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#### **IV (2006) CPJ 76 (Raj.)**

- **Flight cancelled — Prior information not given — Deficiency in service — OP liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Airlines — Cancellation of flight — Non-giving of prior information — Flight cancelled on 29.5.2000 because of damage of runway at Bagdogra Airport and flight could not land there — Undisputedly, repair work of said Airport started in January, 2000 to be completed in June 2000 — Landing of flights was, therefore, restricted — Such fact within knowledge of O.P., not disclosed to complainant before issuance of OK tickets — Deficiency in service proved — O.P. liable.

#### **IV (2006) CPJ 76 (Raj.)**

- **Territorial Jurisdiction — Tickets purchased at Jaipur — Concerned Forum has jurisdiction.**

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#### **IV (2006) CPJ 76 (Raj.)**

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Consumer Protection Act, 1986 — Section 15 — Appeal — Conditional stay of execution of impugned order — Imposing condition to deposit 50% of amount awarded by Forum — Legality — Contention, Rs. 25,000 or 50% of award amount, whichever less, has to be deposited, not accepted — Such deposit is only for entertainment of appeal — Only after entertaining of appeal, question of granting stay/interim relief would arise — Appellate Forum has discretion to grant or to refuse same — Appropriate order required to be passed, depending upon facts and circumstances of each case — Impugned order of State Commission justified, upheld.

#### **IV (2006) CPJ 25 (NC)**

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Consumer Protection Act, 1986 — Section 21(b) — Motor Vehicles — Non-delivery — Money not delivered to authorised dealer — No contract with Maruti Udyog Limited (MUL) or its authorised dealer — Amount towards booking of vehicle given to one 'J' — No mention on receipt that they are authorized dealers of Maruti — It gives an impression that complainant might have been cheated — In absence of any contract with them, MUL not obliged to deliver vehicle to complainant — No liability.

#### **IV (2006) CPJ 103 (NC)**

##### **BAILEE — Hire Purchase Agreement — Purchaser mere bailee, not consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Hire purchase agreement — Purchaser is mere bailee, not consumer — Not entitled to relief — Complaint dismissed by Forum — Appeal against order barred by limitation — Dismissed.

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##### **BANKING AND FINANCIAL INSTITUTIONS SERVICES — ATM — Improper functioning — Complainant deprived of cash withdrawal facility in spite of maintaining balance — Deficiency in service — OP liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — ATM — Failure to maintain proper functioning of — Complainant deprived of withdrawal of cash of Rs. 800 despite there being balance of Rs. 25,565.63 — Machine refused to make payment on account of insufficient funds — It showed balance of Rs. 249.47 — Complaint alleging deficiency in service — Contention of opposite party, terms and conditions of ATM transaction provide for no liability in case of loss resulting from failure of ATM or its malfunctioning — Rejected — Not case of ATM failure or malfunctioning — Machine showed balance of Rs. 249.47 only whereas actually it was Rs. 25,565.63 — Grosses kind of deficiency in service proved — Terms and conditions cannot come to rescue of opposite party — Opposite party liable — Compensation awarded.

#### **IV (2006) CPJ 167 (Del.)**

##### **— ATM — Improper functioning — Facility provided against savings Bank account which is opened against consideration — Complainant consumer.**

Consumer Protection Act, 1986 — Sections 2(1)(d), 2(1)(g) — Banking and Financial Services — ATM Facility — Improper functioning — Consumer — Complaint alleging deficiency in service — Contention of opposite party, complainant not consumer in respect of ATM transactions as no amount is charged for ATM operations — Rejected — ATM facility being provided against Savings Bank account, which is always opened against consideration and charges — Complainant consumer.

#### **IV (2006) CPJ 167 (Del.)**

- **Agents liability — Housing scheme — Failure of OP to abide by its terms — Agent committed default — OP not absolved of liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Agents' liability — Scheme for purchase of site — Failure of both parties to abide by its terms — Complainant did not complete subscription period of 36 months — OP did not conduct monthly casting of lot — Contention of OP, one 'S', agent of OP, collected amount from subscribers and did not pay to OP — Since S was only his agent, OP not absolved of its liability — Amount rightly directed to be repaid.

#### **IV (2006) CPJ 32 (T.N.)**

- **Bank draft — Not bearing code number and stamp — Deficiency in service — Issuing branch liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Bank draft — Draft issued by opposite party did not bear code number and stamp besides it also did not contain name of branch nor any signature — Draft returned due to aforesaid mistake on it — Deficiency in service proved — Forum rightly allowed interest on draft amount from date of preparation till date it was returned back — Rs. 500 compensation and Rs. 500 litigation cost also awarded — Order upheld.

#### **IV (2006) CPJ 43 (Bih.)**

- **Cash credit limit — Charging interest thereon — Rate of — Deviation from rate being charged by other Nationalised Banks — Deficiency in service.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Cash credit limit — Charging of interest thereon — Rate of — Bank assured charging of interest only at same rate as being charged by other nationalised Bank — Opposite party started charging interest at enhanced rate of 18.75% p.a., further raised to 19.25% p.a. and thereafter to 21.25% p.a. — Opposite party Bank has not led adequate evidence to prove that complainant had not complied with any of parameters to justify charging interest @ 21.25% — Deficiency in service proved — Complaint rightly allowed.

#### **IV (2006) CPJ 81 (NC)**

- **Cheque — Tallying of signatures — Opinion of handwriting expert required — Forum empowered to obtain such reports.**

Consumer Protection Act, 1986 — Sections 13(1)(c), 15 — Practice and Procedure — Banking and Financial Services — Cheque passed without tallying signatures — Complaint dismissed on ground that tallying of signatures cannot be investigated in summary proceedings before Fora as it required opinion of Handwriting Expert — Impugned order inherently infirm — By Section 13(1)(c), Forum is empowered to obtain reports from Experts — Summary proceedings do not mean these should not be subjected to Expert opinions — Impugned order set aside — Matter remanded.

#### **IV (2006) CPJ 153 (Del.)**

- **Cheque book — Code number mentioned wrongly — O.P. negligent — Liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Cheque Book — Mentioning of wrong code number — Resultantly, cheque remained

uncashed and was returned — Contention of opposite party, cheque would have been encashed if presented for clearing by pasting sticker by collecting banker despite fact that wrong MICR code printed on cheque book — Rejected — Collecting bank not expected to forward signed cheque with wrong MICR code — Opposite party negligent in not detecting such mistake before issuing cheque books to account holders — Deficiency in service proved — Forum rightly awarded token compensation of Rs. 3,000 — No interference required — No case for enhancement either.

#### **IV (2006) CPJ 74 (Del.)**

- **Cheque dishonoured — Debiting service charges for not maintaining minimum balance justified — Balance insufficient to pay cheque amount — Rightly returned.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Cheque not honoured — Funds insufficient — Debiting service charges for violation of non-maintenance of minimum balance — Complainant had credit balance of Rs. 2 on 30.3.2002 — Rs. 4,916 deposited on 2.5.2002 — After debiting Rs. 10 service charges for not maintaining minimum balance, balance remained Rs. 4,908 — Balance insufficient to pay cheque amount of Rs. 4,916 — Cheque rightly returned — No deficiency in service proved.

#### **IV (2006) CPJ 56 (NC)**

- **Cheque lost in transit — Negligence proved — Liable to compensate — Cheque amount recoverable from drawer.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Negligence — Cheque lost in transit — Bank negligent in not crediting cheque amount in account of complainant — Deficiency in service proved — Bank free to escape liability in case of loss of bill as mentioned in pay-in-slip — Cannot deny liability to compensate consumer for its negligence — Bank not liable to pay cheque amount — Same recoverable from drawer — Rs. 5,000 compensation awarded.

#### **IV (2006) CPJ 111 (Del.)**

- **Deposits not returned — Petitioner played fraud by false representation — Liable.**

Consumer Protection Act, 1986 — Section 21(b) — Banking and Financial Services — Non-returning of deposits — Petitioner responsible for accepting deposits made by various depositors — He himself collected deposits by representing himself as Managing Director of company and played fraud — Failure to prove that petitioner was employee of company — Petitioner liable to pay maturity value with interest @ 18% p.a. — Order of lower Fora upheld.

#### **IV (2006) CPJ 7 (NC)**

- **Hypothecation agreement — Insurance of vehicle — Option given to OP bank, not obligatory for it, to get vehicle insured — Owner's responsibility.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Motor Vehicles Act, 1988 — Section 146 — Insurance — Banking and Financial Services — Necessity of insurance of vehicle against third party risks — Hypothecation agreement between parties — Option given to O.P. Bank to insure vehicle and debit premium to account of complainant — Not obligatory for Bank to have taken insurance cover of vehicle in question — Responsibility of claimant to get vehicle insured — Even otherwise, plying of vehicle without insurance is violation of Section 146 of MV Act — No deficiency in service of Bank in not paying premium of policy for vehicle — Forum wrongly accepted complaint.

#### **IV (2006) CPJ 189 (Har.)**

- **Hire Purchase Agreement — Loan default in repayment — Vehicle seized as per agreement — No deficiency in service.**

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

purchase agreement — Vehicle purchased by obtaining finance from O.P. — Default in repayment of loan instalments — Agreement authorised financier to repossess vehicle in case of such default — Admittedly, default committed several times — Vehicle seized as per agreement — No deficiency in service proved.

#### **IV (2006) CPJ 68 (Chhat.)**

- **Hire Purchase Agreement — Loan for purchase of vehicle — Supply of articles delayed — Liability of bank *vis-a-vis* suppliers.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Hire Purchase Agreement — Loan for purchase of tractor, culti and trailer — Delay in supply of articles in spite of receipt of amount — Liability of O.P. No. 1 Bank *vis-a-vis* O.Ps. 2 and 3, suppliers — Contention of Bank, it performed its duty and supplied loan in time, it was fault of O.Ps. 2 and 3 — Rejected — In present case, Bank did not follow rules under Banking Circular — No information sent to supplier regarding person to whom requisite goods to be supplied — It is Bank who is responsible and deficient in service, not supplier — Supplier also liable since trailer not supplied despite deposit of money by Bank — Compensation awarded.

#### **IV (2006) CPJ 11 (Bih.)**

- **Joint account — Mandate 'either or survivor' withdrawn — Operation of account by one of holders not allowed without succession certificate.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Contract Act, 1872 — Section 45 — Banking and Financial Services — Joint account — Devolution of joint rights — Complainant joint account holder with husband, with mandate 'either or survivor' — Such mandate withdrawn — State Commission justified in holding that Bank could not allow operation of account by one of account holders alone, without succession certificate — Complainant entitled to release of amount in her favour if other heirs give consent and have no objection.

#### **IV (2006) CPJ 83 (NC)**

- **Lien — Exercise of — Amount due in one branch — General lien over documents/title deeds deposited in other branch, can be exercised — Action justified — No compensation awardable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Contract Act, 1872 — Section 171 — Transfer of Property Act, 1882 — Section 60 — Banking & Financial Services — General lien of bankers — Right of mortgagor to redeem — Bank deficient in service in not returning documents/title-deeds in time — State Commission directed return of same — Appeal by complainants claiming compensation for harassment and mental agony — Complainants guarantors of loans granted to several firms — Said firms committed defaults in payment of dues — Opposite party State Bank of India is one legal entity irrespective of its hundreds of branches — If amount is due against person in account of another branch, Bank could exercise its general lien over documents/title deeds deposited in one branch in respect of loan in other branches — Complainants continued to be liable as other accounts of different branch of opposite party were not cleared — Bank justified in feeling inhibited in returning documents/title deeds — No room for awarding compensation.

#### **IV (2006) CPJ 1 (NC)**

- **Loan — Grant of — Discretion of bank to sanction.**

Consumer Protection Act, 1986 — Section 15 — Banking and Financial Services — Loan — Discretion of bank to sanction or otherwise — Application for grant of loan of Rs. 4.35 lacs to set up small scale unit — Project report produced by complainant showed total cost of project worked out at Rs. 3.46 lacs — It is for Bank to decide whether to assist any industry and if so, to what extent — Loan has to be commensurate with credit worthiness and financial status of borrower — Complainant cannot claim grant of whole Rs. 4.35 lacs —

Complaint rightly dismissed.

#### **IV (2006) CPJ 16 (Punjab)**

- **Loan — Repayment delayed — OP should have provided proper account statement — Both parties at fault — No compensation.**

Consumer Protection Act, 1986 — Section 15 — Banking and Financial Services — Loan — Repayment, not in time, only after lapse of time — Still certain balance payable by him — Opposite party informed that on settlement of amounts by complainant, his share capital and thrift savings amount would be adjusted — Loan not repaid — Incumbent upon OP to have provided complainant with proper statement of account — Both parties at fault — Order of Forum directing OP to furnish statement of account to complainant and loan to be repaid by latter, upheld — Complainant not entitled to any compensation.

#### **IV (2006) CPJ 18 (T.N.)**

- **Loan repaid — Title deeds not released — Stolen in theft — Negligence of OP proved — Same not Act of God — OP Liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Loan by securing title deeds — Repayment — Non-release of title deeds — Statement of opposite party, documents might have been lost in theft which occurred in Bank in which many important documents and other valuables were stolen — Negligence of opposite party, amounting to deficiency in service proved — Forum right in not accepting stand of opposite party that it was an Act of God — Opposite party irresponsible and indifferent — Rs. 25,000 compensation awarded.

#### **IV (2006) CPJ 174 (T.N.)**

- **Lockers — Broken in burglary — Bank negligent — Valuation of valuables, jewellery etc. — Complainants to approach Civil Court.**

Consumer Protection Act, 1986 — Sections 11, 15, 17, 21 — Banking and Financial Services — Lockers hired — Burglary in Bank — Lockers broken after breaking open strong room of bank — Complainants suffered loss since their jewellery articles, etc. were kept in locker — Negligence of Bank alleged — Compensation claimed — Contention of OP Bank, Consumer Forums cannot go into details regarding actual keeping of valuables of particular value, accepted — Complainants at liberty to approach Civil Court for redressal of their grievance.

#### **IV (2006) CPJ 86 (Punjab)**

- **Maturity amounts not paid — Cheques towards interest also dishonoured — Liability to pay money back with interest and compensation.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Non-payment of maturity amounts — Opposite party did not repay money due under deposit receipts on maturity — 3 cheques issued by opposite party towards interest also returned for want of funds — Opposite party stated that it had discharged its liability — Same not true — If really opposite party had discharged money due to complainant, it could have been proved by producing Bank account — Clear that opposite party had not repaid money and been evading payment — Opposite party to pay Rs. 60,000 back, with interest and compensation.

#### **IV (2006) CPJ 152 (T.N.)**

- **Non-payment of balance amount — Limitation — Contention, claim fully settled in October 2002, rejected — Further payments made — Claim maintainable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Non-payment of balance amount — Limitation — Contention, amount of Rs. 5,000 accepted as full and final settlement on 22.10.2002, complaint filed on 6.12.2004 is time-barred — Contentions can be decided only on basis of evidence — Complainant alleges that further payments by

O.P. made on 16.2.2003 and 24.7.2003 — Hence 22.10.2002 cannot be taken as date for completion of limitation period — Taking date of last payment, complaint filed on 6.12.2004 is within limitation.

#### **IV (2006) CPJ 39 (NC)**

— **Vehicle financed — Used for commercial purposes — O.P. liable for deficient financial service of lending — Complainant consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Banking and Financial Services — Hire Purchase Agreement — Vehicle purchased by obtaining finance from O.P. — Contention, complainant purchased vehicle for commercial purposes hence not consumer — Dispute relates to financial service of lending for purchase of vehicle — Point elaborately discussed and settled by National Commission in I (2005) CPJ 27 (NC) — Objection on this count deserves to be overruled.

#### **IV (2006) CPJ 68 (Chhat.)**

**BENEFICIARY — Transport Services — Freight — Paid by beneficiary — Consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Transport Services — Freight paid by complainant — He being beneficiary comes under purview of being 'consumer'.

#### **IV (2006) CPJ 144 (NC)**

**BURGLARY — Locker broken in Bank ..... (See Banking and Financial Institutions Services)**

#### **IV (2006) CPJ 86 (Punjab)**

**CHAIN SNATCHING — Ornament snatched from train window — Railway administration liable.**

Consumer Protection Act, 1986 — Sections 2(1)(g) and 14(1)(d) — Railway Services — Ornament snatched from outside window of the train — Such occurrence on railway platform amounts to deficiency in service on part of railway administration — Consumer entitled for compensation.

#### **IV (2006) CPJ 45 (Del.)**

**COMMERCIAL PURPOSE — Insurance — Vehicle used as taxi — Service of insurance not barred on ground of being used for commercial purposes — Complainant consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Insurance — Insured vehicle being run as taxi — Repudiation of claim — Contention, vehicle being used for commercial purposes, not accepted — Claim not relating to any alleged defect in goods but deficiency in service by insurer — Service of providing insurance not barred on ground of commercial purpose — Such service hired to obtain security against any loss and not for furtherance of business or commercial activity — Complainant consumer.

#### **IV (2006) CPJ 21 (Chhat.)**

— **Vehicle financed — Used for commercial purposes — O.P. liable for deficient financial service of lending — Complainant consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Banking and Financial Services — Hire Purchase Agreement — Vehicle purchased by obtaining finance from O.P. — Contention, complainant purchased vehicle for commercial purposes hence not consumer — Dispute relates to financial service of lending for purchase of vehicle — Point elaborately discussed and settled by National Commission in I (2005) CPJ 27 (NC) — Objection on this count deserves to be overruled.

#### **IV (2006) CPJ 68 (Chhat.)**

**COMPENSATION — Airlines — Baggage delivered belatedly — Compensation 220 US \$**  
..... (See Airlines)

**IV (2006) CPJ 134 (T.N.)**

- **Airlines — Flight cancelled — Case of deprivation of one LTC tour — Loss of amenities and enjoyment — Compensation payable.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Compensation — Loss of LTC facility — Airlines — Cancellation of flight by O.P. — Complainant had to break up his journey at Delhi and had to come back to Jaipur — Case of deprivation of one LTC tour — Another LTC would come after 4 years — Loss of LTC means loss of amenities and enjoyment — Rs. 25,000 compensation to be awarded for loss of one LTC — Rs. 32,000 for inconveniences and mental agony, etc., as awarded by Forum upheld — Total Rs. 57,000 compensation payable with interest @ 12% p.a.

**IV (2006) CPJ 76 (Raj.)**

- **Educational Service — Education imparted in English, instead of Hindi — Rs. 25,000 awarded.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Compensation — Education imparted in English, instead of Hindi — Inconvenience, hardship, discomfort, etc. caused — Rs. 25,000 compensation, not excessive, appears just, proper and reasonable.

- **Electricity — Motor faulty — Bills raised by O.P. quashed — Complaint allowed on technical ground — Compensation not necessitated.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Indian Electricity Act, 1910 — Section 26(6) — Electricity — Meter Faulty — Forum allowed complaint, quashed bill raised by O.P. and directed to refer dispute to Chief Electrical Inspector under Section 26(6) of Act of 1910 — No compensation awarded — Hence, present appeal — Complaint allowed on wholly technical ground — Not necessary that in such cases compensation must follow — Order of Forum upheld.

**IV (2006) CPJ 102 (Punjab)**

- **Housing — Allotment of rocky site — Entitlement to compensation.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Compensation — Complaint regarding allotment of improper site allowed — Rs. 3,000 compensation awarded — Appeal for enhancement — Allegation, mother of complainant suffered injuries in opposite party's office — No evidence in support — Housing Board not liable to bear expenses for her treatment — No material to substantiate various other claims of complainant — Compensation adequate.

**IV (2006) CPJ 72 (T.N.)**

- **Housing — Builder — Possession delayed for want of petty amount being due from complainant — Rs. 50,000 compensation awarded.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Builder — Certain amounts due from complainants — Possession not handed over — Contention, Rs. 82,000 due towards additional built up area of 46 sq. ft., interest on delayed payments etc. — No agreement between parties to provide additional floor space — Same stated as unauthorised construction — Claim of builder towards said space is without any merit — Builder entitled only to Rs. 12,700 — For such petty amount, he delayed handing over of possession — Deficiency in service proved — State Commission rightly awarded compensation of Rs. 50,000 — No legal infirmity in order — Builder entitled to deduction of Rs. 12,700 from compensation amount.

**IV (2006) CPJ 40 (NC)**

- **Insurance — Awarding more compensation than insured amount — Unjustified — Loss**

**payable as per Surveyor's report.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Insured truck missing — Compensation exceeding limit of insurance — Justifiability — Truck insured for Rs. 2,60,000 — State Commission directed insurer to pay Rs. 3,56,999 — No details available for same — Award not supported by any material on record, not sustainable — Surveyor's report being important piece of document and evidence, cannot be brushed aside — Surveyor assessed loss at Rs. 1,35,500 on repair basis and Rs. 1,11,000 on cash loss basis — No ground for State Commission, not to rely upon same — Impugned order set aside — Complainant entitled to loss assessed by Surveyor with interest @ 10% from two months after report of Surveyor till payment — Claim regarding subsequent loss cannot be awarded since no separate policy taken by complainant relating to consequent loss — Principle of indemnity is to restore status of complainant.

**IV (2006) CPJ 84 (NC)**

— **Interest — Award of — Absence of equitable grounds — Payment of interest set aside.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Code of Civil Procedure, 1908 — Section 34 — Compensation — Direction to refund with interest — Appeal against — Interest awarded if there are equitable grounds *i.e.*, justice, equity and good conscience — Direction to refund price upheld — Payment of interest set aside.

**IV (2006) CPJ 40 (Del.)**

— **RKBY Scheme — Assessment as per formula.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Compensation — Quantum — Amount to be paid as per formula :

Assured amount x Short fall in yield

Threshold yield

=Rs. 8,395 payable by Nodal Agency with interest @ 9% p.a.

**IV (2006) CPJ 4 (Chhat.)**

**COMPLAINANT — Complaint — Filing of — Requirements under Section 2(1)(b) to be complied with.**

Consumer Protection Act, 1986 — Section 2(1)(b) — Complainant — Jurisdiction of Forum — For invoking jurisdiction, complainant required to file complaint in terms with Section 2(1)(b) — Same complied with — Contention of opposite party, complaint not been verified as required under law, cannot be accepted.

**IV (2006) CPJ 8 (Har.)**

**COMPLAINT — Electricity — Motor faulty — Bills raised by O.P. quashed — Complaint allowed on technical ground — Compensation not necessitated.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Indian Electricity Act, 1910 — Section 26(6) — Electricity — Meter Faulty — Forum allowed complaint, quashed bill raised by O.P. and directed to refer dispute to Chief Electrical Inspector under Section 26(6) of Act of 1910 — No compensation awarded — Hence, present appeal — Complaint allowed on wholly technical ground — Not necessary that in such cases compensation must follow — Order of Forum upheld.

**IV (2006) CPJ 102 (Punjab)**

— **Maintainability — Complaint by partnership firm — Not signed by all partners — Maintainable.**

Consumer Protection Act, 1986 — Section 2(1)(c) — Complaint — Maintainability — Complaint on behalf of firm — Signed and verified by only one of two partners — Maintainable, since provisions of CPC not applicable to proceedings before Consumer Fora.

#### **IV (2006) CPJ 21 (Chhat.)**

- **Maintainability — LTC facility availed — Wife and daughter not made parties — Case not bad for non-joinder of parties — Maintainable.**

Consumer Protection Act, 1986 — Section 2(1)(c) — Complaint — Maintainability — Contention of O.P., defect of non-joinder of necessary parties present, complaint not maintainable — Rejected — Complainant availed LTC facility — Such facility availed not only by Government official himself but by his family members also — Wife and daughters not made parties — Cannot be said case of non-joinder of parties.

#### **IV (2006) CPJ 76 (Raj.)**

- **Maintainability — RKBY Scheme — Complaint claiming compensation thereunder — Relevant considerations.**

Consumer Protection Act, 1986 — Sections 2(1)(c) and 11 — Summary jurisdiction of Consumer Fora — Complaint by agriculturists claiming compensation under RKBY scheme — Relevant considerations are whether land of complainant covered under scheme and whether Nodal Agency and implementing Agency performed their duties and obligations under scheme — Matter not requiring recording of detailed evidence, can be decided by Forum.

#### **IV (2006) CPJ 4 (Chhat.)**

- **Maintainability ..... (See Securities)**

#### **IV (2006) CPJ 122 (Raj.)**

- **Maintainability — Services deficient — Rectified — Complainant failed to prove its case — Not maintainable.**

Consumer Protection Act, 1986 — Sections 2(1)(c), 24A — Complaint — Maintainability — Limitation — Complaint by registered voluntary association of small scale unit holders of opposite party — Services rendered by opposite party alleged to be deficient in many respects like non-availability of roads, fire-fighting services and inadequate water-supply etc. — Failure to prove — Deficiencies brought to notice of opposite party on 11.4.1986 — Complaint filed in 1996 — Alleged deficiencies in service rectified — Affidavit of executive engineer produced as evidence — Affidavit dealt with facilities of road, water supply, power, drainage, etc. — Complaint filed after about 10 years, at any rate cannot said to be within limitation — Evidence of complainant falls short of proving its case — Complaint deserved to be dismissed on merits also.

#### **IV (2006) CPJ 28 (NC)**

- **Maintainability — Transport Services — Non-delivery of insured consignment — Amount paid by insurer — Letter of assignment, subrogation executed in name of insurer — Complaint by insurer, not being hirer of services of O.P., not maintainable — Remedy before appropriate Forum.**

Consumer Protection Act, 1986 — Sections 2(1)(c), 2(1)(d) — Consumer — Execution of letter of 'assignment', 'subrogation' and 'general power of attorney' in favour of insurer — Complaint on behalf of insurer — Maintainability — Transport services — Non-delivery of consignment — Goods insured — Amount paid by insurer — Undisputedly, letter of assignment, subrogation, etc. been executed in favour of insurer, by consignor — Consumer complaint against transporter — Insurer, since not hirer of services of opposite party, cannot be said consumer — Addition of consignor as co-applicant makes no difference — Complaint not maintainable — Complainants free to seek remedy before appropriate Forum.

#### **IV (2006) CPJ 44 (NC)**

- **CONSUMER — ATM — Improper functioning — Facility provided against Savings Bank account which is opened against consideration — Complainant consumer.**

Consumer Protection Act, 1986 — Sections 2(1)(d), 2(1)(g) — Banking and Financial Services — ATM Facility — Improper functioning — Consumer — Complaint alleging deficiency in service — Contention of opposite party, complainant not consumer in respect of ATM transactions as no amount is charged for ATM operations — Rejected — ATM facility being provided against Savings Bank account, which is always opened against consideration and charges — Complainant consumer.

#### **IV (2006) CPJ 167 (Del.)**

- **Complainant power of attorney holder — Competent to file complaint on behalf of executor.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Complaint by son of proprietor of firm — Father issued power of attorney in his name — Complainant consumer, competent to file complaint on behalf of firm.

#### **IV (2006) CPJ 43 (Bih.)**

- **Educational Services — Imparting education for consideration — Students consumers.**

Consumer Protection Act, 1986 — Sections 2(1)(d) and 2(1)(o) — Educational Services — Consumer — Imparting education for consideration comes under ambit of service under Section 2(1)(o) — Students admitted for being imparted education are consumers as defined under Section 2(1)(d).

#### **IV (2006) CPJ 13 (Raj.)**

- **Electricity — Transfer of connection — Complainant actual user, beneficiary of original consumer — Consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Electricity — Connection existing in name of original consumer — Transfer of same in name of actual user — Requirement to follow procedure — After death of original user, complainants continued using electricity — Actual user in premises were complainants, they will be beneficiaries of original person in whose name connection was existing — If they wanted connection to be transferred in their names, procedure under Rules and Regulations have to be followed by both parties — Opposite party served no notice upon complainants for checking meter in ME Lab in their presence, no consent letter given to check meter in their absence — Removed meter not been packed as per Rules — Complainants consumers.

#### **IV (2006) CPJ 157 (Punjab)**

- **Hire Purchase Agreement — Purchaser mere bailee, not consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Hire purchase agreement — Purchaser is mere bailee, not consumer — Not entitled to relief — Complaint dismissed by Forum — Appeal against order barred by limitation — Dismissed.

#### **III (2006) CCR 148 (Cha.)**

- **House Tax — Assessment order not supplied — Consideration paid — Complainants consumers — OP statutorily bound to supply same — Deficiency in service — OP liable.**

*R.P. No. 2774/2004*

Consumer Protection Act, 1986 — Sections 2(1)(d), 2(1)(g) — Municipalities — House tax — Non-supply of assessment order — Copy of assessment order not supplied to complainants — Hence complaint before Forum — Contention of opposite party, complainants not consumers, rejected — Complainants deposited Rs. 10 for getting said order — It was regarding premises belonging to complainant — Once assessment order is passed, against or in favour of party, same is required to be communicated — Statutory duty on Opposite party to do so, under existing law — opposite party acted arbitrarily and with oblique motive and harassed complainants — No justifiable reason for not supplying copy of assessment order — Opposite party liable — Compensation awarded.

#### **IV (2006) CPJ 20 (NC)**

- **Insurance — Vehicle used as taxi — Service of insurance not barred on ground of being used for commercial purposes — Complainant consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Insurance — Insured vehicle being run as taxi — Repudiation of claim — Contention, vehicle being used for commercial purposes, not accepted — Claim not relating to any alleged defect in goods but deficiency in service by insurer — Service of providing insurance not barred on ground of commercial purpose — Such service hired to obtain security against any loss and not for furtherance of business or commercial activity — Complainant consumer.

#### **IV (2006) CPJ 21 (Chhat.)**

- **Medical negligence alleged — Treatment in Government hospital — No fees charged — No consumer dispute involved — Patient not consumer.**

Consumer Protection Act, 1986 — Sections 2(1)(d), 2(1)(e) — Consumer — Medical Negligence — Operations conducted at Government Hospital — amount if any received by OPs, would be deemed to be illegal gratification — Same cannot be termed as consideration — Under such circumstances, complainant not consumer — No consumer dispute involved — No relief entitled.

#### **IV (2006) CPJ 45 (M.P.)**

- **Medical Services — Free aid received — Hospital comes under purview of Act — Patient consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Medical Services — Free medical aid received — Not charging any fee from poor patients does not absolve hospital from purview of Consumer Protection Act — Complainant consumer.

#### **IV (2006) CPJ 36 (Bih.)**

- **RKBY Scheme — Services under scheme rendered for consideration — Complainants consumers.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Complainants covered under RKBY scheme — Services rendered by O.P. under scheme, was for consideration, paid by complainants — Complainants consumers.

#### **IV (2006) CPJ 4 (Chhat.)**

- **Transport Services — Freight — Paid by beneficiary — Consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Transport Services — Freight paid by complainant — He being beneficiary comes under purview of being 'consumer'.

#### **IV (2006) CPJ 144 (NC)**

- **Transport Services — Non-delivery of insured consignment — Amount paid by insurer — Letter of assignment, subrogation executed in name of insurer — Complaint by insurer, not being hirer of services of O.P., not maintainable — Remedy before appropriate Forum.**

Consumer Protection Act, 1986 — Sections 2(1)(c), 2(1)(d) — Consumer — Execution of letter of 'assignment', 'subrogation' and 'general power of attorney' in favour of insurer — Complaint on behalf of insurer — Maintainability — Transport services — Non-delivery of consignment — Goods insured — Amount paid by insurer — Undisputedly, letter of assignment, subrogation, etc. been executed in favour of insurer, by consignor — Consumer complaint against transporter — Insurer, since not hirer of services of opposite party, cannot be said consumer — Addition of consignor as co-applicant makes no difference — Complaint not maintainable — Complainants free to seek remedy before appropriate Forum.

#### **IV (2006) CPJ 44 (NC)**

- **Vehicle financed — Used for commercial purposes — O.P. liable for deficient financial service of lending — Complainant consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Banking and Financial Services — Hire Purchase Agreement — Vehicle purchased by obtaining finance from O.P. — Contention, complainant purchased vehicle for commercial purposes hence not consumer — Dispute relates to financial service of lending for purchase of vehicle — Point elaborately discussed and settled by National Commission in I (2005) CPJ 27 (NC) — Objection on this count deserves to be overruled.

#### **IV (2006) CPJ 68 (Chhat.)**

- CONSUMER DISPUTE — Medical negligence alleged — Treatment in Government hospital — No fees charged — No consumer dispute involved — Patient not consumer.**

Consumer Protection Act, 1986 — Sections 2(1)(d), 2(1)(e) — Consumer — Medical Negligence — Operations conducted at Government Hospital — amount if any received by OPs, would be deemed to be illegal gratification — Same cannot be termed as consideration — Under such circumstances, complainant not consumer — No consumer dispute involved — No relief entitled.

#### **IV (2006) CPJ 45 (M.P.)**

- CONTRACT — Conclusion of contract — Insurance — Death before policy issued — No liability.**

Consumer Protection Act, 1986 — Section 21(b) — Insurance — Death of insured before conclusion of contract — Repudiation of claim — Justifiability — Policy issued on 6.5.2002 — Insured died on 17.4.2002 — Though premium was paid on 8.2.2001, but policy issued only on above said date after complying with all conditions — Insurer not liable — Rs. 20,000 *ex gratia* payment made by opposite party insurer.

#### **IV (2006) CPJ 102 (NC)**

- **Motor Vehicles — Non-delivery — Booking amount not deposited with authorised dealer — No contract with MUL — No liability.**

Consumer Protection Act, 1986 — Section 21(b) — Motor Vehicles — Non-delivery — Money not delivered to authorised dealer — No contract with Maruti Udyog Limited (MUL) or its authorised dealer — Amount towards booking of vehicle given to one 'J' — No mention on receipt that they are authorized dealers of Maruti — It gives an impression that complainant might have been cheated — In absence of any contract with them, MUL not obliged to deliver vehicle to complainant — No liability.

#### **IV (2006) CPJ 103 (NC)**

- COURIER SERVICES — Non-delivery of letter — Denial of liability — Onerous duty on OP to show, to whom and in what manner letter delivered.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Courier Services — Non-delivery of letter containing Bank Drafts — Drafts fell in wrong hands, encashed — FIR registered — Three persons arrested — Contention of opposite party, letter delivered to addressee and thereafter said three persons got drafts encashed — Onerous duty on opposite party to have shown as to whom and in what manner letter delivered — No satisfactory explanation put forth by O.P. — Order of Forum allowing complaint upheld — Liberty to O.P. for taking suitable action for recovery of amount against said three persons.

#### **IV (2006) CPJ 29 (H.P.)**

- CUSTOMS DUTY — Goods pilfered — Duty on such goods should not have been paid — Entitlement to refund.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Customs Act, 1962 — Section 13 —

Compensation — Duty on pilfered goods — Complainant should not have paid customs duty on pilfered goods — Entitled to refund under appropriate provisions of Act of 1962 — Opposite party not liable to pay such amount — Interest @ 18% p.a. on higher side, reduced to 12% p.a.

**IV (2006) CPJ 144 (NC)**

**DRUGS AND COSMETICS — Drug Reaction ..... (See Medical Negligence)**

**IV (2006) CPJ 138 (Kar.)**

**EDUCATIONAL SERVICE — Answer books not evaluated — Results belatedly published — Deficiency in service — Compensation awarded.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Educational Services — Non-evaluation of answer books for long time — Delayed publication of results — Resultantly, complainant could not take examination for 3 subsequent years — Meanwhile she also crossed age limit fixed for such exam — Deficiency in service proved — Pleas that O.P. not rendering “service” or complainant not “consumer”, not accepted — Order of Forum directing O.Ps. to pay Rs. 25,000 compensation upheld.

**IV (2006) CPJ 2 (Bih.)**

— **Education imparted in English, instead of Hindi — Rs. 25,000 awarded.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Compensation — Education imparted in English, instead of Hindi — Inconvenience, hardship, discomfort, etc. caused — Rs. 25,000 compensation, not excessive, appears just, proper and reasonable.

**IV (2006) CPJ 13 (Raj.)**

— **Imparting education for consideration — Students consumers.**

Consumer Protection Act, 1986 — Sections 2(1)(d) and 2(1)(o) — Educational Services — Consumer — Imparting education for consideration comes under ambit of service under Section 2(1)(o) — Students admitted for being imparted education are consumers as defined under Section 2(1)(d).

**IV (2006) CPJ 13 (Raj.)**

— **Prospectus — Departure from terms and conditions thereof — Deficiency in Service.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Educational Services — Binding nature of terms and conditions of prospectus — Non-supply of course material as per prospectus — Clear mention in prospectus that course material would be made available in ‘Hindi’ medium — Same supplied in English medium — Departure from terms and conditions of prospectus — Deficiency in service proved — O.P. liable.

**IV (2006) CPJ 13 (Raj.)**

— **Provisional certificate not supplied — Requisite fee deposited — University liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Educational Services — Provisional certificate — Non-supply of — Required fee deposited — Deficiency in service on part of University proved — Forum erred in faulting the college — Complaint against college dismissed in appeal — University liable to pay compensation.

**IV (2006) CPJ 150 (T.N.)**

— **Study Centre — Shifted to sister concern — Proportionate fees to be disbursed to latter centre by O.P. — Course not completed — Deficiency in Service proved.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Educational Services — Shifting of study centre to another sister concern — Non-disbursement of proportionate amount of fees to latter centre — Withdrawal of candidature of complainant — Loss of whole one year — Complainant’s request to shift to Rourkela Centre, duly granted — Entire fees already paid

at Sambalpur Centre — No steps taken to pay differential amount of fees to Rourkela centre — Problem could have been sorted out between 2 centres mutually — Complainant could not complete course — Deficiency in service proved — Rs. 50,000 compensation awarded.

#### **IV (2006) CPJ 41 (Ori.)**

**ELECTRICITY — Motor faulty — Bills raised by O.P. quashed — Complaint allowed on technical ground — Compensation not necessitated.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Indian Electricity Act, 1910 — Section 26(6) — Electricity — Meter Faulty — Forum allowed complaint, quashed bill raised by O.P. and directed to refer dispute to Chief Electrical Inspector under Section 26(6) of Act of 1910 — No compensation awarded — Hence, present appeal — Complaint allowed on wholly technical ground — Not necessary that in such cases compensation must follow — Order of Forum upheld.

#### **IV (2006) CPJ 102 (Punjab)**

— **Service charges — Determination — Relevant date — Rates prevalent at time demand notice issued, payable.**

Consumer Protection Act, 1986 — Section 15 — Electricity — Service charges for getting tubewell connection — Determination — Relevant date — Date of application *vis-a-vis* date of demand notice — Rates prevalent at time of issuance of demand notice for providing connection is relevant date for determining charges as prior to that date, nothing is charged for submission of application — OP justified in demanding rates applicable at time demand notice issued.

#### **IV (2006) CPJ 20 (Punjab)**

— **Supply disrupted — Bills sent on average basis even when no electricity consumed — Illegal — Quashed.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Electricity — Supply disrupted due to breaking of electric poles — Poles repaired after 7 years — No electricity consumed during such period — Opposite party continued sending bills on average basis — Legality — No action taken by opposite party for long time for repair and restoration of electric supply despite several requests — No documentary evidence to show line energized within one week and complainant continued drawing energy — Hence, bills on average basis illegal and without any basis — Rightly quashed.

#### **III (2006) CCR 1 (Cha.)**

— **Transfer of connection — Rules and regulations to be followed by both parties.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Electricity — Connection existing in name of original consumer — Transfer of same in name of actual user — Requirement to follow procedure — After death of original user, complainants continued using electricity — Actual user in premises were complainants, they will be beneficiaries of original person in whose name connection was existing — If they wanted connection to be transferred in their names, procedure under Rules and Regulations have to be followed by both parties — Opposite party served no notice upon complainants for checking meter in ME Lab in their presence, no consent letter given to check meter in their absence — Removed meter not been packed as per Rules — Complainants consumers.

#### **IV (2006) CPJ 157 (Punjab)**

**EMPLOYEES STATE INSURANCE — Medical Negligence alleged — Doctors of ESI Corporation Hospital liable — Jurisdiction of Forum not ousted under Section 75(3) of Employees State Insurance Act.**

Consumer Protection Act, 1986 — Section 3 — Jurisdiction of Consumer Fora — Employees State Insurance Act, 1948 — Section 75(3) — Complaint alleging medical negligence and

deficiency in service — Jurisdiction of Forum to entertain — Workmen claimed compensation and medical expenses because of alleged negligence on part of doctors of ESI Corporation Hospital, in performing operation — Main claim does not fall in any of categories enumerated in Section 75 — Jurisdiction of Forum to entertain and decide complaints not ousted under Section 75(3) of Act of 1948.

#### **IV (2006) CPJ 10 (NC)**

**ESTOPPEL — Insurance — Assessment of loss — Amount accepted without protest — Complainant estopped from alleging deficiency in service.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 15 — Insurance — Fire accident — Stock kept in business premises burnt — Loss assessed after deducting amount towards “under insurance” — Assessed amount received by complainant without protest — Complaint filed alleging deficiency in service — Deduction towards under insurance as per policy clause, justified — Amount received without protest, complainant estopped from filing complaint alleging deficiency in service — No relief entitled.

#### **IV (2006) CPJ 30 (Kar.)**

**EXECUTION OF ORDER — Money decree — In absence of special circumstances/sufficient cause, order not to be stayed.**

Consumer Protection Act, 1986 — Section 15 — Appeal — Conditional stay of execution of impugned order — Imposing condition to deposit 50% of amount awarded by Forum — Legality — Contention, Rs. 25,000 or 50% of award amount, whichever less, has to be deposited, not accepted — Such deposit is only for entertainment of appeal — Only after entertaining of appeal, question of granting stay/interim relief would arise — Appellate Forum has discretion to grant or to refuse same — Appropriate order required to be passed, depending upon facts and circumstances of each case — Impugned order of State Commission justified, upheld.

#### **IV (2006) CPJ 25 (NC)**

**EXPERT OPINION — Proof of medical negligence — Adequate evidence with supportive medical texts required — Expert opinion remained un rebutted — No negligence proved.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Failure to establish — Expert opinion contrary to case of complainants — Deceased patient suffering from gastric obstruction — Necessary to be operated upon — Patient operated upon, condition worsened, death resulted — Cause of death respiratory failure leading to severe respiratory acidosis — Lack of post operative care alleged — Further allegation that patient died due to wrong diagnosis and there was no need for surgery — Patient not in good health condition prior to operation — Surgery only remedy — Expert opinion consistently stated that right line of treatment followed — Post operative records establish that patient was examined at regular intervals — Repeated opportunities given to complainant to cross-examine expert witnesses — Same not availed of by him — It resulted in non-rebuttal of such evidence — To prove negligence of doctor, complainant has to lead adequate evidence with supportive medical texts — Same not done — No medical negligence proved.

#### **IV (2006) CPJ 71 (NC)**

**GOODS — Defective — Liability of dealer and manufacturer — Joint and several.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Goods — T.V. defective — Joint and several liability of dealer and manufacturer — Appellant dealer held liable to refund price of TV along with interest, cost and compensation — Hence appeal — Contention, appellant not liable, being only agent/dealer, receiving commission from manufacturer — Rejected — Manufacturer selling TVs through dealers and not directly — Amount received by dealer — Consumer dealt directly with dealer — It is for consumer to choose to whom he should implead or not — Appellant dealer liable, with liberty to recover amount from manufacturer

— Liability joint and several.

#### **IV (2006) CPJ 40 (Del.)**

— **Defective — No steps taken by O.P. to remove defects — Deficiency in service — Liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Goods — Defective — Briquetting machine supplied by opposite party not operating properly — Machine defective as it vibrated — No steps taken by opposite party to get defects removed — Deficiency in service proved — Direction of Forum to get machine examined by mechanical expert and remove defects or replace same, to bear entire interest liability and to pay all outstanding electricity charges with Rs. 5,000 compensation — Compliance of order directed.

#### **IV (2006) CPJ 33 (Ori.)**

— **Defective — Problem persisted even after repairs — OP liable — Refund directed.**

Consumer Protection Act, 1986 — Sections 2(1)(f), 2(1)(g) — Goods — Defective — Air conditioner non-functional — Compressor defective — Improper cooling, making loud noise — Problem persisted even after several repairs — Dealer of appellant visited complainant on number of times for rectifying/repair work for pretty long time — Selling of defective goods proved — Order of Forum directing opposite party to refund price of machine, upheld — Compensation reduced from Rs. 5,000 to Rs. 2,000.

#### **IV (2006) CPJ 27 (Del.)**

**GOVERNMENT HOSPITAL — Medical Negligence alleged — Treatment in Government hospital — No fees charged — No consumer dispute involved — Patient not consumer.**

Consumer Protection Act, 1986 — Sections 2(1)(d), 2(1)(e) — Consumer — Medical Negligence — Operations conducted at Government Hospital — amount if any received by OPs, would be deemed to be illegal gratification — Same cannot be termed as consideration — Under such circumstances, complainant not consumer — No consumer dispute involved — No relief entitled.

#### **IV (2006) CPJ 45 (M.P.)**

**HIRE PURCHASE AGREEMENT — Loan default in repayment — Vehicle seized as per agreement — No deficiency in service.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Hire purchase agreement — Vehicle purchased by obtaining finance from O.P. — Default in repayment of loan instalments — Agreement authorised financier to repossess vehicle in case of such default — Admittedly, default committed several times — Vehicle seized as per agreement — No deficiency in service proved.

#### **IV (2006) CPJ 68 (Chhat.)**

— **Loan for purchase of vehicle — Supply of articles delayed — Liability of bank *vis-a-vis* suppliers.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Hire Purchase Agreement — Loan for purchase of tractor, culti and trailer — Delay in supply of articles in spite of receipt of amount — Liability of O.P. No. 1 Bank *vis-a-vis* O.Ps. 2 and 3, suppliers — Contention of Bank, it performed its duty and supplied loan in time, it was fault of O.Ps. 2 and 3 — Rejected — In present case, Bank did not follow rules under Banking Circular — No information sent to supplier regarding person to whom requisite goods to be supplied — It is Bank who is responsible and deficient in service, not supplier — Supplier also liable since trailer not supplied despite deposit of money by Bank — Compensation awarded.

#### **IV (2006) CPJ 11 (Bih.)**

— **Purchaser mere bailee, not consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Hire purchase agreement — Purchaser is mere bailee, not consumer — Not entitled to relief — Complaint dismissed by Forum — Appeal against order barred by limitation — Dismissed.

**III (2006) CCR 148 (Cha.)**

— **Responsibility to get vehicle insured — Bank *vis-a-vis* owner ..... (See Banking and Financial Institutions Services)**

**IV (2006) CPJ 189 (Har.)**

**HOUSING — Agreement — Binding on both parties — Possession of area as mentioned in agreement.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Agreement — Binding on both parties — Area mentioned in allotment letter 965 sq. ft. — Same mentioned as 696 sq. ft. in agreement — Contention of complainant, O.P. wrote less area in agreement without his consent and knowledge — Complainant could not have signed documents without perusing same — Contention of complainant to hand over possession as per allotment letter for 965 sq. ft., not proper, untenable in law — No deficiency in service of O.P. proved.

**IV (2006) CPJ 59 (Mah.)**

— **Allotment — Registration — No right of allotment conferred on mere registration — No deficiency in service.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Allotment — Registration — Non-allotment of house — Contention, registration amount deposited, complainant registered for allotment of house — Registration scheme distinguished from allotment scheme — No right of allotment of house conferred on mere registration — Failure on part of complainant to deposit money and give requisite consent — No deficiency in service proved — Complainant cannot take advantage of his own default — Order of Forum upheld.

**IV (2006) CPJ 105 (Raj.)**

— **Allotment — Site rocky — Alternate site not allotted — Deficiency in service — Direction to remove defects.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Allotment — Site rocky, surrounded by thorny bushes, not possible to break rock and clear area — Promise to give alternative site not kept — Deficiency in service proved — Opposite party liable — Direction to opposite party, to make plot fit for occupation by removing defects in plot, upheld — Cost and compensation awarded.

**IV (2006) CPJ 72 (T.N.)**

— **Allotment — Substantial amount deposited — Wrongfully detained for 9 years — Deficiency in service — Liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Allotment — Substantial amount deposited — Name not included in first draw — Deficiency in service proved — Complainant entitled to compensation for wrongful detention of amount paid towards cost of first flat in 1984 whereas second flat handed over in 1993.

**IV (2006) CPJ 95 (Del.)**

— **Allotment of rocky site — Entitlement to compensation.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Compensation — Complaint regarding allotment of improper site allowed — Rs. 3,000 compensation awarded — Appeal for enhancement — Allegation, mother of complainant suffered injuries in opposite party's office — No evidence in support — Housing Board not liable to bear expenses for her treatment — No material to substantiate various other claims of complainant —

Compensation adequate.

**IV (2006) CPJ 72 (T.N.)**

- **Allotment letter : Belatedly issued — Price prevalent at time of draw of lots chargeable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Allotment letter — Delay in issuance of — Charging of price — Relevant date — Complainant declared successful in draw of lots and was allotted plot in year 1995 — Allotment letter issued only in year 2000 — No fault of complainant — Price chargeable would be as prevalent when draw of lots took place — Complainant entitled to allotment and delivery of plot @ Rs. 1,400 per sq. yd. which was price prevalent in 1995, and not @ Rs. 3,600 per sq. yd. being the enhanced price — Rs. 1,00,000 further awarded as composite compensation.

**IV (2006) CPJ 49 (Punjab)**

- **Builder — Car parking charges — Parking area clearly demarcated — Complainant liable to pay.**

Consumer Protection Act, 1986 — Section 15 — Housing — Builder — Car parking charges — Liability to pay — Parking area clearly demarcated in sanction plan — Same does not mean it is granted free of cost — Complainant not entitled to get car parking area free of cost.

**IV (2006) CPJ 123 (NC)**

- **Builder — Common services — Charges towards — Not abnormal or illegal — Provided in agreement itself — Complainant liable to pay.**

Consumer Protection Act, 1986 — Section 15 — Housing — Builder — Common Services — Builder claimed amounts towards electric sub-station, fire fighting installations, water, sewer, electricity connections and other miscellaneous charges — Such charges not in any way abnormal or illegal — Same provided for in agreement itself — Complainant liable to pay.

**IV (2006) CPJ 123 (NC)**

- **Builder — Holding charges — Not provided in agreement — Not payable by complainant.**

Consumer Protection Act, 1986 — Section 15 — Housing — Builder — Holding charges — Agreement silent about payment of such charges — Same not payable by complainant.

**IV (2006) CPJ 123 (NC)**

- **Builder — Increase in super area — Complainant liable to pay enhanced price and consequential payments.**

Consumer Protection Act, 1986 — Section 15 — Housing — Builder — Increase in super area — Liability to pay enhanced price — Complainant lost opportunity to prove his contention, that there is no increase in super area, in lower Fora — Hence liable to pay increased cost — Consequential payment, in form of external development charges, automatically follows with increase in area — Complainant also liable to pay same.

**IV (2006) CPJ 123 (NC)**

- **Builder — Maintenance charges — In agreement, allottee liable to pay.**

Consumer Protection Act, 1986 — Section 15 — Housing — Builder — Maintenance charges — As per agreement, allottee liable to pay maintenance security — Since possession was offered, allottees required to pay maintenance charges — Complainant bound to pay said charges along with interest free security deposit.

**IV (2006) CPJ 123 (NC)**

- **Builder — Petty amount due from complainant — Possession delayed — Deficiency in service — Fit case to award Rs. 50,000 compensation.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Builder — Certain amounts due from complainants — Possession not handed over — Contention, Rs. 82,000 due towards additional built up area of 46 sq. ft., interest on delayed payments etc. — No agreement between parties to provide additional floor space — Same stated as unauthorised construction — Claim of builder towards said space is without any merit — Builder entitled only to Rs. 12,700 — For such petty amount, he delayed handing over of possession — Deficiency in service proved — State Commission rightly awarded compensation of Rs. 50,000 — No legal infirmity in order — Builder entitled to deduction of Rs. 12,700 from compensation amount.

#### **IV (2006) CPJ 40 (NC)**

- **Builder — Stamp duty charges — Statutory duty, not negotiable — Complainant liable to pay.**

Consumer Protection Act, 1986 — Section 15 — Housing — Builder — Stamp duty charges — Statutory levy, not negotiable — Builder assured that they are charging exactly same amount that is payable to Registering Authority — Complainant liable to pay.

#### **IV (2006) CPJ 123 (NC)**

- **Building activity — Comes within purview of Act.**

Consumer Protection Act, 1986 — Section 2(1)(o) — Service — Housing — Building activity relating to housing construction comes within purview of Act.

#### **IV (2006) CPJ 123 (NC)**

- **Compound Interest — Charging of — Amount due against allottee — Unjustified.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Charging of compound interest — Certain amount outstanding against appellants — O.P. charged compound interest on such amount for period of delay — Same against contractual rate agreed between parties in terms of allotment letter — Unjustified — Compound interest cannot be charged on balance amount for delayed period — Complaints rightly allowed.

#### **IV (2006) CPJ 8 (Har.)**

- **Escalation charges — Demand of — No material to justify demand — O.P. not entitled to such charges.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Escalation charges — Demand of — Agreement provided for payment of escalation charges, which shall not include into purchase price — Authority has to broadly satisfy by placing material to justify escalation — No such document produced by O.P. — Deficiency in service proved — O.P. not entitled to such charges.

#### **IV (2006) CPJ 59 (Mah.)**

- **Escalation charges — Liability to pay — Fora cannot adjudicate on issue.**

Consumer Protection Act, 1986 — Section 15 — Housing — Jurisdiction of Fora — Escalation charges — Consumer Fora cannot adjudicate on issue of liability to pay escalation charges.

#### **IV (2006) CPJ 123 (NC)**

- **Limitation — Complaint alleging delayed possession — Cause of action accrues on date of possession .....(See Limitation)**

Consumer Protection Act, 1986 — Section 24A — Limitation — Housing — Allotment and possession of flats given in year 1998 — Complaint challenging enhancement in price and delayed possession, filed in 2002 — Maintainability — Complaint contested on ground of limitation — Cause of action to file complaints, accrued in year 1998, when possession was given — Complaints filed, without application under Section 24A, barred by time — Forum erroneously condoned delay on oral requests — Order of Fora below, allowing complaints,

set aside.

#### **IV (2006) CPJ 31 (NC)**

- **Possession delayed — Retention of amount for 7 years — Unjustified — Unfair trade practices proved — O.P. liable.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 2(1)(r) — Housing — Possession delayed — Scheme floated for retired/retiring employees — Total cost of flat deposited — Withholding of possession unjustified — Deficiency in service proved — Retention of registration amount for 7 long years unjustified, amounts to unfair trade practice — Compensation and cost awarded.

#### **IV (2006) CPJ 57 (Del.)**

- **IMPLEADMENT OF PARTIES — LTC facility availed — Wife and daughter not made parties — Case not bad for non-joinder of parties.**

Consumer Protection Act, 1986 — Section 2(1)(c) — Complaint — Maintainability — Contention of O.P., defect of non-joinder of necessary parties present, complaint not maintainable — Rejected — Complainant availed LTC facility — Such facility availed not only by Government official himself but by his family members also — Wife and daughters not made parties — Cannot be said case of non-joinder of parties.

#### **IV (2006) CPJ 76 (Raj.)**

- **RKBY Scheme — Complaint claiming compensation — Central and State Governments not necessary parties.**

Impleadment of Parties — Rashtriya Krishi Bima Yojna (RKBY) scheme — Obligation on Nodal Agency to collect premium from agriculturists and to remit same to implementing agency — Complainants entitled to compensation on failure of crop in area where their land situated — Complaint claiming compensation — Not incumbent for complainant to implead State and Central Governments.

#### **IV (2006) CPJ 4 (Chhat.)**

- **INSURANCE — Accident — Certain premium paid — Entitlement to amount, for which premium was what complainant paid.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Damage to vehicle in accident — Premium of Rs. 7,115 paid — Forum allowed complaint, directed payment of Rs. 2,08,500 — Hence, present appeal by insurer — Vehicle did not suffer from any accident or damage during period it remained uninsured — Instead of paying Rs. 9069.49 premium, complainant had paid Rs. 7,115 after enjoying no claim bonus — Entitled to sum calculated on basis as if insurance was done of amount for which premium at relevant time was Rs. 7,115.

#### **IV (2006) CPJ 92 (Punjab)**

- **Accident — Consequential damage — Failure to prove — Claim of Rs. 3.5 lacs not acceptable — Liability as per Surveyor's report.**

Consumer Protection Act, 1986 — Section 21(b) — Insurance — Accident — Damage to bus therein — Proof — Complainant failed to establish occurrence of accident and consequential damage to bus — Alleged accident took place on 16.6.2003 — Information to insurer given on 11.8.2003, *i.e.*, virtually after lapse of 2 months — No passenger in bus at relevant time — Difficult to believe that overturning of bus not noticed by anybody — Complainant's claim for Rs. 3,50,373 cannot be accepted — Even if some loss is to be reimbursed, at the most Rs. 4,225 awardable as per Surveyor's report.

#### **IV (2006) CPJ 53 (NC)**

- **Accident benefits — Death — Attack by group of people — Accidental — Double benefits payable.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Double Benefit Policy — Death of insured after being attacked by group of people resulting in sustaining grievous injuries — Payment of additional sum repudiated on ground, death caused due to riot, complainant not entitled to accident benefit — Deceased not victim of any riots — Attack on deceased was by some villagers who had been reprimanded previous evening by elders for indulging in eve-teasing — Repudiation unjustified — Complainant entitled to double benefit — Interest @ 9% on amount awarded.

#### **IV (2006) CPJ 112 (T.N.)**

- **Accident benefits — Insured violently beaten to death by Naxalites — Accident — Double accident benefits payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Endowment Policy with Accident Benefit — “Accidental death” — Insured was dragged out of his house by Naxalites, beaten with butt-ends of guns and sticks — Death due to such injuries — Double benefit denied by opposite party as death not accidental — Undoubtedly, insured not died of natural causes — He was done to death in violent manner — Not also in dispute that injury was caused by outward, violent and visible means — Further contention of opposite party, insured died of having suffered injuries resulting from riots — Not acceptable — “Riots” to be understood in general sense and not in sense it has been used in Indian Penal Code — Cannot be said insured died of injuries resulting from riots — Insurer liable to pay double accident benefits.

#### **IV (2006) CPJ 135 (NC)**

- **Accident claim — Only total and irrecoverable loss covered — 30% vision loss — Insurer not liable.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 15 — Insurance — Accident claim — Complainant hit by jeep, received head injury — Partial vision lost — Claim repudiated as complainant suffered partial disability, *i.e.*, 30% vision loss — Only total and irrecoverable loss of vision covered under policy — Claim wrongly allowed by Forum — Order set aside in appeal.

#### **IV (2006) CPJ 136 (Chhat.)**

- **Accident claim — Surveyor assessed loss — All formalities fulfilled still claim not settled — Deficiency in service.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 15 — Insurance — Accident claim — Loss assessed by Surveyor — Claim not settled despite all formalities fulfilled by complainant — Deficiency in service proved — Complaint allowed by Forum — Appeal for enhancement of compensation filed — Salvage value fixed at much lesser amount than assessed by complainant’s own Surveyor, now complainant cannot dispute the same — Order passed by Forum just and proper — Interest enhanced.

#### **IV (2006) CPJ 146 (Chhat.)**

- **Accident claim — Vehicle damaged — Reimbursement of replaced spare parts directed.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Accident claim — New vehicle badly damaged — Spare parts replaced — Vehicle got repaired — Reimbursement claim denied by company — Replacement of spare parts was necessary to bring the vehicle to its original condition — Deficiency in service on part of company proved — Complaint allowed by Forum — Order upheld in appeal.

#### **IV (2006) CPJ 104 (Ori.)**

- **Accident due to fire : Claim not genuine — Based on forge and fabricated documents — Insurer not liable.**

Consumer Protection Act, 1986 — Section 21 — Insurance — Damage due to accidental fire

— Genuineness of claim disputed — Complaint alleging extensive damage to filter bags and venturies in coal mill of complainant — Claim lodged for value of Rs. 26,28, 828 — Claim based on 2 documents viz. bill of Rs. 41,22,966 towards purchase of damaged items and complaint allegedly made at Fire Station — Upon investigation, both documents found forged and fabricated — Purchase of filter bags and venturies not proved by any cheque or Bank draft respecting payment towards same — Purchase of items not only doubtful, it appears to have been manipulated for raising claim — Opposite party not liable.

#### **IV (2006) CPJ 87 (NC)**

— **Animal claim — Death of cattle and their insurance doubtful — Repudiation justified.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Animal claim — Repudiated as death of cattle and their insurance found doubtful — Contention, intimation of illness/death of cattle not furnished — Insurer deprived of opportunity to verify the identity of cattle — Policy condition violated — Tag Nos. not mentioned in treatment papers — No deficiency in service proved — Complaint dismissed by Forum — Order upheld in appeal.

#### **IV (2006) CPJ 143 (Chhat.)**

— **Assessment of loss — Amount accepted without protest — Complainant estopped from alleging deficiency in service.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 15 — Insurance — Fire accident — Stock kept in business premises burnt — Loss assessed after deducting amount towards “under insurance” — Assessed amount received by complainant without protest — Complaint filed alleging deficiency in service — Deduction towards under insurance as per policy clause, justified — Amount received without protest, complainant estopped from filing complaint alleging deficiency in service — No relief entitled.

#### **IV (2006) CPJ 30 (Kar.)**

— **Assessment of loss — Deduction as per policy clause justified.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 15 — Insurance — Fire accident — Stock kept in business premises burnt — Loss assessed after deducting amount towards “under insurance” — Assessed amount received by complainant without protest — Complaint filed alleging deficiency in service — Deduction towards under insurance as per policy clause, justified — Amount received without protest, complainant estopped from filing complaint alleging deficiency in service — No relief entitled.

#### **IV (2006) CPJ 30 (Kar.)**

— **Breach of policy — Proof — Dismantling of machinery — Not amounts to “alteration” — Policy terms not violated — Insurer liable.**

Consumer Protection Act, 1986 — Section 21(b) — Insurance — Non-settlement of claim — Violation of conditions of policy — Proof — DG set insured — Break down — Repudiation of claim — Fora below allowed complaint — Hence present revision petition — Contention, claim should not have been allowed for there was violation of policy — During inspection, found that DG set was completely dismantled by Service Engineer and not single part was in assembled condition — However, mere dismantling of DG set not amounts to “alteration” to say policy terms were violated — Claim could not have been settled on non-standard basis — However, as per conditions of policy and contract between parties, insurer entitled to deduction of amount towards excess-normal and on account of crank shaft — Order modified to such extent.

#### **IV (2006) CPJ 68 (NC)**

— **Breach of policy — Vehicle plied without having fitness certificate — Insurer not liable.**

Consumer Protection Act, 1986 — Section 15 — Motor Vehicles Act, 1988 — Sections 39, 56

— Insurance — Necessity for registration of vehicle — Carrying of fitness certificate necessary for valid registration — Admittedly, vehicle had no valid fitness certificate on date it was set on fire — Vehicle brought on road without such certificate — Clear case of violation of conditions of policy — Insurer not liable to compensate.

#### **IV (2006) CPJ 62 (NC)**

— **Building under construction insured — Roof collapsed — No steps taken even after receipt of Surveyor's report — Deficiency in service — Claim allowed with interest and compensation.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Building under construction insured during construction stage onwards — Concrete roof of building completely collapsed — Repudiation of claim stating insurance issued only for complete building, not for one under construction — Various documents supporting fact that insurance taken for building under construction — Further, before issuing policy, representatives of insurer required to inspect property and risks to be insured and satisfy themselves about condition of same — Clear that either no inspection made or plea taken is false — Even after receipt of Surveyor's report, no decision taken by insurer — Deficiency in service proved — State Commission allowed claim of complainant, with interest @ 18% p.a. and compensation of Rs. 30,000 — In ends of justice, interest rate reduced to 15% p.a. and compensation enhanced to Rs. 50,000 — Rest of order confirmed.

#### **IV (2006) CPJ 4 (NC)**

— **Compensation — Awarding more compensation than insured amount — Unjustified — Loss payable as per Surveyor's report.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Insured truck missing — Compensation exceeding limit of insurance — Justifiability — Truck insured for Rs. 2,60,000 — State Commission directed insurer to pay Rs. 3,56,999 — No details available for same — Award not supported by any material on record, not sustainable — Surveyor's report being important piece of document and evidence, cannot be brushed aside — Surveyor assessed loss at Rs. 1,35,500 on repair basis and Rs. 1,11,000 on cash loss basis — No ground for State Commission, not to rely upon same — Impugned order set aside — Complainant entitled to loss assessed by Surveyor with interest @ 10% from two months after report of Surveyor till payment — Claim regarding subsequent loss cannot be awarded since no separate policy taken by complainant relating to consequent loss — Principle of indemnity is to restore status of complainant.

#### **IV (2006) CPJ 84 (NC)**

— **Death before contract concluded — Insurer not liable.**

Consumer Protection Act, 1986 — Section 21(b) — Insurance — Death of insured before conclusion of contract — Repudiation of claim — Justifiability — Policy issued on 6.5.2002 — Insured died on 17.4.2002 — Though premium was paid on 8.2.2001, but policy issued only on above said date after complying with all conditions — Insurer not liable — Rs. 20,000 *ex gratia* payment made by opposite party insurer.

#### **IV (2006) CPJ 102 (NC)**

— **Driving licence — Heavy goods vehicle includes transport vehicle — Driver entitled to drive — Settling claim on non-standard basis — Unjustified — Loss assessed by Surveyor payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Motor Vehicles Act, 1988 — Sections 2(16), 2(47), 3, 10 — Insurance — Driving licence — Validity — Settling claim on non-standard basis — Justifiability — Driver licensed to drive 'heavy goods vehicle', driving transport vehicle at relevant time — Insurer deducted certain amount from loss assessed by Surveyor and settled claim on non-standard basis — Unjustified — Driver had valid licence to drive heavy goods vehicle — Transport vehicle includes goods carriage vehicle — Once

person had licence to drive heavy goods carriage vehicle, it would mean he was entitled to drive transport vehicle — Insurer liable to pay whole amount as assessed by Surveyor — Interest @ 12% p.a.

#### **IV (2006) CPJ 15 (NC)**

- **Driving licence — Though invalid, validly renewed — Breach of policy by owner not wilful — Insurer liable.**

Consumer Protection Act, 1986 — Section 21(b) — Insurance — Driving licence — Not issued by Licensing Authority, renewed validly twice — Liability of insurer — Not expected of owner to make detailed inquiries whether licence actually issued by Licensing Authority — Insurer could avoid its liability only on proving that insured was aware of breach of condition — In present case, breach on part of owner not wilful — Order of State Commission holding insurer liable upheld — Interest as awarded @ 12% p.a. reduced to 9% p.a.

#### **IV (2006) CPJ 132 (NC)**

- **Driving licence fake — Owner *bonafidely* believed it as genuine — Driver not disqualified to drive — Insurer liable.**

Consumer Protection Act, 1986 — Insurance — Repudiation of claim — Driving licence fake — Renewed many times by licensing authority — Complainant *bona fidely* believed in its genuineness, taken due care and caution in employing the driver — Fake/invalid licence or disqualification of driver, not defence available to insurer towards insured or third party — Insured not guilty of negligence regarding use of vehicle by duly licensed driver — Driver ever disqualified to drive the vehicle not proved — Company liable under policy.

#### **III (2006) CCR 107 (Cha.)**

- **Fire Policy — Assessment of loss — 2 Survey reports — 2nd Surveyor unreasonably reduced payable amount — In absence of cogent reasons to disprove said assessment, assessment by 1st Surveyor upheld.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Fire Policy — Loss due to accidental fire — Assessment of loss/salvage value — Surveyor assessed loss at Rs. 28,41,854 and salvage value at Rs. 9.5 lakh — Appointment of Second Surveyor — Whole matter relooked, concluded salvage value so assessed is too low — He found amount payable to be Rs. 9,03,922 after deducting salvage value assessed at Rs. 22,83,246 — Second Surveyor unreasonably reduced amount payable — Only after detailed analysis, first Surveyor assessed loss by calculating number of bags not affected by fire, those totally damaged, those partly damaged and those which were affected by water logging due to fire fighting — Second Surveyor not gave cogent reasons to disprove said assessment — Amount of loss as assessed by first surveyor to be paid with interest @ 10% p.a. — Costs of Rs. 50,000 also imposed in view of unjustified stand of insurer.

#### **IV (2006) CPJ 115 (NC)**

- **Hire Purchase Agreement — Responsibility to get vehicle insured — Bank *vis-a-vis* owner ..... (See *Banking and Financial Institutions Services*)**

#### **IV (2006) CPJ 189 (Har.)**

- **House-wife policy — Not issuable unless husband had matching policy — Relevant clause never disclosed by insurer — Repudiation unjustified.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Life Insurance — House wife policy — Claim repudiated — Contention of opposite party, such policy cannot be issued unless husband had matching policy — No evidence that such relevant clause was ever disclosed to insured by agent of opposite party — Proposal form of insured filled by LIC agent in hurry — Further, LIC authorities had 7 months after issuance of policy to check up and cross check

facts and figures — Having failed to do so, liability to compensate cannot be repudiated.

#### **IV (2006) CPJ 64 (NC)**

- **Marine Policy — Coverage — Continuance and termination — Insurance continues during transit and terminates on delivery to consignee.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Marine Policy — Continuance and termination of insurance coverage — Loss due to pilferage — Failure to prove — Complainant, while taking delivery of consignment from Airlines, confirmed that packets were received intact — Complainant could not prove any pilferage or damage being occurred during transit — If he had any doubt regarding pilferage, before opening cartons, insurer ought to have been informed — Further, insurance continues during ordinary course of transit and terminates on delivery to consignee — Once delivery of cargo taken by complainant, insurance coverage stood terminated — Insurer not liable — Complaint rightly dismissed.

#### **IV (2006) CPJ 47 (NC)**

- **Marine policy — Loss due to pilferage — Failure to prove — Insurer not liable.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Marine Policy — Continuance and termination of insurance coverage — Loss due to pilferage — Failure to prove — Complainant, while taking delivery of consignment from Airlines, confirmed that packets were received intact — Complainant could not prove any pilferage or damage being occurred during transit — If he had any doubt regarding pilferage, before opening cartons, insurer ought to have been informed — Further, insurance continues during ordinary course of transit and terminates on delivery to consignee — Once delivery of cargo taken by complainant, insurance coverage stood terminated — Insurer not liable — Complaint rightly dismissed.

#### **IV (2006) CPJ 47 (NC)**

- **Personal accident policy — Loss of hand at wrist — Assessment of disability as per PPD table — Liability accordingly.**

Consumer Protection Act, 1986 — Section 21(b) — Insurance — Personal Accident Policy — Loss of hand at wrist — Applicability of partial permanent disability clause — Sum assured Rs. 7,35,000 — Hand injured — Medical certificate mentioned disability as 60% — Insurer paid Rs. 3,30,750 on basis of 45% disability in terms of break up *i.e.* 10% for loss of index finger, 20% for loss of thumb and 15% for loss of other 3 fingers — However, case of total amputation of hand from wrist level — Should be held as loss of hand at wrist as whole — Hence, disability 55% as per PPD table — Insurer required to pay 55% of sum assured — In view of specific provision in policy regarding loss of bodily injury, medical certificate cannot be made basis for reimbursement — Payment of balance sum directed with interest @ 9% p.a.

#### **IV (2006) CPJ 35 (NC)**

- **Personal accident policy — Risk of only insured person covered.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Personal Accident Policy — Vehicle insured in complainant's name — Driven by her husband, met with accident — Husband died at the spot — Claim repudiated by company as complainant's husband neither owner of vehicle nor insurance policy was in his name — Complaint dismissed by Forum — Hence appeal — Personal Accident Policy would cover only complainant, risk of her husband not covered under policy — No infirmity in order of Forum — Appeal dismissed.

#### **IV (2006) CPJ 70 (Punjab)**

- **Poultry Farm — Death of insured birds — Surveyor's report supporting complainant's case — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Poultry business — Risk of death of birds during period of their breeding covered — Death of birds during various ages due to disease and sunstroke — Claim repudiated on ground that purchase vouchers submitted were false — Surveyor's report, admitting death of large number of birds, not been challenged — Complainant's poultry records, insurance policy document and surveyor's report, clearly show that birds existed prior to disease and in fact died — Poultry doctor's certificate also attached — Findings recorded in policy at time of its issuance cannot be easily discarded in absence of clear evidence that no purchases were in fact made — Insurer required to take minimum precaution of verifying initial stock of birds at time of issuing insurance policy — If policy issued without verifying such stock, insurer itself has to bear its consequences — Insurer liable.

#### **IV (2006) CPJ 94 (NC)**

- **Repudiation for want of proof of loss of articles — Insured Kashmiri migrant — Belongings taken by miscreants — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Repudiation of claim — Appellant, a Kashmiri migrant became refugee — All belongings taken by miscreants and militants — Insurance claim repudiated — Complaint dismissed by Forum for want of proof of loss of articles — Hence appeal — Too much to expect from migrant, to go back to Kashmir to collect evidence — Documents produced showing loss of goods — Case remanded for decision afresh.

#### **IV (2006) CPJ 151 (Del.)**

- **Riots — Non-settlement of entire claim — Damage to stock in multi-storeyed showroom — Loss indemnified excluding basement levels — Unjustified — Same covered by policy — Claim payable.**

Insurance — Damage to stock in trade due to riots, strike, covered — Non-settlement of entire claim — Claim partly paid excluding stocks damaged in basement levels due to riots — Hence present appeal — Show room comprised of 2 basement levels along with ground floor level — Stock insured for Rs. 2 crores — Average stock at any point of time in insured premises more than Rs. 2 crores — Insurer paid Rs. 1,02,16,173/- excluding damage to stocks in basement levels — Contention of opposite party, remote possibility of riotous mob having entered basement levels as only point of entry thereto was blocked by fire, heat and smoke — True that appellant had no material to strengthen their claim, but in present facts and attendant circumstances, they were not in position to supply any further evidence — Exact point of time when mob entered basement levels cannot be determined — Quite possible that looting occurred before police and fire fighting personnel arrived at site — Nothing to indicate that stock removed from basement levels in anticipation of any such rioting — Appellants discharged initial burden regarding destruction, damage — It was for insurer to disprove such claim with evidence, if any — Insurer failed to establish that claim of appellants was unjustified and not covered by policy of insurance — Liable to pay balance amount of Rs. 97,83,827/- with interest @ 9% p.a. — Appellants not entitled to payment of compensation towards hardship, mental agony and harassment — Consumer Protection Act, 1986 — Sections 2(1)(g), 23.

#### **IV (2006) CPJ 3 (Supreme Court of India) (SC)**

- **Second hand — Machinery insured — Integral part damaged — Liability only to pay cost of second hand parts.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Second hand machinery insured — Integral and crucial part damaged — Because of such mishap, entire project affected, could not be made functional — As per policy, insurer required to pay cost of second hand part only and not cost of new part — Contention of complainant, second hand parts not available in market, he was forced to import new parts and hence insurer be directed to pay cost of new parts, rejected — Nothing to establish second hand parts not

available — Insurer liable only to pay cost of second hand parts.

#### **IV (2006) CPJ 52 (NC)**

- **Settlement delayed — Insisting to sign discharge voucher on less than claim amount — Deficiency in service — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Delay in settling claim — Insistence of insurer to sign discharge voucher on less than claim amount — Action of insurer arbitrary — Deficiency in service proved — Further, vehicle insured for Rs. 1,92,928 — Premium charged accordingly — Total loss of vehicle — Payment based on sum insured, in case of total loss, justified — Opposite party liable to pay market value of vehicle with interest.

#### **IV (2006) CPJ 21 (Chhat.)**

- **Sub-standard claim — Total loss of vehicle — Claim allowed without dealing with contentions of insurer — Order unsustainable — Matter remanded.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Sub-standard claim — Total loss of vehicle — Claim repudiated on grounds that, complainant had no insurable interest, driver not duly licensed and vehicle used in violation of terms and conditions of policy — None of said contentions been dealt with by Forum — No specific finding returned — Impugned order set aside — Matter remanded.

#### **IV (2006) CPJ 192 (Del.)**

- **Suppression of material facts — Wrong declaration of occupation of insured — Complex factual position — Relief not awardable in summary proceedings.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 17 and 21 — Insurance — Suppression of material facts — Genuineness of documents *i.e.* proposal forms disputed — Exercise of jurisdiction by Commission — Mis-declaration in proposal form and false claim that insured was teacher, which is not correct position — National Commission granted relief to complainant by holding insurer liable — Hence appeal by insurer — Matter involved adjudication of issues involving disputed factual questions — Commission, having accepted that there was wrong declaration of nature of occupation of person insured, should not have granted relief — Proceedings before Commission are essentially in summary nature — Complex factual position requires matter to be examined by appropriate Court of Law and not by Commission — Commission not justified to deal with matter in manner as was done — Order of State Commission leaving complainant to take appropriate proceeding for establishing his claim and for seeking reliefs in Court of competent jurisdiction upheld.

#### **IV (2006) CPJ 1 (Supreme Court of India) (SC)**

- **Surveyors — Appointing one after another — Unjustified — Claim to be settled as per reports of 1st and 2nd Surveyors.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Claim regarding theft in insured premises — Assessment of loss — Appointing one surveyor after another — Unjustified — First surveyor visited premises and examined witnesses, found factum of theft correct — Thereafter second surveyor appointed who assessed loss at Rs. 2,07,891.75 — Instead of compensating insured, insurer appointed 3 more surveyors — Reliance on these reports cannot be placed — Insurer liable — Rightly directed to settle claim on basis of 1st and 2nd Surveyors' reports with interest and costs.

#### **IV (2006) CPJ 111 (NC)**

- **Surveyors — Consecutive appointment to get favourable report — Report rightly rejected — Reimbursement of loss as per documentary proof.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Accident Claim — Consecutive Surveyors appointed to obtain favourable report — Surveyor's report rejected by Forum — Complainant incurred Rs. 3,28,610 towards repairs of vehicle proved by

documents produced on record — Insurance Company liable to reimburse the amount after deducting Rs. 2,195 towards salvage — Interest reduced in appeal.

#### **IV (2006) CPJ 176 (Ori.)**

- **Surveyors — Successive appointments, one after other — Unjustified — Concurrent estimation of loss by 2 Surveyors — Loss so assessed, payable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Non-settlement of claim in accordance with Surveyor's report — Successive appointments of Surveyors/Investigators — Damage to vehicle in accident — 3 Surveyors, one after other, appointed by insurer — Unjustified — Insurer cannot go on appointing Surveyors, till extent of damages is minimized by one of them — Concurrent estimation of loss by two different Surveyors — No reason for rejecting said reports — Forum committed error in not accepting first Surveyor's report — Impugned order deserves to be modified — Insurer liable to pay amount of loss as assessed by first Surveyor.

#### **IV (2006) CPJ 66 (Raj.)**

- **Surveyor's report — Important evidence — Cannot be brushed aside.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Insured truck missing — Compensation exceeding limit of insurance — Justifiability — Truck insured for Rs. 2,60,000 — State Commission directed insurer to pay Rs. 3,56,999 — No details available for same — Award not supported by any material on record, not sustainable — Surveyor's report being important piece of document and evidence, cannot be brushed aside — Surveyor assessed loss at Rs. 1,35,500 on repair basis and Rs. 1,11,000 on cash loss basis — No ground for State Commission, not to rely upon same — Impugned order set aside — Complainant entitled to loss assessed by Surveyor with interest @ 10% from two months after report of Surveyor till payment — Claim regarding subsequent loss cannot be awarded since no separate policy taken by complainant relating to consequent loss — Principle of indemnity is to restore status of complainant.

#### **IV (2006) CPJ 84 (NC)**

- **Surveyor's report — Reliability — Surveyor never visited site, report based on opinion of some V — Deserves to be ignored.**

Consumer Protection Act, 1986 — Section 21(b) — Insurance — Surveyor's report — Reliability — House insured — Cracks developed due to heavy rain and subsidence — Surveyor never visited site, recommended payment of Rs. 2,537 acting on opinion of one V — Report deserves to be ignored — In consideration of extent of damage and repair work to be carried to restore house, estimate prepared by Civil Engineer, rightly awarded by State Commission — Order upheld.

#### **IV (2006) CPJ 30 (NC)**

- **Surveyor's report — Settling claim on basis thereof — Upheld.**

Consumer Protection Act, 1986 — Section 21(b) — Insurance — Damage to vehicle — Settling claim on basis of Surveyor's report — Justifiability — Vehicle insured for Rs. 1,50,000 — Forum directed payment of whole of insured amount — On appeal by O.P., State Commission reduced amount and directed payment of Rs. 71,000 — Said amount based on Surveyor's report — Complainant not filed any objection against this report — Surveyor's report being valuable piece of evidence, State Commission rightly relied upon it — Order upheld.

#### **IV (2006) CPJ 86 (NC)**

- **Theft of articles and cash — Liability only to pay value of stolen articles — Value be assessed at relevant time.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Office Protection Shield —

Theft of articles and cash — Forum directed O.P. to indemnify loss of Rs. 22,000 as cost of goods with interest — As per policy, O.P. liable to replace or to pay value of articles stolen — Theft of cash occurred in night *i.e.*, beyond business hours — Said claim rightly repudiated — Further, printers available for Rs. 25,000 to Rs. 35,000 — Forum awarded Rs. 22,000 in view of subsequent circumstance of decrease in price — Erroneous — Value to be assessed at relevant time — Amount enhanced to Rs. 25,000.

#### **IV (2006) CPJ 90 (Del.)**

- **Third party risks — Insurance coverage necessary — Obligatory for vehicle owner to get vehicle insured.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Motor Vehicles Act, 1988 — Section 146 — Insurance — Banking and Financial Services — Necessity of insurance of vehicle against third party risks — Hypothecation agreement between parties — Option given to O.P. Bank to insure vehicle and debit premium to account of complainant — Not obligatory for Bank to have taken insurance cover of vehicle in question — Responsibility of claimant to get vehicle insured — Even otherwise, plying of vehicle without insurance is violation of Section 146 of MV Act — No deficiency in service of Bank in not paying premium of policy for vehicle — Forum wrongly accepted complaint.

#### **IV (2006) CPJ 189 (Har.)**

- **Vehicle used as taxi — Service of insurance not barred on ground of being used for commercial purposes — Complainant consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Insurance — Insured vehicle being run as taxi — Repudiation of claim — Contention, vehicle being used for commercial purposes, not accepted — Claim not relating to any alleged defect in goods but deficiency in service by insurer — Service of providing insurance not barred on ground of commercial purpose — Such service hired to obtain security against any loss and not for furtherance of business or commercial activity — Complainant consumer.

#### **IV (2006) CPJ 21 (Chhat.)**

- **Water sports — Accident due to negligent boat driving — Immaterial, whether being driven by regular operator or third person — O.Ps. vicariously liable for accident claim.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Water Sports — Accident claim — Negligence in boat driving — Boat hit a rock resulting death of complainant's husband — Contention, complainant's husband himself was driving the boat at accident time, contributed his negligence for accident, O.P. not liable — Contention not acceptable — Accident occurred due to negligent driving of boat, irrespective of the fact whether it was driven by regular operator or third person — O.P. vicariously liable to pay compensation — Insurance policy obtained covering risk involved in water sports — Insurance Company liable under policy.

#### **IV (2006) CPJ 131 (Kar.)**

- **INSURANCE (AGRICULTURE) — RKBY Scheme — Compensation — Assessment as per formula.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Compensation — Quantum — Amount to be paid as per formula :

Assured amount x Short fall in yield

Threshold yield

=Rs. 8,395 payable by Nodal Agency with interest @ 9% p.a.

#### **IV (2006) CPJ 4 (Chhat.)**

- **RKBY Scheme — Complaint by agriculturists claiming compensation — Adjudication —**

**Relevant considerations.**

Consumer Protection Act, 1986 — Sections 2(1)(c) and 11 — Summary jurisdiction of Consumer Fora — Complaint by agriculturists claiming compensation under RKBY scheme — Relevant considerations are whether land of complainant covered under scheme and whether Nodal Agency and implementing Agency performed their duties and obligations under scheme — Matter not requiring recording of detailed evidence, can be decided by Forum.

**IV (2006) CPJ 4 (Chhat.)**

- **RKBY Scheme — Complaint claiming compensation — Central and State Governments not necessary parties.**

Impleadment of Parties — Rashtriya Krishi Bima Yojna (RKBY) scheme — Obligation on Nodal Agency to collect premium from agriculturists and to remit same to implementing agency — Complainants entitled to compensation on failure of crop in area where their land situated — Complaint claiming compensation — Not incumbent for complainant to implead State and Central Governments.

**IV (2006) CPJ 4 (Chhat.)**

- **RKBY Scheme — Nodal Agency — Duty to collect premium and remit same to implementing agency — Failure to do — Deficiency in service — Nodal agency liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — RKBY scheme — Duty and obligation of Nodal Agency to collect premium and remit same along with declaration forms of agriculturists to implementing agency — Prescribed form not sent by Nodal Agency within cut-off date — Deficiency in service and breach of duties cast upon them under RKBY proved — Nodal Agency liable to compensate claimants.

**IV (2006) CPJ 4 (Chhat.)**

- **RKBY Scheme — Services under scheme rendered for consideration — Complainants consumers.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Complainants covered under RKBY scheme — Services rendered by O.P. under scheme, was for consideration, paid by complainants — Complainants consumers.

**IV (2006) CPJ 4 (Chhat.)**

- **INSURANCE (LIFE) — Policy obtained by playing fraud — Repudiation justified.**

Consumer Protection Act, 1986 — Section 15 — Life Insurance — Case of fraud played by deceased life assured — Repudiation of claim — Instead of getting himself medically examined by doctor of opposite party, someone else was produced by him to undergo ECG test — Signatures on original proposal form not written by same person whose signatures are on ECG test form — Same verified by Handwriting Expert — No evidence from complainant's side to discredit and not accepting said opinion — Repudiation justified.

**IV (2006) CPJ 154 (H.P.)**

- **Repudiation on mere suspicion/rumours — Deficiency in service — Policy amount payable with interest, cost and compensation.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Life Insurance — Delay in disposal of case — Repudiation of claim on mere suspicion — Death of insured due to chronic duodenal ulcer perforation — Claim repudiated on ground, deceased committed suicide by consuming poison — Repudiation based on affidavit of employee of OP — Said employee not examined — Doctor certifying case of death on ground of unnatural causes, also not examined — Case of suicide not established — Repudiation, merely on basis of rumours, unjustified — Further, OP taken its own time to repudiate claim on frivolous unsubstantiated ground — Deficiency in service proved — Policy amount with interest @ 18% p.a. and cost and compensation

awarded.

#### **IV (2006) CPJ 125 (T.N.)**

- **Suppression of facts regarding health — Failure to prove — Insured examined by doctor of O.P. — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Life Insurance — Suppression of material facts regarding health — Failure of insurer to prove — Liability — Contention of LIC, insured suffered from Malaria at time of issuance of policy, died due to same, hence amount not payable — Not accepted — Proposal form signed by medical examiner of LIC — Fact of suffering from any such disease would have known to O.P. — Such fact not cross-checked — Insurer liable.

#### **IV (2006) CPJ 64 (NC)**

- **Suppression of material facts — Suffering from peptic ulcer concealed — Repudiation under Section 45 of Insurance Act justified.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Life Insurance — Repudiation of claim — Insured suffering from peptic ulcer prior to taking of policy, was on leave for 48 days for treatment — Suppression of material facts proved — Insured died within 2 years of taking of policy — Repudiation justified under Section 45 of Insurance Act — Complaint wrongly allowed by Forum — Order set aside in appeal.

#### **IV (2006) CPJ 170 (T.N.)**

- **Suppression of material facts alleged — Failure to prove — Repudiation illegal and arbitrary — Liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Life Insurance — Repudiation of claim — Alleged suppression of material facts — Contention of LIC, insured concealed material facts about her health that she suffered from hypertension for 6 years prior to her death — No records filed by opposite party indicating treatment taken by insured either as in or out patient in any hospital — Insured medically examined, examining doctor affirmed, questions in proposal form regarding health have been answered correctly — LIC repudiated claim illegally and arbitrarily — Unjustified — Liable to pay policy amount.

#### **IV (2006) CPJ 139 (NC)**

- **Suppression of material facts regarding health — Failure to prove — Insurer liable under policy.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Life Insurance — Suppression of material information regarding health — Failure of insurer to prove — Liability — Contention, deceased suffered from chronic alcoholic liver disease, admitted in de-addiction centre and remained on medical leave, hence not entitled for any claim — Affidavits of Police Superintendent and doctor, not produced — Contentions of O.P. cannot be accepted — Insurer liable under policy — Forum awarded policy amount with interest @ 12% p.a. — Interest reduced to 9% p.a. to bring it in consonance with decisions of Supreme Court and National Commission.

#### **IV (2006) CPJ 187 (H.P.)**

- INTEREST — Award of — Absence of equitable grounds — Payment of interest set aside.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Code of Civil Procedure, 1908 — Section 34 — Compensation — Direction to refund with interest — Appeal against — Interest awarded if there are equitable grounds *i.e.*, justice, equity and good conscience — Direction to refund price upheld — Payment of interest set aside.

#### **IV (2006) CPJ 40 (Del.)**

- **Cash credit limit — Rate of interest thereon — Assurance to charge at same rate as charged**

**by other Nationalised Bank — O.P. to charge accordingly.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Banking and Financial Services — Cash credit limit — Charging of interest thereon — Rate of — Bank assured charging of interest only at same rate as being charged by other nationalised Bank — Opposite party started charging interest at enhanced rate of 18.75% p.a., further raised to 19.25% p.a. and thereafter to 21.25% p.a. — Opposite party Bank has not led adequate evidence to prove that complainant had not complied with any of parameters to justify charging interest @ 21.25% — Deficiency in service proved — Complaint rightly allowed.

**IV (2006) CPJ 81 (NC)**

**— Compound Interest — Housing — Charging of — Amount due against allottee — Unjustified.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Housing — Charging of compound interest — Certain amount outstanding against appellants — O.P. charged compound interest on such amount for period of delay — Same against contractual rate agreed between parties in terms of allotment letter — Unjustified — Compound interest cannot be charged on balance amount for delayed period — Complaints rightly allowed.

**IV (2006) CPJ 8 (Har.)**

**— Provident Funds — Pensionary benefits — Arrears of pension — Interest — 14% p.a. plus penal interest of 3% p.a. higher than statutory rate awarded — No further enhancement.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 21(b) — Provident Funds — Pensionary benefits — Arrears of pension — Dues rightfully payable — Forum directed opposite party to pay interest @ 14% p.a. on pension amount on account of delay — Appeal before State Commission for enhancement of interest — Order of Forum modified — Penal interest @ 3% higher than respective statutory rate, further imposed — Hence revision petition for further enhancement — Relief asked for, in form of computation of month to month pension on understandable basis and interest based on elementary mathematical principles and formulae — Prayer very vague — Complainant failed to explain what these principles and formulae were — Opposite party has well established method of accounting — New formulae for computation of dues cannot be imposed — Order passed by Forum and as modified by State Commission upheld.

**IV (2006) CPJ 120 (NC)**

**INTERPRETATION OF STATUTES — Limitation — Condonation of delay — Tests for — Section 5 of Limitation Act to be construed liberally.**

Consumer Protection Act, 1986 — Section 15 — Limitation Act, 1963 — Section 5 — Limitation — Tests for condonation of delay — Liberal construction of Section 5 of Act of 1963 — Appeal against order of Forum — Impugned order dated 16.8.2004 — Certified copy applied for only on 8.7.2005, made available on same date — Moreover, in execution petition filed by complainant, notice was served upon present applicant on 13.5.2005 — Fact whether applicant made any inquiry about day to day progress in complaint and in execution, upon receipt of notice, been delightfully kept vague — No cause, sufficient to condone delay, made out — Delay not condoned — Application liable to be dismissed with costs.

**IV (2006) CPJ 178 (H.P.)**

**JURISDICTION — Housing — Building activity — Comes within purview of Act.**

Consumer Protection Act, 1986 — Section 2(1)(o) — Service — Housing — Building activity relating to housing construction comes within purview of Act.

**IV (2006) CPJ 123 (NC)**

**— Non-compliance of order — O.P. (Board) cannot be penalised under Act — Remedy elsewhere.**

Consumer Protection Act, 1986 — Section 27 — Penalty — Non-compliance of order — Opposite party had not complied with order of Forum dated 28.11.2000, till date *i.e.* 8.3.2006 — For non-compliance of order of Forum, remedy of complainant elsewhere — Board cannot be penalized under Consumer Protection Act.

#### **IV (2006) CPJ 72 (T.N.)**

- **Pecuniary jurisdiction — Common complaint aggregating individual grievance, to bring it within jurisdiction of this Commission — Not maintainable.**

Consumer Protection Act, 1986 — Sections 11, 21 — Jurisdiction — Pecuniary jurisdiction — Common complaint filed, aggregating individual grievance, to bring it within jurisdiction of this Commission — Admittedly, each complaint has its own grievance, requiring scrutiny and evidence in each case — District Forum is right Forum to hear case — Complaint dismissed with opportunity to complainants to file individual complaints before Forum, praying for specific relief particular to their case with proof.

#### **IV (2006) CPJ 17 (NC)**

- **Proceedings before Fora — Provisions of CPC not applicable.**

Consumer Protection Act, 1986 — Section 2(1)(c) — Complaint — Maintainability — Complaint on behalf of firm — Signed and verified by only one of two partners — Maintainable, since provisions of CPC not applicable to proceedings before Consumer Fora.

#### **IV (2006) CPJ 21 (Chhat.)**

- **Riots — Insurance — Matter involved adjudication of complex factual issues — To be examined by appropriate Court of law, not by Commission.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 17 and 21 — Insurance — Suppression of material facts — Genuineness of documents *i.e.* proposal forms disputed — Exercise of jurisdiction by Commission — Mis-declaration in proposal form and false claim that insured was teacher, which is not correct position — National Commission granted relief to complainant by holding insurer liable — Hence appeal by insurer — Matter involved adjudication of issues involving disputed factual questions — Commission, having accepted that there was wrong declaration of nature of occupation of person insured, should not have granted relief — Proceedings before Commission are essentially in summary nature — Complex factual position requires matter to be examined by appropriate Court of Law and not by Commission — Commission not justified to deal with matter in manner as was done — Order of State Commission leaving complainant to take appropriate proceeding for establishing his claim and for seeking reliefs in Court of competent jurisdiction upheld.

#### **IV (2006) CPJ 1 (Supreme Court of India) (SC)**

- **Territorial jurisdiction — Defective treatment alleged — O.P. Hospital in Delhi — Complaint in U.P. State Commission not maintainable.**

Consumer Protection Act, 1986 — Section 17 — Jurisdiction — Territorial Jurisdiction — Maintainability of complaint — Complaint alleging faulty and defective treatment and dereliction of its duty by O.P. Apollo Hospital, Delhi — Preliminary objection, territorial jurisdiction not available in this Commission, accepted — Section 17 very clear in its term — Complaint not maintainable — To be presented before State Commission, Delhi.

#### **IV (2006) CPJ 91 (Utt.)**

- **Territorial jurisdiction — Tickets purchased at Jaipur — Concerned Forum has jurisdiction.**

Consumer Protection Act, 1986 — Section 11 — Jurisdiction of Forum — Territorial jurisdiction — Complaint regarding cancellation of air flight from Delhi to Bagdogra — Air tickets purchased at Jaipur — Forum at Jaipur has jurisdiction — Complaint been rightly

entertained.

#### **IV (2006) CPJ 76 (Raj.)**

- **Transport Services — Non-delivery of insured consignment — Amount paid by insurer — Letter of assignment, subrogation executed in name of insurer — Complaint by insurer, not being hirer of services of O.P., not maintainable — Remedy before appropriate Forum.**

Consumer Protection Act, 1986 — Sections 2(1)(c), 2(1)(d) — Consumer — Execution of letter of 'assignment', 'subrogation' and 'general power of attorney' in favour of insurer — Complaint on behalf of insurer — Maintainability — Transport services — Non-delivery of consignment — Goods insured — Amount paid by insurer — Undisputedly, letter of assignment, subrogation, etc. been executed in favour of insurer, by consignor — Consumer complaint against transporter — Insurer, since not hirer of services of opposite party, cannot be said consumer — Addition of consignor as co-applicant makes no difference — Complaint not maintainable — Complainants free to seek remedy before appropriate Forum.

#### **IV (2006) CPJ 44 (NC)**

- **JURISDICTION OF FORUM — Execution and registration of sale deeds — Direction regarding — Awardable.**

Consumer Protection Act, 1986 — Sections 11, 17 and 21 — Jurisdiction of Consumer Fora — Transfer of plots by executing and registering sale deeds — Direction regarding — Said direction can be given in proceedings before Consumer Forum.

#### **IV (2006) CPJ 34 (NC)**

- **Housing — Escalation charges — Liability to pay — Fora cannot adjudicate on issue.**

Consumer Protection Act, 1986 — Section 15 — Housing — Jurisdiction of Fora — Escalation charges — Consumer Fora cannot adjudicate on issue of liability to pay escalation charges.

#### **IV (2006) CPJ 123 (NC)**

- **Invocation of jurisdiction of Forum — Complaint to be filed in terms with Section 2(1)(b).**

Consumer Protection Act, 1986 — Section 2(1)(b) — Complainant — Jurisdiction of Forum — For invoking jurisdiction, complainant required to file complaint in terms with Section 2(1)(b) — Same complied with — Contention of opposite party, complaint not been verified as required under law, cannot be accepted.

#### **IV (2006) CPJ 8 (Har.)**

- **Medical Negligence alleged — Doctors of ESI Corporation Hospital liable — Jurisdiction of Forum not ousted under Section 75(3) of Employees State Insurance Act.**

Consumer Protection Act, 1986 — Section 3 — Jurisdiction of Consumer Fora — Employees State Insurance Act, 1948 — Section 75(3) — Complaint alleging medical negligence and deficiency in service — Jurisdiction of Forum to entertain — Workmen claimed compensation and medical expenses because of alleged negligence on part of doctors of ESI Corporation Hospital, in performing operation — Main claim does not fall in any of categories enumerated in Section 75 — Jurisdiction of Forum to entertain and decide complaints not ousted under Section 75(3) of Act of 1948.

#### **IV (2006) CPJ 10 (NC)**

- **Non-compliance of order — Action under Section 27 — Procedure under Criminal Procedure Code to be followed — Forum not debarred to secure presence of defaulting party.**

Consumer Protection Act, 1986 — Section 27 — Non-compliance of order — Penalty — Forum issued bailable warrants against Estate Officer — Justifiability — For purpose of taking action under Section 27, procedure prescribed under Criminal Procedure Code have to be followed — Forum not debarred to secure presence of defaulting party on finding that

compliance of order not done deliberately and his presence needed for adjudication of proceedings under Section 27 — Order upheld.

#### **IV (2006) CPJ 83 (Har.)**

- **Securities — Shares — Transfer in name of joint holder on death of first holder — Forum ought to have issued notice to O.Ps. and decide complaint, even though 24 documents produced.**

Consumer Protection Act, 1986 — Sections 2(1)(c) and 11 — Jurisdiction of Forum — Complaint — Maintainability — Dismissal, as being not decideable in summary proceedings by Forum — Challenge against — Dispute regarding transfer of shares in name of complainant, joint holder, upon death of first holder — Forum observed that 24 documents produced by complainant, requiring detailed recording of evidence — Some documents merely letters, reminders and copies of ration card etc. — Forum ought to have issued notice to O.Ps. and on basis of pleadings, decide triability of matter in issue — Impugned order set aside — Matter remanded.

#### **IV (2006) CPJ 122 (Raj.)**

- **Summary jurisdiction — Matter not requiring detailed evidence — can be decided by Forum.**

Consumer Protection Act, 1986 — Sections 2(1)(c) and 11 — Summary jurisdiction of Consumer Fora — Complaint by agriculturists claiming compensation under RKBY scheme — Relevant considerations are whether land of complainant covered under scheme and whether Nodal Agency and implementing Agency performed their duties and obligations under scheme — Matter not requiring recording of detailed evidence, can be decided by Forum.

#### **IV (2006) CPJ 4 (Chhat.)**

- **Summary proceedings — Forum empowered to obtain expert opinion.**

Consumer Protection Act, 1986 — Sections 13(1)(c), 15 — Practice and Procedure — Banking and Financial Services — Cheque passed without tallying signatures — Complaint dismissed on ground that tallying of signatures cannot be investigated in summary proceedings before Fora as it required opinion of Handwriting Expert — Impugned order inherently infirm — By Section 13(1)(c), Forum is empowered to obtain reports from Experts — Summary proceedings do not mean these should not be subjected to Expert opinions — Impugned order set aside — Matter remanded.

#### **IV (2006) CPJ 153 (Del.)**

- **Tender/auction — Cancellation of proceedings — Forum not empowered to declare same as invalid.**

Consumer Protection Act, 1986 — Section 15 — Jurisdiction — Subject matter — Tender/auction proceedings not subject matter of litigation under C.P.A. — Forum not empowered to declare cancellation of tender as invalid.

#### **IV (2006) CPJ 116 (U.P.)**

- **JURISDICTION OF STATE COMMISSION — Power of review — Order having attained finality, cannot be reviewed/modified.**

Consumer Protection Act, 1986 — Section 17 — Jurisdiction of State Commission — Power of review/modify its earlier order — In one complaint before it, Forum awarded compensation and interest — Appeal before State Commission dismissed — Application by OP seeking modification/clarification, allowed by State Commission and above said directions of Forum set aside — Legally erroneous — Earlier order, which had attained finality not having been challenged by filing revision petition, could not have been reviewed/modified — Aforesaid order set aside.

#### **IV (2006) CPJ 26 (NC)**

**LTC — Airlines — Flight cancelled — Case of deprivation of one LTC tour — Loss of amenities and enjoyment — Compensation payable.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Compensation — Loss of LTC facility — Airlines — Cancellation of flight by O.P. — Complainant had to break up his journey at Delhi and had to come back to Jaipur — Case of deprivation of one LTC tour — Another LTC would come after 4 years — Loss of LTC means loss of amenities and enjoyment — Rs. 25,000 compensation to be awarded for loss of one LTC — Rs. 32,000 for inconveniences and mental agony, etc., as awarded by Forum upheld — Total Rs. 57,000 compensation payable with interest @ 12% p.a.

**IV (2006) CPJ 76 (Raj.)**

— **Facility availed — Wife and daughter not made parties — Case not bad for non-joinder of parties.**

Consumer Protection Act, 1986 — Section 2(1)(c) — Complaint — Maintainability — Contention of O.P., defect of non-joinder of necessary parties present, complaint not maintainable — Rejected — Complainant availed LTC facility — Such facility availed not only by Government official himself but by his family members also — Wife and daughters not made parties — Cannot be said case of non-joinder of parties.

**IV (2006) CPJ 76 (Raj.)**

**LIMITATION — Abnormal delay of 378 days — No sufficient explanation — No condonation.**

Consumer Protection Act, 1986 — Section 21(b) — Limitation — Delay of 378 days in filing revision — Such abnormal delay, not sufficiently explained — Contention, lot of time spent in consultation and seeking instructions — Same not good reason to condone delay — Petition liable to be dismissed.

**IV (2006) CPJ 120 (NC)**

— **Condonation of delay — Tests for — Section 5 of Limitation Act to be construed liberally.**

Consumer Protection Act, 1986 — Section 15 — Limitation Act, 1963 — Section 5 — Limitation — Tests for condonation of delay — Liberal construction of Section 5 of Act of 1963 — Appeal against order of Forum — Impugned order dated 16.8.2004 — Certified copy applied for only on 8.7.2005, made available on same date — Moreover, in execution petition filed by complainant, notice was served upon present applicant on 13.5.2005 — Fact whether applicant made any inquiry about day to day progress in complaint and in execution, upon receipt of notice, been delightfully kept vague — No cause, sufficient to condone delay, made out — Delay not condoned — Application liable to be dismissed with costs.

**IV (2006) CPJ 178 (H.P.)**

— **Deficient services — Brought to notice of O.P. in 1986 — Complaint filed in 1996, time barred.**

Consumer Protection Act, 1986 — Sections 2(1)(c), 24A — Complaint — Maintainability — Limitation — Complaint by registered voluntary association of small scale unit holders of opposite party — Services rendered by opposite party alleged to be deficient in many respects like non-availability of roads, fire-fighting services and inadequate water-supply etc. — Failure to prove — Deficiencies brought to notice of opposite party on 11.4.1986 — Complaint filed in 1996 — Alleged deficiencies in service rectified — Affidavit of executive engineer produced as evidence — Affidavit dealt with facilities of road, water supply, power, drainage, etc. — Complaint filed after about 10 years, at any rate cannot said to be within limitation — Evidence of complainant falls short of proving its case — Complaint deserved to be dismissed on merits also.

**IV (2006) CPJ 28 (NC)**

— **Delay of 116 days — Vague grounds for condonation — Delay not condoned.**

Consumer Protection Act, 1986 — Section 21(b) — Limitation — Delay of 116 days in filing revision — Setting out vague grounds for condonation — Delay cannot be condoned — More so, appeal against main order of Forum, was also dismissed being barred by limitation — Present petition too time barred, not maintainable.

**IV (2006) CPJ 99 (NC)**

— **Delay of 213 days — Pleas taken in condonation application not convincing — Absence of sufficient cause — Delay not condoned.**

Consumer Protection Act, 1986 — Section 15 — Limitation — Delay of 213 days in filing appeal — Condonation sought — Allegation that copy of State Commission's order dated 7.2.2005, received only on 11.8.2005 — After receiving certified copy of order on 19.8.2005, plea of ill-health of proprietor of appellant continuously upto date of filing appeal, taken — Plea not convincing — Not been denied in condonation application that copy of order not received by appellant from Registry of State Commission — Some suit for declaration filed by appellant on 5.10.2005 — If appellant could have filed that suit, it may also have preferred appeal before 18.4.2006 — Plea that appellant did not have requisite amount of Rs. 35,000 for being deposited as condition precedent for entertaining appeal, cannot be believed — No sufficient cause shown to condone delay in question — Condonation application dismissed.

**IV (2006) CPJ 12 (NC)**

— **Housing — Possession in 1998 — Complaint alleging delayed possession in 2002 — Barred.**

Consumer Protection Act, 1986 — Section 24A — Limitation — Housing — Allotment and possession of flats given in year 1998 — Complaint challenging enhancement in price and delayed possession, filed in 2002 — Maintainability — Complaint contested on ground of limitation — Cause of action to file complaints, accrued in year 1998, when possession was given — Complaints filed, without application under Section 24A, barred by time — Forum erroneously condoned delay on oral requests — Order of Fora below, allowing complaints, set aside.

**IV (2006) CPJ 31 (NC)**

— **Medical negligence alleged failure of tubectomy operation — Complaint filed after birth of child despite being aware of growing pregnancy — Time barred.**

Consumer Protection Act, 1986 — Section 24A — Limitation — Operation for termination of pregnancy and tubectomy done on 26.3.2001 — Complainant remained pregnant even after operation — In spite of being aware of growing pregnancy, she waited for birth of child before filing complaint — Definitely, big question of limitation involved in matter — Complaint liable to be dismissed as being time barred.

**IV (2006) CPJ 36 (Bih.)**

— **Sufficient ground absent — Delay not condoned.**

Consumer Protection Act, 1986 — Section 15 — Limitation — Condonation of delay — Casual attitude adopted towards proceedings before Forum — Copy of order sent to O.P. by post — No reason to believe as to why said order was not delivered — Sufficient ground not shown — Delay not condoned.

**IV (2006) CPJ 128 (Chhat.)**

**LOCUS STANDI — Non bailable warrants against SL — Challenged by others — No locus standi to move petitions.**

Consumer Protection Act, 1986 — Section 15 — *Locus standi* — Forum issued non-bailable warrants against one SL — Prayer made on his behalf to set aside order — He has not filed any petition against that order — Present petitioners have no *locus standi* to challenge order

on his behalf.

**IV (2006) CPJ 83 (Har.)**

***MALA FIDE ACTION — Municipalities — Failure to discharge duty and obligations ..... (See Municipalities)***

**IV (2006) CPJ 20 (NC)**

***MANUFACTURER — Motor Vehicles — Booking cancelled — Liability manufacturer not dealer .....(See Motor Vehicles)***

**IV (2006) CPJ 124 (Ker.)**

***MEDICAL NEGLIGENCE — Diagnosis — Difference between reports of various hospitals — No material difference — Negligence of OP not presumed.***

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Mistaken diagnosis — Negligence not presumed — Reports of cyst in respect of liver and breast alleged to be wrong — Re-testing done — No material difference between report given by opposite party and other hospital where retesting got done — For cysts, opposite party diagnosed them as metastatic lesions — Even if some difference found between reports, cannot be said report by opposite party was absolutely wrong one — Mistaken diagnosis not necessarily negligent one — Diagnosis by opposite party cannot be regarded so palpably wrong as to prove negligence — Practitioner liable for negligent diagnosis if his mistake is of such nature as to imply absence of reasonable skill and care on his part, thereby causing injury to patient — Not so in present case — No medical negligence proved.

**IV (2006) CPJ 158 (Raj.)**

— ***Diagnosis — Mistaken diagnosis not necessarily negligent one — Liability only on proof of injury to patient.***

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Mistaken diagnosis — Negligence not presumed — Reports of cyst in respect of liver and breast alleged to be wrong — Re-testing done — No material difference between report given by opposite party and other hospital where retesting got done — For cysts, opposite party diagnosed them as metastatic lesions — Even if some difference found between reports, cannot be said report by opposite party was absolutely wrong one — Mistaken diagnosis not necessarily negligent one — Diagnosis by opposite party cannot be regarded so palpably wrong as to prove negligence — Practitioner liable for negligent diagnosis if his mistake is of such nature as to imply absence of reasonable skill and care on his part, thereby causing injury to patient — Not so in present case — No medical negligence proved.

**IV (2006) CPJ 158 (Raj.)**

— ***Drug reaction — Eye-sight lost — Medical negligence alleged, not proved — Medicine not wrongly prescribed — No deficiency in service.***

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Treatment — Drug reaction — Eye sight lost — Alleged, wrong medicine prescribed continuously for 21 days and without any test dose — No expert evidence produced in support — Allegations not proved — Medicine prescribed by O.P. is the only drug prescribed for Toxoplasmosis in pregnant women during pregnancy proved by medical authorities — Deficiency in service not proved — No relief entitled.

**IV (2006) CPJ 138 (Kar.)**

— ***Eye operation — Cornea damaged — Visibility lost — Negligence alleged — Standard treatment protocol followed — Optimal procedure carried out — No liability.***

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Eye-operation — Cornea damaged — Visibility lost — Allegation that proper dilation of eye was not done

before conducting cataract operation — Further allegation that operation done in hurried manner — Complaint also filed before Medical Council of India — It obtained expert opinion of 2 well known institutions to conclude that there was no negligence on part of opposite parties — Standard treatment protocol followed and optimal procedures carried out — Negligence of opposite parties not substantiated — Complaint liable to be dismissed.

### III (2006) CCR 96 (Cha.)

- **Operation — Condition worsened — Death — Expert opinion that right line of treatment followed — Expert witnesses not cross-examined — Failure to establish medical negligence — No liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Failure to establish — Expert opinion contrary to case of complainants — Deceased patient suffering from gastric obstruction — Necessary to be operated upon — Patient operated upon, condition worsened, death resulted — Cause of death respiratory failure leading to severe respiratory acidosis — Lack of post operative care alleged — Further allegation that patient died due to wrong diagnosis and there was no need for surgery — Patient not in good health condition prior to operation — Surgery only remedy — Expert opinion consistently stated that right line of treatment followed — Post operative records establish that patient was examined at regular intervals — Repeated opportunities given to complainant to cross-examine expert witnesses — Same not availed of by him — It resulted in non-rebuttal of such evidence — To prove negligence of doctor, complainant has to lead adequate evidence with supportive medical texts — Same not done — No medical negligence proved.

### IV (2006) CPJ 71 (NC)

- **Operation preponed — Patient not adversely affected — No medical negligence.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Angioplasty — Preponement — Procedure scheduled for 15.7.2002, carried out on 12.7.2002 — Preponement based on availability of operation theatre — No evidence to show so called preponement, in any way, adversely affected condition of patient — No medical negligence proved.

### IV (2006) CPJ 182 (Kar.)

- **Post-operative care — Lack of — Patient not seen for 24 hours despite writhing pain and complications — Medical negligence proved — Liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Surgery — Leaving surgical mop in abdominal cavity — Complications resulted — Second surgery necessitated — Same performed by head of Department of Surgical Oncology of NIMS, whose knowledge and competence not questioned by opposite parties — Clear from surgical records of NIMS that earlier surgery not perfect — Opposite party also deficient in providing post-operative care — Patient not seen by operating surgeon for 24 hours, though she suffered from writhing pain and complications due to improper surgery — Medical negligence proved — Opposite parties liable to pay compensation of Rs. 3.5 lacs.

### IV (2006) CPJ 105 (NC)

- **Post operative care — Patient's condition constantly monitored — Principles of *res ipsa loquitur* not applicable — No medical negligence.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Angioplasty — Failure of O.P. to attend to patient for 2 days thereafter — Contention of O.P., treatment to particular patient is given by team of doctors, not by individual doctor, accepted — Condition of patient constantly monitored by several doctors — No expert evidence to show that O.Ps. failed to take appropriate steps in matter of treatment or not administered appropriate medicines during relevant time — Principles of *res ipsa loquitur* not applicable — No medical negligence proved.

### IV (2006) CPJ 182 (Kar.)

- **Sterilisation operation — Lack of adequate care — Death of patient — Action in Torts maintainable — State liable.**

Vicarious Liability — Medical Practitioner — Careless and negligent — Action in torts maintainable — Simple case of delivery — Sterilisation operation — Operation led to peritonitis — Lack of adequate care — Doctor — Employee of respondent No. 1 — Vicariously liable — Death by negligence established — State will be liable for damages.

#### **IV (2006) CPJ 8 (Supreme Court of India) (SC)**

- **Surgery — Complications developed — Death of patient — No proof of negligence — No liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Treatment — Infection developed after surgery — Patient expired — Opposite parties experienced and qualified surgeons, capable of undertaking the treatment in question — Merely because some complications developed after surgery which led to the death of patient, conclusion regarding negligence cannot be drawn — No expert evidence produced to prove negligence — Forum erred in holding opposite party guilty of medical negligence — Order set aside in appeal.

#### **IV (2006) CPJ 45 (M.P.)**

- **Surgery — Surgical mop left inside — Complications — Second surgery necessitated — O.P. liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Surgery — Leaving surgical mop in abdominal cavity — Complications resulted — Second surgery necessitated — Same performed by head of Department of Surgical Oncology of NIMS, whose knowledge and competence not questioned by opposite parties — Clear from surgical records of NIMS that earlier surgery not perfect — Opposite party also deficient in providing post-operative care — Patient not seen by operating surgeon for 24 hours, though she suffered from writhing pain and complications due to improper surgery — Medical negligence proved — Opposite parties liable to pay compensation of Rs. 3.5 lacs.

#### **IV (2006) CPJ 105 (NC)**

- **Tubectomy operation — Failure of — Absence of proof of negligence of O.P. — No liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Medical Negligence — Failure of tubectomy operation — Opposite party doctor not liable for compensation on account of unwanted pregnancy — Claim sustainable only on proof of negligence in performing surgery — Possibility of conception even after successful operation not ruled out — Absence of proof of carelessness or negligence on part of opposite party — No negligence in service proved — No compensation payable.

#### **IV (2006) CPJ 36 (Bih.)**

- MEDICAL SERVICES — Consumer — Free aid received — Hospital comes under purview of Act — Patient consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Medical Services — Free medical aid received — Not charging any fee from poor patients does not absolve hospital from purview of Consumer Protection Act — Complainant consumer.

#### **IV (2006) CPJ 36 (Bih.)**

- MOTOR VEHICLES — Booking cancelled — Manufacturer's liability to refund booking amount — Dealer not liable.**

Consumer Protection Act, 1986 — Section 15 — Motor vehicles — Booking cancelled — Liability of dealer/manufacturer to refund booking amount — Appellant dealer — Respondent No. 2 manufacturer — Advance payment of Rs. 25,000 made to and received by

respondent No. 2 — Demand for return of advance amount made only to respondent No. 2, no demand made to appellant dealer — Dealer not at all liable for claim made in complaint — Forum not justified in mulcting him with liability to return said amount — Respondent No. 2 only liable — Impugned order set aside to that extent.

#### **IV (2006) CPJ 124 (Ker.)**

- **Delivery delayed — No intimation given to complainant regarding delay — Deficiency in service — Refund — Motor Vehicles — Delivery delayed : Appeal for refund, not paid.**
- Consumer Protection Act, 1986 — Sections 2(1)(g), 14(1)(d) — Motor Vehicles — Delivery of vehicle delayed — False assurance about date of delivery — Booking charges paid on 14.12.1989 — Car not delivered within stipulated period — No intimation given to complainant regarding delay — Refund of amount, as asked for in 1992, not given — Delivery on 11.5.1993 — Price prevalent at time of booking less than amount deposited — Complainant forced to pay enhanced sum — Deficiency in service proved — Rs. 15,000 compensation awarded.

#### **IV (2006) CPJ 34 (Del.)**

- **Mileage — Falsely represented — Manufacturing defects also — Unfair trade practices proved — Refund directed.**
- Consumer Protection Act, 1986 — Sections 2(1)(g) and 2(1)(r) — Unfair Trade Practices — Motor Vehicles — False representation of mileage — Some manufacturing defects also — Forum directed return of cost of vehicle with interest — Appeal before State Commission dismissed — Hence present revision petition — Contention, complainants have been using vehicles for over 4 years, order for refund of price is erroneous, rejected — Undisputedly, motor cycle gave per litre mileage less than one-half of what was represented — Unfair trade practices proved — Order for refund just and appropriate — Upheld.

#### **IV (2006) CPJ 100 (NC)**

- **Non-delivery — Booking amount not deposited with authorised dealer — No liability.**
- Consumer Protection Act, 1986 — Section 21(b) — Motor Vehicles — Non-delivery — Money not delivered to authorised dealer — No contract with Maruti Udyog Limited (MUL) or its authorised dealer — Amount towards booking of vehicle given to one 'J' — No mention on receipt that they are authorized dealers of Maruti — It gives an impression that complainant might have been cheated — In absence of any contract with them, MUL not obliged to deliver vehicle to complainant — No liability.

#### **IV (2006) CPJ 103 (NC)**

**MUNICIPALITIES — House Tax — Assessment order not supplied — Consideration paid — Complainants consumers — OP statutorily bound to supply same — Deficiency in service — OP liable.**

*R.P. No. 2774/2004*

Consumer Protection Act, 1986 — Sections 2(1)(d), 2(1)(g) — Municipalities — House tax — Non-supply of assessment order — Copy of assessment order not supplied to complainants — Hence complaint before Forum — Contention of opposite party, complainants not consumers, rejected — Complainants deposited Rs. 10 for getting said order — It was regarding premises belonging to complainant — Once assessment order is passed, against or in favour of party, same is required to be communicated — Statutory duty on Opposite party to do so, under existing law — opposite party acted arbitrarily and with oblique motive and harassed complainants — No justifiable reason for not supplying copy of assessment order — Opposite party liable — Compensation awarded.

#### **IV (2006) CPJ 20 (NC)**

- **Septic tank — Consideration received, tank not cleaned — Deficiency in service, harassment for oblique motive — Liability.**

R.P. No. 2775/2004

Consumer Protection Act, 1986 — Section 2(1)(g) — Municipalities — *Mala fide* action — Failure to discharge duty and obligations in manner prescribed by Rules — Cleaning of septic tank — Opposite party not carried out any cleaning work despite receiving Rs. 200 consideration towards it — Clear case of deficiency in rendering service and harassment for oblique motive — Opposite party liable — Compensation awarded.

#### **IV (2006) CPJ 20 (NC)**

— **Water and drainage connection — Not provided despite receipt of necessary fees — O.P. liable.**

Consumer Protection Act, 1986 — Section 15 — Municipalities — Failure to provide water and drainage connection despite receipt of necessary fees — Forum allowed complaint, directed opposite party to provide connection, cost and compensation also provided — Hence present appeal by opposite party — Contention, unfortunately opposite parties were set *ex parte* and truth could not be brought before Forum, rejected — After service of notice, opposite party appeared in person and offered to file version — Same was not filed — Shows callous indifference of opposite parties — Case would have been different had opposite parties responded to notice and defended themselves — Forum rightly allowed complaint — Order upheld.

#### **IV (2006) CPJ 38 (T.N.)**

**NODAL AGENCY — RKBY Scheme — Duty to collect premium and remit same to implementing agency — Failure to do — Deficiency in service — Nodal Agency liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — RKBY scheme — Duty and obligation of Nodal Agency to collect premium and remit same along with declaration forms of agriculturists to implementing agency — Prescribed form not sent by Nodal Agency within cut-off date — Deficiency in service and breach of duties cast upon them under RKBY proved — Nodal Agency liable to compensate claimants.

#### **IV (2006) CPJ 4 (Chhat.)**

**ORDER/JUDGMENT — Validity of order — Mentioning date under words “announced in open Court” not required by law — Order valid.**

Consumer Protection Act, 1986 — Section 15 — Practice and Procedure — Appeal against order of Forum — Contention, order illegal since no date mentioned below words “announced in open Court” — Rejected — President appended his signatures, date mentioned thereunder — No provisions of law or rule require mentioning of date of pronouncement of order under words “Announced in open Court” — Validity of order upheld.

#### **IV (2006) CPJ 83 (Har.)**

**PARKING CHARGES — Housing — Parking area clearly demarcated, not granted free of cost — Complainant liable to pay charges.**

Consumer Protection Act, 1986 — Section 15 — Housing — Builder — Car parking charges — Liability to pay — Parking area clearly demarcated in sanction plan — Same does not mean it is granted free of cost — Complainant not entitled to get car parking area free of cost.

#### **IV (2006) CPJ 123 (NC)**

**PARTNERSHIP FIRM — Complainant firm — Complaint, though not signed by all partners, maintainable.**

Consumer Protection Act, 1986 — Section 2(1)(c) — Complaint — Maintainability — Complaint on behalf of firm — Signed and verified by only one of two partners — Maintainable, since provisions of CPC not applicable to proceedings before Consumer Fora.

#### **IV (2006) CPJ 21 (Chhat.)**

**PENALTY — Non-compliance of order — Action under Section 27 — Procedure under Criminal Procedure Code to be followed — Forum not debarred to secure presence of defaulting party.**

Consumer Protection Act, 1986 — Section 27 — Non-compliance of order — Penalty — Forum issued bailable warrants against Estate Officer — Justifiability — For purpose of taking action under Section 27, procedure prescribed under Criminal Procedure Code have to be followed — Forum not debarred to secure presence of defaulting party on finding that compliance of order not done deliberately and his presence needed for adjudication of proceedings under Section 27 — Order upheld.

**IV (2006) CPJ 83 (Har.)**

- **Non-compliance of order — O.P. (Board) cannot be penalised under Act — Remedy elsewhere.**

Consumer Protection Act, 1986 — Section 27 — Penalty — Non-compliance of order — Opposite party had not complied with order of Forum dated 28.11.2000, till date *i.e.* 8.3.2006 — For non-compliance of order of Forum, remedy of complainant elsewhere — Board cannot be penalized under Consumer Protection Act.

**IV (2006) CPJ 72 (T.N.)**

- **POSTAL SERVICES — Delivery to room partner — Absence of fraudulent or wilful act — No liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Indian Post Office Act, 1898 — Section 6 — Postal Services — Unauthorised delivery — Absence of fraudulent or wilful act on part of opposite party — Liability — Letter to be delivered to complainant's son, delivered to his room partner — Not even remotely pleaded in complaint that said delivery was done wilfully or fraudulently — In absence of same, second part of Section 6 not applicable — Opposite party not liable.

**IV (2006) CPJ 37 (NC)**

- **Money order — Delivery delayed — O.P. not exempt from liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Indian Post Office Act, 1898 — Section 48 — Postal Services — Belated delivery of money order — Exemption from liability — Money order delivered after 10 months — Contention of O.P., delay accidental, Section 48 applicable, rejected — Even if it is admitted that something went wrong with satellite, same must have been rectified when defect was found — Money order was sent for very urgent and essential purpose, *viz.*, for treatment of family member — Very purpose of sending same frustrated as money not received in time — Opposite party liable.

**IV (2006) CPJ 63 (Punjab)**

- **Speed post article — Delivery delayed — Deficiency in service — Liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Indian Post Offices Act, 1898 — Section 6 — Postal Services — Speed post article — Belatedly delivered — Admittedly, article delivered after more than 72 hours — Facts of case clearly establish lapses on part of opposite party — Section 6 of Act of 1898 cannot be taken as excuse for delayed delivery — Article contained application for Civil Services Exam — Complainant lost chance to appear at said examination — Deficiency in service proved — Rs. 5,000 compensation awarded.

**IV (2006) CPJ 25 (Bih.)**

- **POULTRY FARM — Insurance — Risk of death of birds covered — Death due to disease and sun-stroke — Surveyor's report in support — Insurer liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Insurance — Poultry business — Risk of death of birds during period of their breeding covered — Death of birds during various ages due to disease and sunstroke — Claim repudiated on ground that purchase vouchers

submitted were false — Surveyor's report, admitting death of large number of birds, not been challenged — Complainant's poultry records, insurance policy document and surveyor's report, clearly show that birds existed prior to disease and in fact died — Poultry doctor's certificate also attached — Findings recorded in policy at time of its issuance cannot be easily discarded in absence of clear evidence that no purchases were in fact made — Insurer required to take minimum precaution of verifying initial stock of birds at time of issuing insurance policy — If policy issued without verifying such stock, insurer itself has to bear its consequences — Insurer liable.

#### **IV (2006) CPJ 94 (NC)**

##### **POWER OF ATTORNEY — Complainant power of attorney holder — Competent to file complaint on behalf of executor.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Complaint by son of proprietor of firm — Father issued power of attorney in his name — Complainant consumer, competent to file complaint on behalf of firm.

#### **IV (2006) CPJ 43 (Bih.)**

##### **PRACTICE AND PROCEDURE — Banking and Financial Services — Cheque — Tallying of signatures — Opinion of handwriting expert required — Forum empowered to obtain such reports.**

Consumer Protection Act, 1986 — Sections 13(1)(c), 15 — Practice and Procedure — Banking and Financial Services — Cheque passed without tallying signatures — Complaint dismissed on ground that tallying of signatures cannot be investigated in summary proceedings before Fora as it required opinion of Handwriting Expert — Impugned order inherently infirm — By Section 13(1)(c), Forum is empowered to obtain reports from Experts — Summary proceedings do not mean these should not be subjected to Expert opinions — Impugned order set aside — Matter remanded.

#### **IV (2006) CPJ 153 (Del.)**

##### **— Non-compliance of order — Action under Section 27 — Procedure under Criminal Procedure Code to be followed — Forum not debarred to secure presence of defaulting party.**

Consumer Protection Act, 1986 — Section 27 — Non-compliance of order — Penalty — Forum issued bailable warrants against Estate Officer — Justifiability — For purpose of taking action under Section 27, procedure prescribed under Criminal Procedure Code have to be followed — Forum not debarred to secure presence of defaulting party on finding that compliance of order not done deliberately and his presence needed for adjudication of proceedings under Section 27 — Order upheld.

#### **IV (2006) CPJ 83 (Har.)**

##### **— Non-compliance of order — O.P. (Board) cannot be penalised under Act — Remedy elsewhere.**

Consumer Protection Act, 1986 — Section 27 — Penalty — Non-compliance of order — Opposite party had not complied with order of Forum dated 28.11.2000, till date *i.e.* 8.3.2006 — For non-compliance of order of Forum, remedy of complainant elsewhere — Board cannot be penalized under Consumer Protection Act.

#### **IV (2006) CPJ 72 (T.N.)**

##### **— Power of Review — Order having attained finality could not be reviewed/ modified.**

Consumer Protection Act, 1986 — Section 17 — Jurisdiction of State Commission — Power of review/modify its earlier order — In one complaint before it, Forum awarded compensation and interest — Appeal before State Commission dismissed — Application by OP seeking modification/clarification, allowed by State Commission and above said directions of Forum

set aside — Legally erroneous — Earlier order, which had attained finality not having been challenged by filing revision petition, could not have been reviewed/modified — Aforesaid order set aside.

#### **IV (2006) CPJ 26 (NC)**

— **Validity of order — Mentioning date under words “announced in open Court” not required by law — Order valid.**

Consumer Protection Act, 1986 — Section 15 — Practice and Procedure — Appeal against order of Forum — Contention, order illegal since no date mentioned below words “announced in open Court” — Rejected — President appended his signatures, date mentioned thereunder — No provisions of law or rule require mentioning of date of pronouncement of order under words “Announced in open Court” — Validity of order upheld.

#### **IV (2006) CPJ 83 (Har.)**

**PRINCIPLE OF INDEMNITY — Object — To restore status.**

Consumer Protection Act, 1986 — Section 15 — Insurance — Insured truck missing — Compensation exceeding limit of insurance — Justifiability — Truck insured for Rs. 2,60,000 — State Commission directed insurer to pay Rs. 3,56,999 — No details available for same — Award not supported by any material on record, not sustainable — Surveyor’s report being important piece of document and evidence, cannot be brushed aside — Surveyor assessed loss at Rs. 1,35,500 on repair basis and Rs. 1,11,000 on cash loss basis — No ground for State Commission, not to rely upon same — Impugned order set aside — Complainant entitled to loss assessed by Surveyor with interest @ 10% from two months after report of Surveyor till payment — Claim regarding subsequent loss cannot be awarded since no separate policy taken by complainant relating to consequent loss — Principle of indemnity is to restore status of complainant.

#### **IV (2006) CPJ 84 (NC)**

**PROFESSIONAL SERVICES — Survey of ground water — Inaccurate conclusion drawn — Deficiency in service.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Professional Services — Making survey of ground water — Report showed availability of marginal to sub marginal quality of water at 40 mtrs. depth — Tubewell installed by complainant, acting on such report — Water found saline, quality not in accordance with said report — Water of tubewell unfit for agricultural use — Inaccurate conclusion drawn by O.P. amounts to deficiency in service — Complainant entitled to expenditure incurred for material used and towards labour charges for making tubewell.

#### **IV (2006) CPJ 133 (NC)**

**PROVIDENT FUNDS — Arrears of pension — Computation of dues — Well established method of accounting — New formulae not impossible.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 21(b) — Provident Funds — Pensionary benefits — Arrears of pension — Dues rightfully payable — Forum directed opposite party to pay interest @ 14% p.a. on pension amount on account of delay — Appeal before State Commission for enhancement of interest — Order of Forum modified — Penal interest @ 3% higher than respective statutory rate, further imposed — Hence revision petition for further enhancement — Relief asked for, in form of computation of month to month pension on understandable basis and interest based on elementary mathematical principles and formulae — Prayer very vague — Complainant failed to explain what these principles and formulae were — Opposite party has well established method of accounting — New formulae for computation of dues cannot be imposed — Order passed by Forum and as modified by State Commission upheld.

#### **IV (2006) CPJ 120 (NC)**

- **Pensionary benefits — Arrears of pension — Interest — 14% p.a. plus penal interest of 3% p.a. higher than statutory rate awarded — No further enhancement.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 21(b) — Provident Funds — Pensionary benefits — Arrears of pension — Dues rightfully payable — Forum directed opposite party to pay interest @ 14% p.a. on pension amount on account of delay — Appeal before State Commission for enhancement of interest — Order of Forum modified — Penal interest @ 3% higher than respective statutory rate, further imposed — Hence revision petition for further enhancement — Relief asked for, in form of computation of month to month pension on understandable basis and interest based on elementary mathematical principles and formulae — Prayer very vague — Complainant failed to explain what these principles and formulae were — Opposite party has well established method of accounting — New formulae for computation of dues cannot be imposed — Order passed by Forum and as modified by State Commission upheld.

#### **IV (2006) CPJ 120 (NC)**

- **PROVISIONAL CERTIFICATE — Educational services — Non-supply of certificates despite deposit of requisite fee — University liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Educational Services — Provisional certificate — Non-supply of — Required fee deposited — Deficiency in service on part of University proved — Forum erred in faulting the college — Complaint against college dismissed in appeal — University liable to pay compensation.

#### **IV (2006) CPJ 150 (T.N.)**

- **RAILWAYS — Ornament snatched from train window — Railway administration liable.**

Consumer Protection Act, 1986 — Sections 2(1)(g) and 14(1)(d) — Railway Services — Ornament snatched from outside window of the train — Such occurrence on railway platform amounts to deficiency in service on part of railway administration — Consumer entitled for compensation.

#### **IV (2006) CPJ 45 (Del.)**

- **Transport Services — Pilferage of goods — Administrative Ministry of O.P., Ministry of Railways — Not sufficient to attract provision of Railways Act to deny liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Railways Act, 1989 — Section 99 — Transport Services — Part of goods pilfered — Complainant claimed indemnification — Liability denied by opposite party stating as per provisions of Section 99, no complaint can be filed against them — Undisputedly, opposite party not “Railways” — They are merely registered as company whose administrative Ministry is Ministry of Railways — Provisions of Act of 1989 not applicable — Opposite party liable.

#### **IV (2006) CPJ 144 (NC)**

- **REFUND — Customs Duty — Goods pilfered — Duty on such goods should not have been paid — Entitlement to refund.**

Consumer Protection Act, 1986 — Section 14(1)(d) — Customs Act, 1962 — Section 13 — Compensation — Duty on pilfered goods — Complainant should not have paid customs duty on pilfered goods — Entitled to refund under appropriate provisions of Act of 1962 — Opposite party not liable to pay such amount — Interest @ 18% p.a. on higher side, reduced to 12% p.a.

#### **IV (2006) CPJ 144 (NC)**

- **Goods — Defective ..... (See Goods)**

#### **IV (2006) CPJ 27 (Del.)**

— **Motor Vehicles — Booking cancelled — Manufacturer's liability to refund booking amount — Dealer not liable.**

Consumer Protection Act, 1986 — Section 15 — Motor vehicles — Booking cancelled — Liability of dealer/manufacturer to refund booking amount — Appellant dealer — Respondent No. 2 manufacturer — Advance payment of Rs. 25,000 made to and received by respondent No. 2 — Demand for return of advance amount made only to respondent No. 2, no demand made to appellant dealer — Dealer not at all liable for claim made in complaint — Forum not justified in mulcting him with liability to return said amount — Respondent No. 2 only liable — Impugned order set aside to that extent.

**IV (2006) CPJ 124 (Ker.)**

— **Motor Vehicles — Delivery delayed — Asked for refund, not paid ..... (See Motor Vehicles — Delayed delivery)**

Consumer Protection Act, 1986 — Sections 2(1)(g), 14(1)(d) — Motor Vehicles — Delivery of vehicle delayed — False assurance about date of delivery — Booking charges paid on 14.12.1989 — Car not delivered within stipulated period — No intimation given to complainant regarding delay — Refund of amount, as asked for in 1992, not given — Delivery on 11.5.1993 — Price prevalent at time of booking less than amount deposited — Complainant forced to pay enhanced sum — Deficiency in service proved — Rs. 15,000 compensation awarded.

**IV (2006) CPJ 34 (Del.)**

— **Motor Vehicles — Mileage — Falsely represented — Manufacturing defects also — Unfair trade practices proved — Refund directed.**

Consumer Protection Act, 1986 — Sections 2(1)(g) and 2(1)(r) — Unfair Trade Practices — Motor Vehicles — False representation of mileage — Some manufacturing defects also — Forum directed return of cost of vehicle with interest — Appeal before State Commission dismissed — Hence present revision petition — Contention, complainants have been using vehicles for over 4 years, order for refund of price is erroneous, rejected — Undisputedly, motor cycle gave per litre mileage less than one-half of what was represented — Unfair trade practices proved — Order for refund just and appropriate — Upheld.

**IV (2006) CPJ 100 (NC)**

**REGISTRATION OF SALE DEED EXECUTION .....(See Jurisdiction)**

**IV (2006) CPJ 34 (NC)**

**RES IPSA LOQUITUR ..... (See Medical Negligence)**

**IV (2006) CPJ 182 (Kar.)**

**SECURITIES — Debenture holders — Role of trustees to protect interest of debenture holder.**

Consumer Protection Act, 1986 — Section 21(b) — Securities — Protecting interest of debenture holders — Role of trustees — Petitioner ICICI is debenture trustee of opposite party No. 1 — Trustee's role is to protect interest of debenture holders — Such role discharged by filing recovery suit before High Court — Order of Fora below, directing petitioner to pay debenture amount with interest, set aside.

**IV (2006) CPJ 58 (NC)**

— **IVPs lost — Cannot be replaced/issued in duplicate.**

Consumer Protection Act, 1986 — Section 15 — 1986 Rules framed under Government Saving Certificate Act — Rule 7(2) — Securities — Loss of IVPs — Not liable to be replaced/issued in duplicate — IVPs lost in floods — Contention of complainant, maturity value can be given on furnishing some surety or idemnity bond and after verifying that said IVPs have not so far been encashed — Not acceptable — Rule 7(2) makes clear that certificate

lost, stolen etc. will not be replaced — Complaint liable to be dismissed.

#### **IV (2006) CPJ 166 (Punjab)**

- **Shares — Transfer in name of joint holder on death of first holder — Forum ought to have issued notice to O.Ps. and decide complaint, even though 24 documents produced.**

Consumer Protection Act, 1986 — Sections 2(1)(c) and 11 — Jurisdiction of Forum — Complaint — Maintainability — Dismissal, as being not decideable in summary proceedings by Forum — Challenge against — Dispute regarding transfer of shares in name of complainant, joint holder, upon death of first holder — Forum observed that 24 documents produced by complainant, requiring detailed recording of evidence — Some documents merely letters, reminders and copies of ration card etc. — Forum ought to have issued notice to O.Ps. and on basis of pleadings, decide triability of matter in issue — Impugned order set aside — Matter remanded.

#### **IV (2006) CPJ 122 (Raj.)**

- **Unit certificates — Maturity amount paid via cheque, encashed same day — No further liability.**

Consumer Protection Act, 1986 — Section 15 — Securities — Unit certificates — Forum directed O.P. to pay unit certificates amount of Rs. 23,000 besides interest, cost and compensation — Hence appeal by O.P. — Contention, maturity amount of units was sent by way of cheque on 4.6.1995 which was encashed same day — Appeal to be allowed, in view of contention — Impugned order set aside.

#### **IV (2006) CPJ 173 (Del.)**

- **SERVICE — Education — Imparting education for consideration — Students consumers.**

Consumer Protection Act, 1986 — Sections 2(1)(d) and 2(1)(o) — Educational Services — Consumer — Imparting education for consideration comes under ambit of service under Section 2(1)(o) — Students admitted for being imparted education are consumers as defined under Section 2(1)(d).

#### **IV (2006) CPJ 13 (Raj.)**

- **Housing — Building activity — Comes within purview of Act.**

Consumer Protection Act, 1986 — Section 2(1)(o) — Service — Housing — Building activity relating to housing construction comes within purview of Act.

#### **IV (2006) CPJ 123 (NC)**

- **RKBY Scheme — Services under scheme rendered for consideration — Complainants consumers.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Complainants covered under RKBY scheme — Services rendered by O.P. under scheme, was for consideration, paid by complainants — Complainants consumers.

#### **IV (2006) CPJ 4 (Chhat.)**

- **STAMP DUTY — Housing — Builder — Stamp duty charges — Statutory duty, not negotiable — Complainant liable to pay.**

Consumer Protection Act, 1986 — Section 15 — Housing — Builder — Stamp duty charges — Statutory levy, not negotiable — Builder assured that they are charging exactly same amount that is payable to Registering Authority — Complainant liable to pay.

#### **IV (2006) CPJ 123 (NC)**

- **STAY ORDER — Conditional — Appropriate order has to be passed — Appellate Forum has discretion to grant or refuse same.**

Consumer Protection Act, 1986 — Section 15 — Appeal — Conditional stay of execution of impugned order — Imposing condition to deposit 50% of amount awarded by Forum — Legality — Contention, Rs. 25,000 or 50% of award amount, whichever less, has to be deposited, not accepted — Such deposit is only for entertainment of appeal — Only after entertaining of appeal, question of granting stay/interim relief would arise — Appellate Forum has discretion to grant or to refuse same — Appropriate order required to be passed, depending upon facts and circumstances of each case — Impugned order of State Commission justified, upheld.

#### **IV (2006) CPJ 25 (NC)**

**SUCCESSION CERTIFICATE — Joint account — Mandate 'either or survivor' withdrawn — Operation of account by one of holders not allowed without succession certificate.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Contract Act, 1872 — Section 45 — Banking and Financial Services — Joint account — Devolution of joint rights — Complainant joint account holder with husband, with mandate 'either or survivor' — Such mandate withdrawn — State Commission justified in holding that Bank could not allow operation of account by one of account holders alone, without succession certificate — Complainant entitled to release of amount in her favour if other heirs give consent and have no objection.

#### **IV (2006) CPJ 83 (NC)**

**TELEPHONE — Connection not given — Registration fee not returned — No intimation given to complainant — Deficiency in service — Direction to provide connection.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Telephone — Connection not given — Registration fee deposited — Contention, connection could not be provided due to non-availability of spare cable, not acceptable — Connection given to other persons in the village — No intimation about non-feasibility of new connection given to complainant — Deposited fee not returned — Deficiency in service proved — O.P. liable to provide new connection within a month — Compensation and cost awarded.

#### **IV (2006) CPJ 145 (Ori.)**

**— Mobile — Tower not constructed as per schedule — Unfair trade practices proved — Compensation awarded.**

Consumer Protection Act, 1986 — Section 2(r)(viii)(i) — Unfair Trade Practices — Telephone — Mobile — Tower not constructed — Inability to use cell phone — Petitioner, being induced by representation of opposite party that tower would be constructed by October 1999, subscribed to connection — Admittedly, tower not constructed on ground of its not being viable — Unfair trade practices proved — Case fully covered by Section 2(r)(viii)(i) of Act — Opposite party liable — Rs. 30,000 compensation awarded.

#### **IV (2006) CPJ 67 (NC)**

**TENDER — Cancelled — Complainant highest bidder therein — Second tender — Land validly allotted to appellant — Upheld — No deficiency in cancelling tender.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Tender — Cancellation of tender — Forum directed allotment of plot and delivery of possession to complainant — Hence appeal — Contention, tender cancelled where complainant was highest bidder — Not participated in second proceedings despite being informed — In Second tender, land validly allotted to appellant — Registration of deed performed, possession also delivered — Vice-Chairman empowered to cancel tender — No deficiency in service proved — Complaint wrongly allowed by Forum, order set aside.

#### **IV (2006) CPJ 116 (U.P.)**

**— Cancellation of proceedings — Forum not empowered to declare same as invalid.**

Consumer Protection Act, 1986 — Section 15 — Jurisdiction — Subject matter — Tender/auction proceedings not subject matter of litigation under C.P.A. — Forum not

empowered to declare cancellation of tender as invalid.

#### **IV (2006) CPJ 116 (U.P.)**

**TRANSPORT SERVICES — Carrier — Liable to deliver goods safely — Position same as of insurer.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Transport Services — Consignment short — Stolen before delivery to consignee — Carrier is in position of insurer, liable to deliver goods safely, undamaged, without loss — Consignment till delivery to consignee, responsibility was entirely that of carrier — Burden of proving absence of negligence is on carrier — Complaint allowed by Forum — Order upheld in appeal.

#### **IV (2006) CPJ 130 (T.N.)**

— **Consignment — Short delivery — Liability to pay value of stolen goods and compensation.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Transport Services — Short delivery of consignment — Value of stolen goods claimed — Liability denied by O.P. — Contention, value of goods not declared, correctly — Contention not acceptable — Endorsement regarding shortage made in way bills — Absence of negligence not prove by O.P. — Value of goods stolen not disputed — O.P. liable to pay value of goods stolen together with compensation and costs.

#### **IV (2006) CPJ 56 (T.N.)**

— **Consignment not delivered — Liability denied — Return of goods to complainant not proved — O.P. liable.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Transport Services — Consignment not reached destination — Onus to prove contention denying liability — Delivery of goods not made despite service of notice on opposite party — Contention, goods returned to complainant for repacking — Onus to prove return of goods was on opposite party — Undisputedly, opposite party not produced any receipt executed by complainant acknowledging receipt of boxes for repacking — Forum rightly returned finding that booked boxes not delivered to consignee — Opposite party liable — Interest rate of 15% p.a., awarded by Forum on higher side, reduced to 12% p.a.

#### **IV (2006) CPJ 14 (NC)**

— **Freight — Paid by beneficiary — Consumer.**

Consumer Protection Act, 1986 — Section 2(1)(d) — Consumer — Transport Services — Freight paid by complainant — He being beneficiary comes under purview of being 'consumer'.

#### **IV (2006) CPJ 144 (NC)**

— **Goods pilfered — Condition denying liability hardly legible — To be held against O.P. — Liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Transport Services — Goods pilfered — Liability denied on basis of Condition No. 3 mentioned in "Inland Way Bill" — Said condition cannot be read since same printed in such "fine-print" that it is hardly legible and readable — Such material is to be held against person who fine-prints such condition — Opposite party liable.

#### **IV (2006) CPJ 144 (NC)**

— **Non-delivery of insured consignment — Amount paid by insurer — Letter of assignment, subrogation executed in name of insurer — Complaint by insurer, not being hirer of services of O.P., not maintainable — Remedy before appropriate Forum.**

Consumer Protection Act, 1986 — Sections 2(1)(c), 2(1)(d) — Consumer — Execution of letter

of 'assignment', 'subrogation' and 'general power of attorney' in favour of insurer — Complaint on behalf of insurer — Maintainability — Transport services — Non-delivery of consignment — Goods insured — Amount paid by insurer — Undisputedly, letter of assignment, subrogation, etc. been executed in favour of insurer, by consignor — Consumer complaint against transporter — Insurer, since not hirer of services of opposite party, cannot be said consumer — Addition of consignor as co-applicant makes no difference — Complaint not maintainable — Complainants free to seek remedy before appropriate Forum.

#### **IV (2006) CPJ 44 (NC)**

- **Pilferage of goods — Administrative Ministry of O.P., Ministry of Railways — Not sufficient to attract provision of Railways Act to deny liability.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Railways Act, 1989 — Section 99 — Transport Services — Part of goods pilfered — Complainant claimed indemnification — Liability denied by opposite party stating as per provisions of Section 99, no complaint can be filed against them — Undisputedly, opposite party not "Railways" — They are merely registered as company whose administrative Ministry is Ministry of Railways — Provisions of Act of 1989 not applicable — Opposite party liable.

#### **IV (2006) CPJ 144 (NC)**

- **Short delivery — Liability of carrier — Burden of proving absence of negligence on carrier.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Transport Services — Consignment short — Stolen before delivery to consignee — Carrier is in position of insurer, liable to deliver goods safely, undamaged, without loss — Consignment till delivery to consignee, responsibility was entirely that of carrier — Burden of proving absence of negligence is on carrier — Complaint allowed by Forum — Order upheld in appeal.

#### **IV (2006) CPJ 130 (T.N.)**

- **TUBEWELL — Water unfit for agriculture — Saline — Inaccurate conclusion drawn — Deficiency in service — Entitled to material used plus labour charges.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Professional Services — Making survey of ground water — Report showed availability of marginal to sub marginal quality of water at 40 mtrs. depth — Tubewell installed by complainant, acting on such report — Water found saline, quality not in accordance with said report — Water of tubewell unfit for agricultural use — Inaccurate conclusion drawn by O.P. amounts to deficiency in service — Complainant entitled to expenditure incurred for material used and towards labour charges for making tubewell.

#### **IV (2006) CPJ 133 (NC)**

- **UNFAIR TRADE PRACTICES — Housing — Possession delayed — Retention of amount for 7 years — Unjustified — Unfair trade practices proved — O.P. liable.**

Consumer Protection Act, 1986 — Sections 2(1)(g), 2(1)(r) — Housing — Possession delayed — Scheme floated for retired/retiring employees — Total cost of flat deposited — Withholding of possession unjustified — Deficiency in service proved — Retention of registration amount for 7 long years unjustified, amounts to unfair trade practice — Compensation and cost awarded.

#### **IV (2006) CPJ 57 (Del.)**

- **Motor Vehicles — Mileage — Falsely represented — Manufacturing defects also — Unfair trade practices proved — Refund directed.**

Consumer Protection Act, 1986 — Sections 2(1)(g) and 2(1)(r) — Unfair Trade Practices — Motor Vehicles — False representation of mileage — Some manufacturing defects also — Forum directed return of cost of vehicle with interest — Appeal before State Commission

dismissed — Hence present revision petition — Contention, complainants have been using vehicles for over 4 years, order for refund of price is erroneous, rejected — Undisputedly, motor cycle gave per litre mileage less than one-half of what was represented — Unfair trade practices proved — Order for refund just and appropriate — Upheld.

#### **IV (2006) CPJ 100 (NC)**

— **Telephone — Mobile — Tower not constructed as per schedule — Unfair trade practices proved — Compensation awarded.**

Consumer Protection Act, 1986 — Section 2(r)(viii)(i) — Unfair Trade Practices — Telephone — Mobile — Tower not constructed — Inability to use cell phone — Petitioner, being induced by representation of opposite party that tower would be constructed by October 1999, subscribed to connection — Admittedly, tower not constructed on ground of its not being viable — Unfair trade practices proved — Case fully covered by Section 2(r)(viii)(i) of Act — Opposite party liable — Rs. 30,000 compensation awarded.

#### **IV (2006) CPJ 67 (NC)**

**VICARIOUS LIABILITY — Medical Practitioner — Causing death due to negligence — State liable for damages.**

Medical Practitioner — Careless and negligent — Action in torts maintainable — Simple case of delivery — Sterilisation operation — Operation led to peritonitis — Lack of adequate care — Doctor — Employee of respondent No. 1 — Vicariously liable — Death by negligence established — State will be liable for damages.

#### **IV (2006) CPJ 8 (Supreme Court of India) (SC)**

— **Water sports — Accident — Insurance Company liable ..... (See Insurance)**

#### **IV (2006) CPJ 131 (Kar.)**

**WATER SPORTS — Accident due to negligent boat driving — Immaterial, whether being driven by regular operator or third person — O.Ps. vicariously liable for accident claim.**

Consumer Protection Act, 1986 — Section 2(1)(g) — Water Sports — Accident claim — Negligence in boat driving — Boat hit a rock resulting death of complainant's husband — Contention, complainant's husband himself was driving the boat at accident time, contributed his negligence for accident, O.P. not liable — Contention not acceptable — Accident occurred due to negligent driving of boat, irrespective of the fact whether it was driven by regular operator or third person — O.P. vicariously liable to pay compensation — Insurance policy obtained covering risk involved in water sports — Insurance Company liable under policy.

#### **IV (2006) CPJ 131 (Kar.)**

**WORDS AND PHRASES — "Alteration."**

#### **IV (2006) CPJ 68 (NC)**

— **"Compensation".**

#### **IV (2006) CPJ 13 (Raj.)**

— **"House-scavenging"**

*R.P. No. 2775/2004*

U.P. Municipalities Act, 1916 — Section 195 — "House-scavenging" — Defined.

#### **IV (2006) CPJ 20 (NC)**

— **"Riot".**

#### **IV (2006) CPJ 135 (NC)**

## **CONTRACT ACT, 1872**

Consumer Protection Act, 1986 — Section 2(1)(g) — **Contract Act, 1872 — Section 45** — Banking and Financial Services — Joint account — Devolution of joint rights — Complainant joint account holder with husband, with mandate 'either or survivor' — Such mandate withdrawn — State Commission justified in holding that Bank could not allow operation of account by one of account holders alone, without succession certificate — Complainant entitled to release of amount in her favour if other heirs give consent and have no objection.

### **IV (2006) CPJ 83 (NC)**

Consumer Protection Act, 1986 — Section 2(1)(g) — **Contract Act, 1872 — Section 171** — Transfer of Property Act, 1882 — Section 60 — Banking & Financial Services — General lien of bankers — Right of mortgagor to redeem — Bank deficient in service in not returning documents/title-deeds in time — State Commission directed return of same — Appeal by complainants claiming compensation for harassment and mental agony — Complainants guarantors of loans granted to several firms — Said firms committed defaults in payment of dues — Opposite party State Bank of India is one legal entity irrespective of its hundreds of branches — If amount is due against person in account of another branch, Bank could exercise its general lien over documents/title deeds deposited in one branch in respect of loan in other branches — Complainants continued to be liable as other accounts of different branch of opposite party were not cleared — Bank justified in feeling inhibited in returning documents/title deeds — No room for awarding compensation.

### **IV (2006) CPJ 1 (NC)**

## **CUSTOMS ACT, 1962**

Consumer Protection Act, 1986 — Section 14(1)(d) — **Customs Act, 1962 — Section 13** — Compensation — Duty on pilfered goods — Complainant should not have paid customs duty on pilfered goods — Entitled to refund under appropriate provisions of Act of 1962 — Opposite party not liable to pay such amount — Interest @ 18% p.a. on higher side, reduced to 12% p.a.

### **IV (2006) CPJ 144 (NC)**

## **EMPLOYEES STATE INSURANCE ACT, 1948**

— Consumer Protection Act, 1986 — Section 3 — Jurisdiction of Consumer Fora — **Employees State Insurance Act, 1948 — Section 75(3)** — Complaint alleging medical negligence and deficiency in service — Jurisdiction of Forum to entertain — Workmen claimed compensation and medical expenses because of alleged negligence on part of doctors of ESI Corporation Hospital, in performing operation — Main claim does not fall in any of categories enumerated in Section 75 — Jurisdiction of Forum to entertain and decide complaints not ousted under Section 75(3) of Act of 1948.

### **IV (2006) CPJ 10 (NC)**

## **INDIAN POST OFFICE ACT, 1898**

Consumer Protection Act, 1986 — Section 2(1)(g) — **Indian Post Office Act, 1898 — Section 6** — Postal Services — Unauthorised delivery — Absence of fraudulent or wilful act on part of opposite party — Liability — Letter to be delivered to complainant's son, delivered to his room partner — Not even remotely pleaded in complaint that said delivery was done wilfully or fraudulently — In absence of same, second part of Section 6 not applicable — Opposite party not liable.

### **IV (2006) CPJ 37 (NC)**

Consumer Protection Act, 1986 — Section 2(1)(g) — **Indian Post Offices Act, 1898 — Section 6** — Postal Services — Speed post article — Belatedly delivered — Admittedly, article

delivered after more than 72 hours — Facts of case clearly establish lapses on part of opposite party — Section 6 of Act of 1898 cannot be taken as excuse for delayed delivery — Article contained application for Civil Services Exam — Complainant lost chance to appear at said examination — Deficiency in service proved — Rs. 5,000 compensation awarded.

#### **IV (2006) CPJ 25 (Bih.)**

Consumer Protection Act, 1986 — Section 2(1)(g) — **Indian Post Office Act, 1898 — Section 48** — Postal Services — Belated delivery of money order — Exemption from liability — Money order delivered after 10 months — Contention of O.P., delay accidental, Section 48 applicable, rejected — Even if it is admitted that something went wrong with satellite, same must have been rectified when defect was found — Money order was sent for very urgent and essential purpose, viz., for treatment of family member — Very purpose of sending same frustrated as money not received in time — Opposite party liable.

#### **IV (2006) CPJ 63 (Punjab)**

### **LIMITATION ACT, 1963**

Consumer Protection Act, 1986 — Section 15 — **Limitation Act, 1963 — Section 5** — Limitation — Tests for condonation of delay — Liberal construction of Section 5 of Act of 1963 — Appeal against order of Forum — Impugned order dated 16.8.2004 — Certified copy applied for only on 8.7.2005, made available on same date — Moreover, in execution petition filed by complainant, notice was served upon present applicant on 13.5.2005 — Fact whether applicant made any inquiry about day to day progress in complaint and in execution, upon receipt of notice, been delightfully kept vague — No cause, sufficient to condone delay, made out — Delay not condoned — Application liable to be dismissed with costs.

#### **IV (2006) CPJ 178 (H.P.)**

### **MOTOR VEHICLES ACT, 1988**

Consumer Protection Act, 1986 — Section 15 — **Motor Vehicles Act, 1988 — Sections 39, 56** — Insurance — Necessity for registration of vehicle — Carrying of fitness certificate necessary for valid registration — Admittedly, vehicle had no valid fitness certificate on date it was set on fire — Vehicle brought on road without such certificate — Clear case of violation of conditions of policy — Insurer not liable to compensate.

#### **IV (2006) CPJ 62 (NC)**

### **RAILWAYS ACT, 1989**

Consumer Protection Act, 1986 — Section 2(1)(g) — **Railways Act, 1989 — Section 99** — Transport Services — Part of goods pilfered — Complainant claimed indemnification — Liability denied by opposite party stating as per provisions of Section 99, no complaint can be filed against them — Undisputedly, opposite party not “Railways” — They are merely registered as company whose administrative Ministry is Ministry of Railways — Provisions of Act of 1989 not applicable — Opposite party liable.

#### **IV (2006) CPJ 144 (NC)**

### **TRANSFER OF PROPERTY ACT, 1882**

Consumer Protection Act, 1986 — Section 2(1)(g) — Contract Act, 1872 — Section 171 — **Transfer of Property Act, 1882 — Section 60** — Banking & Financial Services — General lien of bankers — Right of mortgagor to redeem — Bank deficient in service in not returning documents/title-deeds in time — State Commission directed return of same — Appeal by complainants claiming compensation for harassment and mental agony — Complainants guarantors of loans granted to several firms — Said firms committed defaults in payment of dues — Opposite party State Bank of India is one legal entity irrespective of its hundreds of branches — If amount is due against person in account of another branch, Bank could

exercise its general lien over documents/title deeds deposited in one branch in respect of loan in other branches — Complainants continued to be liable as other accounts of different branch of opposite party were not cleared — Bank justified in feeling inhibited in returning documents/title deeds — No room for awarding compensation.

**IV (2006) CPJ 1 (NC)**

**U.P. MUNICIPALITIES ACT, 1916**

*R.P. No. 2775/2004*

— **Section 195** — “House-scavenging” — Defined.

**IV (2006) CPJ 20 (NC)**

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