1986 — Sections 2(1)(g) — Securities — Amount invested in UTI Scheme — Payment of certain sum on maturity — Claim for additional amount — Sustainability — Interpretation of clauses of scheme — Entitlement to interest @ 13.5% p.a. on reinvested amount *i.e.* on dividend — Case of complainant that OP assured minimum return @ 13.5% on reinvested dividend income — Documentary evidence in form of scheme of investment — UTI required to return capital invested and to pay return on said units @ 13.5% — In case return is reinvested by purchasing units at NAV, its repurchase price would be only on basis of NAV price — Undisputedly, that has been done by OP —

Complainant's claim for additional sum not maintainable.

IV (2006) CPJ 301 (NC)

SEEDS — Defective — Crop not same as promised — No adverse inference to be drawn against complainant for not sending sample to testing — O.P. guilty for supplying defective seeds.

Consumer Protection Act, 1986 — Section 2(1)(g) — Seeds — Defective — Crop did not come up as promised — Contention of O.P., complainant not sent sample of seed to laboratory for testing its deficiency and that seed not sown as per instructions — Rejected — In order to prove that seed was not sub-standard/defective, O.P. could have sent sample for testing — It failed to do so — No adverse inference can be drawn against complainant on this ground — Further, instructions for sowing seeds not printed on bag, no mention outside bag that same were kept inside it — Cannot be said complainant did not follow alleged instructions — Both Fora below found O.P. guilty for having supplied defective seed — Order upheld.

IV (2006) CPJ 178 (NC)

OP No. 296/98 and OP No. 47/98 :

SERVICES — Consignment released without original documents — Carrier primarily liable to compensate claimants.

Consumer Protection Act, 1986 — Sections 2(1)(g), 14(1)(d) — Carriage by Air Act, 1972 — Rules 22(2), 25 — Cargo Services — Release of insured consignment without original documents — Liability of carrier *vis-a-vis* Insurer — Carrier delivered consignment without obtaining documents of title and Bank release from Bank — Act and omission on part of employees of carrier reckless — Primary liability to reimburse complainants is that of carrier — Even if insurer reimburses complainant, insurer entitled to recover same from carrier — Assessment of liability on similar terms as in OP No. 217/97.

IV (2006) CPJ 276 (NC)

TELEPHONE — Bill disputed — Raised for period telephone disconnected — Unjustified — Quashed.

Consumer Protection Act, 1986 — Section 2(1)(g) — Telephone — Bill disputed — Charging of rental for period when telephone remains disconnected — Unjustified — No service rendered by O.P. during such period — No question of raising bills for period of disconnection since no call is possible from disconnected telephone — Bill quashed — Compensation awarded.

IV (2006) CPJ 253 (Bih.)

— **Installation delayed — Delay unexplained — Deficiency in service — OP liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Telephone — Connection not installed — Complainant made application on 13.1.1998 — Application registered on 30.9.1999 — Long delay in registration not explained — Contention, connection installed in old address of complainant, not proved — No bills relating to installation at old address sent — No telephone installed either in old or new address proved — Deficiency in service proved — O.Ps. jointly and severally liable to pay deposited amount — Compensation and cost awarded.

IV (2006) CPJ 348 (T.N.)

— **Subscriber — Installation for use of HUF — Family members authorised to use, operate and maintain phone — Consumers.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Telephone — Subscriber thereof — Contention, not complainant, rather his NRI son, is subscriber of phone, complainant not consumer — Rejected — Telephone installed for use of HUF, headed by father — Family members authorised to use, operate and maintain phone — In such

situation, plea that complainant not consumer, not acceptable specially when son is NRI — Complainant consumer — Complaint by him maintainable.

IV (2006) CPJ 253 (Bih.)

TRANSPORT SERVICES — Consignment damaged — Claim settled by insurer — Complaint by consignor and insurer — Complainant not consumer.

Consumer Protection Act, 1986 — Sections 2(1)(c) and 2(1)(d) — Consumer — Transport Services — Consignment damaged in fire accident — Claim settled by insurer by paying Rs. 14,68,110 — Complaint by consignor and insurer after obtaining letter of subrogation, assignment and General Power of Attorney — Complainant could not fall within definition of 'consumer' — Complaint by them, not maintainable.

IV (2006) CPJ 204 (NC)

— **Consignment damaged — Insurer settled claim — Joint complaint by insurer and consignor against OP — Lack of privity of contract — Insurer not consumer — OP not liable.**

Consumer Protection Act, 1986 — Section 15 — Transport Services — Consignment damaged during transit — Appeal against liability — Consignment insured — Insurer settled claim of consignor who in turn executed letter of subrogation in favour of insurer — Joint complaint filed by insurer and consignor — Allowed, carrier held liable — Hence present appeal — Contention, insurer not its consumer, no privity of contract existed between them, accepted — Complaint filed by insurer, even after making consignor as co-complainant not maintainable — No order could have been passed against appellant — impugned order set aside.

IV (2006) CPJ 302 (M.P.)

— **Consignment damaged — State Commission granted full value, without assessing actual loss — Unjustified — Loss as assessed by Surveyor payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Transport Services — Damage to consignment — Surveyor's report — Reliability — Consignment valued at Rs. 3.41 lakh, insured with insurer — State Commission directed payment of full value of consignment — Unjustified — Consignment contained carvings, 6 beyond repairs, 2 repairable and 1 not damaged at all — Surveyor assessed loss at Rs. 1,39,432 — State Commission not cared to deal with this report — No grounds given for not relying upon same — State Commission acceded its jurisdiction in granting full value, without assessing actual loss — Complainant entitled to Rs. 1,78,500 with interest @ 12% p.a.

IV (2006) CPJ 170 (NC)

— **Consignment not delivered — Services of OPs 1 and 2, lorry brokers, hired for consideration — Further entrustment of consignment to OPs 2 and 4, would not absolve them from liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Transport Services — Consignment not delivered — Consignment entrusted to O.Ps. 1 and 2 for transportation, further entrusted to O.Ps. 3 and 4 (lorry owner and driver) — Liability for non-delivery of consignment denied by O.Ps. 1 and 2 on ground of their being lorry brokers only — Complaint against them dismissed by Forum — Award passed against O.Ps. 3 and 4 — Hence appeal — Complainants hired services of O.Ps. 1 and 2 on payment of consideration — Forum erred in holding that broker could not be held liable — O.Ps. 1 and 2 cannot escape liability, jointly liable to pay compensation.

IV (2006) CPJ 200 (T.N.)

— **Consignment not delivered — Territorial jurisdiction of Forum to entertain complaint(see Jurisdiction)**

IV (2006) CPJ 213 (Cha.)

- **DTC — Senior citizen benefits — Not allowed despite having senior citizen pass — Deficiency in service — O.P. liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Transport Services — DTC — Senior citizen benefits — Complainant very old and sick man — Manhandled by staff of DTC on account of his failure to produce certificate that he was senior citizen — State Commission allowed complaint — Hence present appeal — Incident immediately brought to notice of Senior Manager of DTC, specifically revealed that senior citizen pass was shown to ATIs, but same was snatched by them, insulted him, dragged him down and caused injuries — His injuries and immediate complaint sufficient proof of say of complainant — Complaint rightly allowed — Order upheld.

IV (2006) CPJ 180 (NC)

- **Goods reached destination — Delivery not taken — O.P. carried out its duty — No deficiency in service.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Transport Services — Failure to take delivery — Goods to be delivered at Patna — Evidence that complainant failed to take delivery despite intimation — Evidence to show that goods had in fact reached Patna — O.P. carried out their duties to expectation of complainant, in terms of contract — No deficiency in service proved.

IV (2006) CPJ 317 (NC)

UNFAIR TRADE PRACTICE — Defined.

Words and Phrases — Unfair Trade Practice — Includes every activity where false representation made regarding services of particular standard, grade or quality and gives warranty or guarantee as to its performance, efficacy or adequacy.

IV (2006) CPJ 255 (Del.)

- **Educational services — Fees — Charging in advance for period for which service yet to be provided — Unfair trade practice — Directions issued.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 2(1)(r) — Educational Services — Charging fees in advance — OP charged fee/consideration in lump sum for period for which service was yet to be provided — Same highly unethical, unscrupulous and amounts to unfair trade practice — It is indirect way for OP to earn large amount of money and to earn undue profit by exploiting poor students — Direction issued to all training imparting institutes, educational centres, etc., not to charge fee for whole duration of course in advance by way of lump sum payment.

IV (2006) CPJ 255 (Del.)

- **Empty pouch sold — No evidence that manufacturer supplied tampered pouch to retailer for sale to consumer — No deficiency in service or unfair trade practice.**

Consumer Protection Act, 1986 — Sections 2(1)(r), 14(1)(g) — Unfair Trade Practices — Sale of empty pouches — Allegation that out of 2 purchased pouches of Amrutanjan pain relieving balm, one packet was empty — Same not denied by appellant manufacturer — No evidence that said tampered pouch supplied by appellant to retailer for sale to consumer — Appellant cannot be blamed for deficiency in service for manufacturing defective pouches — Further, degree of mental agony suffered by complainant not been well explained so as to penalize appellant to extent of Rs. 1 lac with interest — No unfair trade practice proved — Impugned order set aside.

IV (2006) CPJ 205 (Ori.)

- **Housing — Allotment — Cancelled after 33 years — No notice served — Not only unfair trade practice, also deficiency in service — Either allotment or payment of Rs. 25 lacs**

directed.

Consumer Protection Act, 1986 — Sections 2(1)(g), 2(1)(r) — Unfair Trade Practices — Housing — Allotment cancelled after 33 years despite having accepted various payments towards illegal demands of OP in form of External Development Charges — Allotment cancelled without serving notice upon complainant — Not only unfair trade practices but also deficiency in service on part of OP proved — OP directed either to allot plot in name of complainant or to pay Rs. 25 lacs compensation.

IV (2006) CPJ 289 (Del.)

— **Motor Vehicles — Mileage — False, exaggerated claim regarding mileage — Unfair trade practices proved — Directions to stop — Compensation awarded.**

Consumer Protection Act, 1986 — Sections 2(1)(g) and 2(1)(r) — Unfair Trade Practices — Motor Vehicles — False claim regarding mileage — Complainant, being encouraged by advertisement that vehicle gives mileage of 87 KMPL, purchased it — Vehicle failed to fulfil promise — Gave mileage of 65 KMPL — Said claim exaggerated — Contention of O.P., reported mileage is always one in “ideal conditions” — Rejected — Not clarified in advertisement as to what are ideal conditions — Unfair trade practices proved — Directions to stop — Compensation awarded.

IV (2006) CPJ 267 (NC)

— **Motor Vehicles — Sale of second hand car alleged — Not proved — Order directing its replacement or refund of price, not sustainable — No unfair trade practices.**

Consumer Protection Act, 1986 — Section 2(1)(r) — Motor Vehicles — Unfair Trade Practices — Allegation, sold car not original one — Failure to prove — Allegation based on report of Auto Workshop that paint of car not original — Said report is undated not mentioning any defect in car — Affidavit of person issuing this report not filed — Report not acceptable — Cannot be concluded, car second hand — Order passed by State Commission, directing replacement of car or refund price with interest, not legally sustainable, set aside.

IV (2006) CPJ 167 (NC)

WELFARE SCHEME — Subscriber — Entitled to benefits of scheme upon retirement — Complainant having taken voluntary retirement, entitled to all benefits.

Consumer Protection Act, 1986 — Section 21(b) — Welfare Scheme — Complainant Subscriber — Entitlement to benefits thereunder upon retirement of members from service — Complainant voluntarily retired — O.P. declined to make *ex-gratia* payment, monthly pension and other benefits under scheme — Contention, “retirement” not meant to include pre-mature/voluntary retirement — Rejected — No distinction can be made between retirement on superannuation and retirement under VRS — Complainant entitled to all benefits.

IV (2006) CPJ 187 (NC)

WORDS AND PHRASES — “Actual total loss” — Meaning of.

Marine Insurance Act, 1963 — Section 57 — “Actual total loss” — Meaning of.

IV (2006) CPJ 250 (NC)

— **“Alteration”**

IV (2006) CPJ 268 (Kar.)

— **“Coercion”, “Indue influence” — Defined.**

Contract Act, 1872 — Sections 15 and 16 — Coercion, undue influence — Defined.

IV (2006) CPJ 241 (NC)

— **“Commercial” — Meaning of.**

IV (2006) CPJ 301 (NC)

— "Compensation".

Words and Phrases — "Compensation" — Meaning, scope, object and principles governing award of just compensation.

IV (2006) CPJ 219 (Raj.)

O.P. No. 217/97

— "Reckless" — Meaning of.

IV (2006) CPJ 276 (NC)

— "Retire".

IV (2006) CPJ 187 (NC)

— "Subrogation" and "Assignment" — Difference between.

IV (2006) CPJ 204 (NC)

— "Unfair trade practice".

Includes every activity where false representation made regarding services of particular standard, grade or quality and gives warranty or guarantee as to its performance, efficacy or adequacy.

IV (2006) CPJ 255 (Del.)

O.P. No. 217/97

— "Wilful default" — Meaning of.

IV (2006) CPJ 276 (NC)

CONTRACT ACT, 1872

- Consumer Protection Act, 1986 — Section 2(1)(g) — NSC 6th Issue Rules, 1989 — Rules 4, 11 — **Contract Act, 1872** — **Sections 72, 73** — Securities — NSCs — Issuance of certificates in contravention of Rules — Entitlement to interest — NSCs issued to Town Area Committee — Transaction invalid — However amount was retained by opposite party — Having accepted amount in contravention of Rules and not refusing to issue NSCs, opposite parties guilty of deficiency in service — Liable to compensate complainant for loss occasioned on such account — Provisions of Sections 72, 73 of Act of 1872 attracted — Opposite party liable to pay principal amount — Towards compensation, no option but to award sum equivalent to interest payable on maturity of NSCs.

IV (2006) CPJ 215 (NC)

EMPLOYEES' STATE INSURANCE ACT, 1948

- Consumer Protection Act, 1986 — Sections 11, 17, 21 — **Employees' State Insurance Act, 1948** — **Section 75(3)** — Jurisdiction of Fora — Complaint alleging non-payment of medical reimbursement bills under Act of 1948 — Allowed by Forum — Hence appeal — As per Section 75(3), in matters relating to cases covered by Act of 1948, Consumer Fora have no jurisdiction — Complaint wrongly allowed — Impugned order set aside.

IV (2006) CPJ 312 (H.P.)

INSURANCE ACT, 1938

- Consumer Protection Act, 1986 — Section 15 — **Insurance Act, 1938** — **Section 45** — Life Insurance — Revival of lapsed policy — Claim repudiated alleging suppression of existing ailment at time of revival — Justifiability — Policy revived upon payment of requisite

premium with penalty/interest in January, 2004 — Death due to cancer of rectum on 30.5.2004 — Deceased was medically examined by panel physician of OP before granting revival — At this time, no symptom of his having suffering with cancer — Diagnosis for first time made on 25.5.2004, i.e. after 4 months of revival — Same cannot be related back to its revival — Further, revival of old policy does not constitute new contract — Period of 2 years, for purposes of Section 45, has to be calculated from date when policy was originally affected — Not case of suppression of ailment — Repudiation unjustified — Insurer liable.

IV (2006) CPJ 306 (M.P.)

MARINE INSURANCE ACT, 1963

- Consumer Protection Act, 1986 — Section 2(1)(g) — **Marine Insurance Act, 1963 — Section 57** — Insurance — Marine Hull Policy — Actual total loss of vessel — Vessel damaged during its operation, could not be salvaged, went beyond repair/redemption — Repudiation of claim — Contention, insured required to establish actual total loss and unless there is total loss as per policy, insured not entitled to any reimbursement — In present case, vessel damaged in such way that it stranded in sand in beach and could not be moved out of it — Assured was irretrievably deprived of vessel — Surveyor's report also to same effect — Further contention that complainant deliberately not taken action to prevent actual total loss of vessel, rejected — Said submission, against evidence on record — Survey report narrates various steps taken by complainant to prevent any further loss — Claim of insured fully justified — Insurer liable.

IV (2006) CPJ 250 (NC)

- **Section 57** — “Actual total loss” — Meaning of.

IV (2006) CPJ 250 (NC)

MOTOR VEHICLES ACT, 1988

- Consumer Protection Act, 1986 — Section 2(1)(g) — **Motor Vehicles Act, 1988 — Sections 2(47), 56** — Insurance — Insured vehicle caught fire, damaged — Claim repudiated on ground that vehicle did not have fitness certificate as on date of accident — Vehicle in question registered as “Rig” — Since it is neither public service vehicle nor goods carriage nor educational institution bus nor private service bus, hence not transport vehicle — Under Section 56 of Act of 1988, fitness certificate required only in respect of transport vehicle, not for other types — Repudiation of claim on said ground unjustified — Vehicle beyond repairable condition — OP liable to pay accepted estimated market value of vehicle subject to surrendering of salvage.

IV (2006) CPJ 317 (Kar.)

- Consumer Protection Act, 1986 — Section 15 — **Motor Vehicles Act, 1988 — Sections 122, 126** — Insurance — Accident while vehicle remained stationary — Relevance of issue regarding validity/invalidity of driving licence of driver — If stationary vehicle is hit by any vehicle, question of validity of licence of driver of stationary vehicle, wholly irrelevant.

IV (2006) CPJ 261 (Punjab)

- Consumer Protection Act, 1986 — Section 15 — **Motor Vehicles Act, 1988 — Section 157** — Insurance — Transfer of certificate of insurance — Vehicle damaged in accident — Claim repudiated on ground that policy not transferred from name of original owner to name of complainant, as on date of accident — Ownership of vehicle transferred on 3.6.2003 — Accident on 6.7.2003 — Policy transferred on 17.7.2003 — Not case of OP that complainant has not made application within 14 days, seeking transfer of policy in his name — Transfer of policy dates back to date of transfer of vehicle as per Section 157 of Act of 1988 stating that deemed transfer of policy takes effect from date of transfer of vehicle — OP cannot avoid its liability to compensate claimants.

IV (2006) CPJ 264 (Kar.)

NSC 6TH ISSUE RULES, 1989

- Consumer Protection Act, 1986 — Section 2(1)(g) — **NSC 6th Issue Rules, 1989 — Rules 4, 11** — Contract Act, 1872 — Sections 72, 73 — Securities — NSCs — Issuance of certificates in contravention of Rules — Entitlement to interest — NSCs issued to Town Area Committee — Transaction invalid — However amount was retained by opposite party — Having accepted amount in contravention of Rules and not refusing to issue NSCs, opposite parties guilty of deficiency in service — Liable to compensate complainant for loss occasioned on such account — Provisions of Sections 72, 73 of Act of 1872 attracted — Opposite party liable to pay principal amount — Towards compensation, no option but to award sum equivalent to interest payable on maturity of NSCs.

IV (2006) CPJ 215 (NC)

RAILWAYS ACT, 1989

- Consumer Protection Act, 1986 — Section 2(1)(g) — **Railways Act, 1989 — Section 60(2)(a)** — Railway Services — Providing reserved accommodation to passengers — Framing of rules therefor — Complainant purchased journey-cum-reservation ticket under “Tatkal Sewa Journey Scheme” — As per Rule 17 of scheme, passenger required to carry ticket and same authority on which it was booked during journey and has to be produced while ticket checking, failing which passenger will be treated as travelling without ticket — Complainant did not carry requisite identification as prescribed — Act of O.P. in insisting complainant for production of original identity card, not unauthorised — Act of O.P. in levying penalty and collecting excess fare, not illegal — No deficiency in service proved — Complainant liable to pay penalty.

IV (2006) CPJ 333 (Pond.)
