



COMPENDIUM OF NATIONAL COMMISSION JUDGEMENTS ON CONSUMER PROTECTION ACT, 1986 (CASES OF 2014 - Vol. III)

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MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION (DEPARTMENT OF CONSUMER AFFAIRS), GOVT OF INDIA &
SHRI.A.K.VENKATA SUBRAMANIAM CHAIR OF EXCELLENCE ON CONSUMER LAW AND JURISPRUDENCE
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CHENNAI

COMPENDIUM OF NATIONAL COMMISSION JUDGEMENTS
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About the Book

This Compendium gives a summary of nearly 400 judgements delivered by the National Consumer Disputes Redressal Commission in the year 2014 on various issues pertaining to the Consumer Protection Act. It is meant to serve as a ready reckoner of the most recent judgements on Consumer Law and will be an invaluable guide to students of law, legal practitioners and particularly the consumers whose rights are constantly violated.

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COMPENDIUM OF NATIONAL COMMISSION JUDGEMENTS ON CONSUMER PROTECTION ACT, 1986 [CASES OF 2014]

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I. APPEAL AGAINST PENALTY

1. M/s. Sanjay Machinery & Tractor Vs. Devendra and others

i) Case in Brief:

A complaint was filed in the District Forum by the Complainant/ Respondent.1 pertaining to an allegedly defective vehicle purchased from OP.1/Respondent.2. The complaint was partly allowed by the District Forum which directed the non-applicants to jointly and severally give a new vehicle to the applicant on deposit of old vehicle. The non-applicants were further directed to pay Rs.10,000/- to the applicant for mental agony, deficiency in service and cost. This order remained unchallenged by the three OPs till an execution petition was filed before the District Forum. Since OP.3/Manufacturing Company had stopped manufacturing the vehicle in question, District Forum directed payment of Rs.1.9 lakhs to the Complainant/Decree Holder in lieu of replacement of the vehicle. Appeal filed by OP.2/Appellant against this order was decided against the Appellant on the ground that he cannot disown liability at a belated stage. The present appeal is against the order of the State Commission. Appeal dismissed.

ii) Order appealed against:

From the order dated 16-07-2013 in Appeal No.927 of 2009 of the Madhya Pradesh State Consumer Disputes Redressal Commission.

iii) Parties:

M/s. Sanjay Machinery & Tractor - Appellant

Vs.

Devendra and others - Respondents

iv) Case No and Date of Judgement:

First Appeal No.684 of 2013 & Date of Judgement: 08-10-2014.

v) Acts and Sections referred:

Sections 19, 21(a) (ii), 27 and 27-A of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was held that since the original order of the District Forum dated 25.04.2013 was not challenged by the appellant, it had

acquired finality qua the appellant/Sanjay Machinery & Tractor. The order of the District Forum passed on 01-04-2009 in execution of the original order took note of the fact that the manufacturing company had stopped production of the vehicle. Further, as the manufacturing company/OP.3 had gone into liquidation, it was held that the impugned order had rightly directed that the decree should be executed against OP.3 in accordance with the provisions of the Companies Act.

- b) The Commission rejected the contention of the appellant that he is neither the manufacturer nor vendor of the vehicle sold to the complainant since the order of 25-04-2003 from which the present execution appeal arose, had attained finality qua the three OPs.
- c) Consequently, it was held that the impugned order was based on correct appreciation of the material before the State Commission and there was no ground to interfere with that order.

vii) Citation:

IV (2014) CPJ 517.

II. CONDONATION OF DELAY

1. Shri Virendra Kumar Jain Vs. Merinoply & Chemicals Ltd.

i) Case in Brief:

Petitioner/Complainant purchased commercial Ply (Block Boards) from the Respondent/OP which was found defective due to termite attack and resulted in destruction with fine yellow powder coming out. The carpenter noticed that the block board became zigzag in size and could not be used for preparing household furniture. Since OP did not pay any heed to petitioner's representations, the latter filed complaint before the District Forum. District Forum ordered OP to refund Rs.27,000/- to the complainant along with Rs.10,000/- as compensation and Rs.5,000/- as cost. The OP filed an appeal before the State Commission which was allowed. Aggrieved by the order of the State Commission, the present revision petition has been filed. Revision petition allowed. State Commission's order was set aside and the District Forum's order was modified by imposing punitive cost of Rs.10,000/- to be paid to the complainant.

ii) Order appealed against:

From the order dated 28-01-2008 in F. Appeal No.1121 of 1993 of U.P State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

Shri Virendra Kumar Jain - Petitioner

Vs.

Merinoply & Chemicals Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2079 of 2013 & Date of Judgement: 25-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Though there was a huge delay of 1851 days in filing the revision petition, the delay was condoned since the reasons for delay were justified.

- b) The National Commission noted that the District Forum had gone by two expert reports, one on behalf of the complainant and the other on behalf of the OP. On the basis of the reports, it was concluded that the block boards were defective. The Commission held that the State Commission had not considered the findings of the District Forum regarding the two experts' reports available on file and hence the State Commission's order was perverse.
- c) The Commission further noted that the complaint pertained to the year 1992 and the OP dragged the matter for 22 years for a meager amount of Rs.27,000/-. OP was in a dominant position and he had taken an innocent and helpless consumer for a ride. Relying upon the Hon'ble Supreme Court Judgement in *Gurgaon Gramin Bank v. Smt. Khazani and another* (Civil Appeal No.6261 of 2012 @ Special Leave Petition © No.8875/2010), the Commission decided to impose punitive cost of Rs.10,000/- to be paid to the complainant. OP was also directed to pay Rs.27,000/- with interest at 6% p.a from the date of filing of the complaint.

vii) Citation:

Not reported in CPJ and CPR.

2. Sadashiva S. Yelagod Vs. Gururaj Joshi

i) Case in Brief:

Petitioner/Complainant availed legal services of the Respondent/OP to contest his criminal case before the Karnataka High Court Bench at Gulburga. He paid Rs.5,000/- as professional fees. It is his contention that the case resulted in dismissal since OP could not make his appearance on 30-10-2008, the date fixed for hearing. Alleging deficiency in service and professional misconduct, he filed complaint before the District Forum which dismissed the complaint. His appeal before the State Commission was also dismissed. Aggrieved by the State Commission's order, the present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 09-07-2013 in F. Appeal No.3357 of 2011 of Karnataka State Consumer Disputes Redressal Commission, Bangalore.

Condonation of Delay

iii) Parties:

Sadashiva S.Yelagod

- Petitioner

Vs.

Gururaj Joshi

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1121 of 2014 & Date of Judgement: 25-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The National Commission noted that the Complainant filed appeal before the State Commission with a delay of 127 days which was not condoned. There was a delay of another 81 days in filing the revision petition also. The Commission noted that at every instance of approaching the courts, the Complainant claimed to have fallen sick. He produced a medical certificate in which the doctor advised him complete bed rest for 6 months for “Acute Allergic Asthama with Malaria” which can be cured in a span of 7 or 10 days. The Commission rejected the application for condonation of delay following the decision of the Hon’ble Supreme Court in *Anshul Aggarwal v. New Okhla Industrial Development Authority*, IV (2011) CPJ 63 (SC), *R.B.Ramlingam v. R.B.Bhavaneshwari*, I (2009) CLT 188 (SC), *Ram Lal and others v. Rewa Coalfields Ltd*, AIR 1962 SC 361 and *Bikram Dass v. Financial Commissioner and others* AIR 1977 SC 1221.
- b) On merits also, the Commission concluded that the OP did not attend the High Court for a boanfide reason that he had to attend his ailing father who underwent an operation on 30-10-2008.
- c) Therefore, both on ground of huge delay in filing the revision petition and due to lack of merit, the revision petition was dismissed and the orders of the fora below were upheld.

vii) Citation:

I (2015) CPJ 116.

3. Chandulal Vs. Shekar

i) Case in Brief:

The Complainant filed complaint for acquisition of two plots. The State Commission dismissed the appeal on the ground that there was a delay of 46 days in filing the First Appeal. The National Commission before whom the present revision petition was filed observed that the Petitioner has got a very strong case on merits and that the question whether the complainant is a consumer or not requires investigation and full probe. The Commission condoned the delay in filing the appeal subject to payment of Rs.10,000/- to the Respondent and directed both the parties to appear before the State Commission for fresh hearing observing that the State Commission's order was otherwise flawless.

ii) Order appealed against:

From the order dated 12-02-2013 in First Appeal No.A/09/277 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Nagpur.

iii) Parties:

Chandulal

- Petitioner

Vs.

Shekar

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3391 of 2013 & Date of Judgement: 26-09-2014.

v) Acts and Sections referred:

Sections 2(1)(d), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The National Commission observed that the matter touches the jurisdictional power of the Consumer Courts and that the question whether the complainant is a consumer or not required investigation and full probe. The Authority of the National commission in *Jag Mohan Chhabra & Anr. v. DLF Universal Ltd.*, MANU/CF/0268/2007 which was upheld by the Hon'ble Supreme Court in Civil Appeal No.6030 - 5031 of 2008 was cited in support of the decision.

vii) Citation:

Not reported in CPJ and CPR.

4. Secretary, State Council of Technical Education and Vocational Training Vs. Sri Surya Narayan Sahoo and another

i) Case in Brief:

Complainant/Respondent filed complaint before the District Forum stating that he had appeared in the trade test conducted by Petitioner/OP.2 after paying fees to OP.1 in July, 2010. However, the result was published after a long delay on 16-07-2012 and the complainant was declared failed. Claiming that the delay in publication of the result had spoiled his career and had come in the way of his pursuing his higher studies, Complainant claimed compensation as well as cost of litigation. District Forum directed OPs to pay a sum of Rs.50,000/- on account of the delay caused by them. The Petitioner/OP.2 filed an appeal before the State Commission with an application for condonation of delay of 68 days in filing the appeal. The said application and the appeal were dismissed by the State Commission vide impugned order against which this revision petition had been filed. Revision petition dismissed.

ii) Order appealed against:

Revision Petition No.3592 of 2014

From the order dated 20-06-2014 in F.A.No.185 of 2014 of the Odisha State Consumer Disputes Redressal Commission, Cuttack.

Revision Petition No.3593 of 2014

From the order dated 20-06-2014 in F.A.No.186 of 2014 of the Odisha State Consumer Disputes Redressal Commission, Cuttack.

iii) Parties:

Revision Petition No.3592 of 2014

Secretary, State Council of Technical Education
and Vocational Training - Petitioner

Vs.

Sri Surya Narayan Sahoo and another - Respondents

Revision Petition No.3593 of 2014

Secretary, State Council of Technical Education
and Vocational Training - Petitioner

Vs.

Sri Naresh Kumar Mohakud and another - Respondents

iv) Case No and Date of Judgement:

- i. Revision Petition No.3592 of 2014 with IA No.6496 of 2014 (For Stay)
- ii. Revision Petition No.3593 of 2014 with IA No.6497 of 2014 (For Stay) &

Date of Judgement: 09-10-2014.

v) Acts and Sections referred:

Sections 19 & 21(b) and of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission observed that no attempt was made by the Petitioner to explain each and every day's delay after the period prescribed for filing appeal against the order of the District Forum had expired. The approach adopted by the Petitioner was held to be casual and no attempt was made to convince the State Commission that the Petitioner was prevented by sufficient cause from filing the appeal within the period of limitation. Revision petition was accordingly dismissed. The issue of law involved in the matter was kept open.

vii) Citation:

Not reported in CPJ and CPR.

5. Divisional Railway Manager Vs. Devendra Gupta

i) Case in Brief:

The complainant, who was to travel from Jhansi to Delhi, deposited one suitcase and one carry bag in the luggage room of Jhansi on 08.12.2001, for which a receipt was duly issued to him after collecting the requisite fee. When he later went to the luggage room to collect his luggage, he was told that the concerned employee being on leave, the luggage would be returned to him later. When he again went to collect the luggage at Jhansi Railway Station, he was told that the luggage had been lost. When a complaint was lodged in this regard, a delivery certificate was also issued to him. However, neither the goods were returned nor was its price paid to the complainant. He, therefore, approached the concerned District Forum which directed the petitioner

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to pay a sum of Rs.20,153/- to the complainant along with interest on that amount at the rate of 8% per annum. The petitioner was also directed to pay a sum of Rs.500/- towards cost of litigation. Being aggrieved from the order of the District Forum, the petitioner approached the State Commission, by way of an appeal. The said appeal having been dismissed, the petitioner has filed this revision petition. Since, there was a delay of as much as 2483 days i.e.6 years, 09 months and 18 days in filing the revision petition, I.A. No.4934/2014 had been filed, seeking condonation of delay in filing the revision petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 06.07.2007 in Appeal No.2031 of 2006 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

Divisional Railway Manager - Petitioner

Vs.

Devendra Gupta - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3041 of 2014 with IA/4933/2014, IA/4934/2014 (For Stay, Condonation of Delay) & Date of Judgement: 10-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19, 21(b) and 24A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was noted that the counsel engaged by the Petitioner in the appeal filed before the State Commission was grossly negligent in the performance of his professional obligations. The officials of the railways had not been monitoring the appeal filed in the State Commission and were not in touch with the advocate.
- b) Held that as the amount involved in this case was a petty sum of about Rs.20,000/-, the National Commission found no justification in condoning the abnormal delay of about 7 years in filing this revision petition. The application, seeking condonation of delay was therefore, dismissed. Consequently, the revision petition was dismissed as barred by limitation.

- c) It was observed by the National Commission that the consumer Forum is expected to render its decision on a complaint, within a period of 3 months. The objective behind this provision is to tender prompt relief to the consumer. It would be a perversity of justice, if the delay of 7 years in filing an appeal is condoned in a matter of this nature.

vii) Citation:

Not reported in CPJ and CPR.

6. Marwar Engineering College and Research Centre Vs. Hanwat Singh and another

i) Case in Brief:

Complainant/Respondent took admission in Petitioner's College in 2005 and deposited fees and examination fees. It is stated that even without declaring result, complainant was given admission in next semesters and fees was charged for those semesters. In the year 2008, Complainant was informed that he was not entitled to appear in B.E, Third Semester because he did not pass all the examinations of First Year. Alleging deficiency in service on the part of OP, he filed complaint before the District Forum. The Complaint was allowed and OP was directed to refund Rs.1,06,250/- with 9% p.a interest and further directed to pay Rs.2,00,000/- for mental agony and Rs.3,000/- towards litigation expenses. Appeal filed by the OP was dismissed by the State Commission vide impugned order against which the present revision petition has been filed along with application for condonation of delay. Application for condonation of delay was dismissed. Revision petition being barred by limitation was also dismissed.

ii) Order appealed against:

From the order dated 09-04-2013 in Appeal No.19 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench, Jodhpur.

iii) Parties:

Marwar Engineering College & Research Centre - Petitioner/ OP

Vs.

Hanwat Singh and another - Respondents/Complainants

iv) Case No and Date of Judgement:

Revision Petition No.2554 of 2014 with IA/4062/2014, IA/4063/2014, IA/4064/2014 (For Stay, Condonation of Delay/ Exemption from filing C/c) & Date of Judgement: 10-10-2014.

v) Acts and Sections referred:

Sections 19, 21(b) and 27 of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was pleaded on behalf of the Petitioner that he came to know about the impugned order only by way of notice under Section 27 of the Act and that getting translations on record from Hindi to English also took time. Since the Petitioner did not file a copy of any notice of application under Section 27 of the Act, the said contention was rejected by the National Commission. It was further held that there was a delay of 347 days from the date of impugned order and at least a delay of more than 150 days from the date of notice under Section 27 and no reasonable explanation had been given for condonation of the afore said delay. Relying on judgements in *R.B. Ramlingam Vs. R.B.Bhavaneshwari* 2009 (2) Scale 108, *Ram Lal and Ors Vs. Rewa Coalfields Ltd*, AIR 1962 SC 361, *Oriental Aroma Chemical Industries Ltd Vs. Gujarat Industrial Development Corporation* (2010) 5 SCC 459, *Post Master General and Ors Vs. Living Media India Ltd and Anr*, (2012) 3 SCC 563 and *Anshul Aggarwal Vs. New Okhla Industrial Development Authority*, 2012(2) CPC 3 (SC), the application for condonation of delay was dismissed. Consequently, the revision petition was also dismissed as barred by limitation.

vii) Citation:

IV (2014) CPJ 582; 2014(4) CPR 414.

7. Narendar Singh Vs. Rajinder Prasad Agnihotri and others

i) Case in Brief:

This revision petition has been filed against the orders of the State Commission in which the application filed by Respondents 1- 4 for condonation of delay of 209 days in filing an appeal against the order of the District Forum was allowed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 19-05-2014 in M.A.No.1212 of 2013 in F.A.No.732 of 2013 of the Punjab State Consumer Disputes Redressal Commission at Chandigarh

iii) Parties:

Narendar Singh

- Petitioner

Vs.

Rajinder Prasad Agnihotri and others

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3801 of 2014 with I.A No.7256 of 2014 (For Stay) & Date of Judgement : 17-10-2014

v) Acts and Sections referred:

Sections 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The State Commission had condoned the delay on the ground that the applicants therein (Respondents 1- 4 in this revision petition) came to know of the impugned order of the District Forum only when the applicant No.1, Rajinder Prasad Agnihotri received summons in a suit filed by Respondents 2 – 4 which included Narinder Singh, Complainant in the complaint filed before the District Forum. The State Commission made it clear that while contesting the appeal, it shall be open to the Petitioner to take all such plea as are open to him. Revision petition was accordingly dismissed.

vii) Citation:

Not reported in CPJ and CPR.

8. Pramod Vs. The Manager, Diwan Housing Finance Corpn. Ltd.

i) Case in Brief:

Complainant/Petitioner, who obtained housing policy from OP No.1/ Respondent No.1 could not make payment of some installments in time and it is his case that OP No.1 illegally surrendered Life Insurance Policy, which was given to him for loan guarantee and adjusted that amount in loan account. Alleging deficiency on the part of OPs, complainant filed complaint before District Forum which dismissed the complaint. Complainant filed appeal before State Commission along with application for condonation of delay which were both dismissed. Aggrieved by the State Commission's order, this revision petition has been filed. Revision Petition was allowed.

ii) Order appealed against:

From the order dated 21.6.2013 in Misc. Application No.63 of 2012 in Appeal No.84 of 2012 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Aurangabad.

iii) Parties:

Pramod - Petitioner/Complainant

Vs.

The Manager,

Diwan Housing Finance Corpn. Ltd. - Respondents/ Opp. Parties

iv) Case No and Date of Judgement:

Revision Petition No.3554 of 2013 & Date of Judgement: 28-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was pointed out by the National Commission that the reasons given by the Complainant/Petitioner in the affidavit filed by him before the State Commission for seeking condonation of delay appeared reasonable and the State Commission ought to have taken sympathetic view and should have condoned delay subject to cost.

b) Therefore, the revision petition filed by the petitioner was allowed and impugned order passed by State Commission was set aside and application for condonation of delay was allowed subject to payment of Rs.5,000/- as cost to Respondent No.1 & 2 and Rs.5,000/- to Respondent No.3 and delay in filing appeal was also condoned. State Commission was directed to decide appeal on merits.

vii) Citation:

2014(4) CPR 559.

9. Royal Sundaram Alliance Insurance Co. Ltd. Vs. Shri Mohd. Shahnaz Alam and others

i) Case in Brief:

In this case, the appeal was filed by the Petitioner against the order of the District Forum dated 17-05-2014. The appeal was signed and a draft of mandatory fee of Rs.25,000/- was prepared on 10-07-2014 and sent by registered post on 12-07-2014. But the appeal was filed only on 05-08-2014. There was absolutely no explanation as to why the appeal could not be filed immediately after 12-07-2014 when it had already been prepared by that time and even the draft of the fee required to be deposited with the State Commission had been prepared. Therefore, appeal was dismissed by the State Commission being barred by limitation against which this Revision Petition had been filed. Revision Petition was dismissed.

ii) Order appealed against:

From the order dated 11-08-2014 in FA No.1542 of 2014 of the Uttar Pradesh State Consumer Disputes Redressal Commission at Lucknow.

iii) Parties:

Royal Sundaram Alliance Insurance Co. Ltd. - Petitioner

Vs.

Shri Mohd. Shahnaz Alam and others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3753 of 2014 with I.A. No.7086 of 2014 (For stay)
& Date of Judgement: 30-10-2014.

v) Acts and Sections referred:

Section 15, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Held that the Petitioner-company failed to explain the delay in filing the appeal before the State Commission. One of the objectives behind enactment of the Consumer Protection Act, 1986 is to provide expeditious relief to the consumer and the said object is likely to be frustrated, if the delay in filing the appeals is condoned as a matter of course, without there being a satisfactory explanation for the said delay. Therefore, decision of the fora below was upheld and the present revision petition was dismissed.

vii) Citation:

Not reported in CPJ and CPR.

10. Smt. Santra Devi Vs. Sahara India Pariwar

i) Case in Brief:

In this case, the impugned order was passed by State Commission on 11.5.2011, a copy of which was received by petitioner on 18.6.2011. But revision petition had been filed on 11.3.2013 and thus there was delay of 542 days in filing revision petition. Petitioner had not given details of the period during which her husband suffered from abdomen disease, which was the main ground for seeking condonation of delay. Revision Petition was dismissed.

ii) Order appealed against:

From the order dated 11.05.2011 in Appeal No. 1924/2008 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Smt. Santra Devi - Petitioner/Complainant

Vs.

Sahara India Pariwar - Respondents/ Opp. Parties

iv) Case No and Date of Judgement:

Revision Petition No.940 of 2013 & Date of Judgement: 30-10-2014.

v) Acts and Sections referred:

Section 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Documents annexed with application revealed that petitioner's husband was under some treatment from 19.11.2011 to 19.8.2012. No explanation had been given for delay from 18.6.2011 to 18.11.2011 before which limitation for filing revision petition had already expired and no explanation had been given for period from 20.8.2012 to 11.3.2013 when this revision petition was filed.
- b) Held that there was no reasonable explanation at all for condonation of inordinate delay of 542 days. In such circumstances, application for condonation of delay was liable to be dismissed. As application for condonation of delay was to be dismissed, revision petition being barred by limitation was also liable to be dismissed in the light of the following judgements viz. *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361; *R.B. Ramlingam Vs. R.B. Bhavaneshwari* 2009 (2) Scale 108; *Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation* reported in (2010) 5 SCC 459; *Anshul Aggarwal Vs. New Okhla Industrial Development Authority* 2012 (2) CPC 3 (SC); *Post Master General & Ors. Vs. Living Media India Ltd. and Anr.* (2012) 3 SCC 563.

vii) Citation:

IV (2014) CPJ 700; 2014(4) CPR 522.

11. Ramlal Pandey and another Vs. Shyam Narayan Dwivedi

i) Case in Brief:

The revision petition challenging the order of the Madhya Pradesh State Commission passed on 26-10-2013 has been filed along with an application for condonation of delay which is of 72 days according to the Petitioner and 74 days according to the registry. The main grounds advanced for condonation of delay were that (1) petitioners were residing 600 KMs away from Bhopal and could not attend the hearings; (2) the petitioner's counsel failed to appear regularly to represent their case; (3) certified Copy of the State Commission's order was not served on them and (4) they came to know about the order only when they received the notice in the execution proceedings. Revision Petition dismissed as reasons for condonation of delay were not convincing.

ii) Order appealed against:

From the order dated 26-10-2013 in First Appeal No.983 of 2011 of the M.P State Consumer Disputes Redressal Commission, Bhopal.

iii) Parties:

Ramlal Pandey and another - Petitioners

Vs.

Shyam Narayan Dwivedi - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1834 of 2014 with IA/2574/2014 & IA/2575/2014 (For Stay and Condonation of Delay) &

Date of Judgement: 31-10-2014.

v) Acts and Sections referred:

Sections 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was held that the explanation offered by the Petitioner in support of their application for condonation of delay was highly vague and general which cannot be regarded as sufficient cause to justify condonation. The Commission relied on the judgements of the Delhi High Court in *New Bank of India v. M/s.Marvels (India)*,

93 (2001) DLT 558, and the orders of the Apex Court in *Ramlal and Ors Vs. Rewa Coalfields Ltd*, AIR 1962 SC 361; *R.B.Ramlingam v. R.B.Bhavaneshwari*, 2009 (2) Scale 108; *Anshul Aggarwal Vs. New Okhla Industrial Development Authority*, IV (2011) CPJ 63 (SC), while dismissing the revision petitions.

- b) It was further held that even on merits, the case did not deserve any consideration because the impugned order showed that the petitioners have been negligent throughout in conducting their case.

vii) Citation:

2014(4) CPR 510.

12. Life Insurance Corporation of India Vs. Smt. Nina Sunil Rane

i) Case in Brief:

On a complaint filed by the Respondent, the District Forum allowing the complaint had directed the petitioner Corporation to pay a sum of Rs. 1,88,590/- to the complainant along with interest on that amount at the rate of 12% per annum from 26.04.2006 and Rs. 10,000/- as the cost of litigation. The appeal filed by the Petitioner Corporation was dismissed by the State Commission. Aggrieved by the order of the State Commission, this revision petition has been filed along with an application for condonation of delay of 54 days. Application for condonation of delay was dismissed and consequently revision petition was also dismissed as barred by time.

ii) Order appealed against:

From the order dated 06.03.2014 in First Appeal No. A/11/439 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai

iii) Parties:

Life Insurance Corporation of India - Petitioner

Vs.

Smt. Nina Sunil Rane - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3986 of 2014 with IA/7680/2014, IA/7681/2014 (Condonation of Delay, Stay) &

Date of Judgement: 05-11-2014.

v) Acts and Sections referred:

Sections 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was held that there was no sufficient explanation for condoning the delay of 54 days in filing the revision petition. One of the objectives behind the enactment of the Consumer Protection Act is to provide speedy relief to a consumer aggrieved from deficiency in service on the part of the service provider and the Act enjoins upon the consumer forum to make effort to dispose of complaint within a period of 90 days. The said purpose would only be defeated if a delay in filing the revision petition is condoned without there being sufficient explanation for the said delay. Therefore, the application seeking condonation of delay in filing the revision petition was dismissed as barred by time.

vii) Citation:

I (2015) CPJ 22; 2014(4) CPR 737.

13. Manager, Regional Office, John Deere India Pvt. Ltd. Vs. Laxmi Narayan Patel & Anr.

i) Case in Brief:

The State Commission had dismissed the appeal filed by the petitioner against the order of the District Forum as barred by limitation. There was a delay of 65 days in filing the appeal and the Petitioner had filed an application seeking condonation of delay. The Petitioner had also filed an affidavit of the Manager in its Regional Office explaining the reasons for delay. The present Revision Petition has been filed challenging the State Commission's order. Revision Petition disposed of by condoning delay in filing appeal subject to payment of Rs.10,000/- as costs to the complainant and remitting the matter back to the State Commission for fresh hearing and disposal.

ii) Order appealed against:

From the order dated 04.08.2014 in Appeal No.FA/12/609 of the Chhattisgarh State Consumer Disputes Redressal Commission, Pandri, Raipur.

iii) Parties:

Manager, Regional Office,

John Deere India Pvt. Ltd.

- Petitioner

Vs.

Laxmi Narayan Patel & Anr.

- Respondents

iv) Case No and Date of Judgement:

Execution Revision Petition No.55 of 2014 with IA/5588/2014 (Stay) & Date of Judgement: 18-11-2014.

v) Acts and Sections referred:

Sections 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The question was whether the delay in filing the appeal has been satisfactorily explained.
- b) It was held that the delay in filing the appeal before the State Commission was not deliberate and it happened because of the copy of the impugned order having been misplaced in the office of the advocate who was representing the petitioner company before the District Forum. Immediately, after the receipt of the notice of the execution petition, representative of the petitioner company visited Raigarh a number of times and as soon as he was able to meet the advocate, certified copy of the order of the District Forum was applied for. In fact the petitioner was vigilant enough to file an appeal before the State Commission without even waiting for the certified copy of the District Forum's order.

vii) Citation:

2015(1) CPR 85.

14. The Karnataka Telecom Dept. Employees Co-operative Society Ltd. Vs. Smt. N.B. Thriveni

i) Case in Brief:

Complainant/Respondent who is a member of OP/Petitioner Society, deposited a total of Rs.6,50,000/- on different dates and OP assured to allot a house site within two years. But the promise was not kept. A Complaint was filed before the District Forum which allowed the complaint and directed the OP to refund Rs.6,50,400/- with 12% p.a. interest and further allowed Rs.3,000/- as costs. Appeal filed by OP was dismissed by the State Commission. This Revision petition has been filed challenging the State Commission's order along with application for condonation of delay. Application for condonation of delay dismissed. Consequently, Revision petition is also dismissed as barred by limitation.

ii) Order appealed against:

From the order dated 17.04.2013 in Appeal No.2022 of 2012 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

iii) Parties:

The Karnataka Telecom Dept.
Employees Co-operative Society Ltd. - Petitioner/Opp. Party

Vs.

Smt. N.B. Thriveni - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.4565 of 2013; Judgement dated 21-11-2104.

v) Acts and Sections referred:

Sections 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) There was a delay of 63 days as per the counsel for the petitioner but as per office report there was a delay of 134 days in filing the revision petition.
- b) Petitioner also filed writ petition before the High Court of Karnataka which while dismissing the writ petition observed that alternative remedy was available to the petitioner. Petitioner was

therefore under obligation to file the revision petition immediately. There is no reasonable explanation for condoning the delay of 63 days.

- c) The following judgements have been cited while rejecting the application for condonation of delay: (i) *R.B.Ramlingam Vs. R.B.Bhavaneshwari* 2009 (2) Scale 108, (ii) *Ram Lal & Ors. Vs. Rewa Coalfields Ltd.* AIR 1962 SC 361, (iii) *Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation* (2010) 5 SCC 459, (iv) *Post Master General & Others Vs. Living Media Ltd. & Anr* (2012) 3 SCC 563, (v) *Anshul Aggarwal Vs. New Okhla Industrial Development Authority* 2012 (2) CPC 3(SC).
- d) Since the application for condonation of delay has been dismissed, revision petition being barred by limitation is also dismissed.

vii) Citation:

2015(1) CPR 34.

15. The Karnataka Telecom Dept. Employees Co-Operative Society Ltd. Vs. Sri H.S. Rajashekar

i) Case in Brief:

Complainant/Respondent who is a member of OP/Petitioner Society, deposited a total of Rs.6,50,400/- on different dates and OP assured to allot a house site within two years. But the promise was not kept. A Complaint was filed before the District Forum which allowed the complaint and directed the OP to refund Rs.6,50,400/- with 12% p.a. interest and further allowed Rs.3,000/- as costs. Appeal filed by OP was dismissed by the State Commission. This Revision petition has been filed challenging the State Commission's order along with application for condonation of delay. Application for condonation of delay dismissed. Consequently, Revision petition was also dismissed as barred by limitation.

ii) Order appealed against:

From the order dated 04.04.2013 in Appeal No.2021 of 2012 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore,

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iii) Parties:

The Karnataka Telecom Dept
Employees Co-Operative Society Ltd. - Petitioner/Opp. Party

Vs.

Sri H.S. Rajashekar - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.4564 of 2013 & Date of Judgement: 11-11-2014.

v) Acts and Sections referred:

Sections 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) There was a delay of 67 days as per the counsel for the petitioner but as per office report there was a delay of 147 days in filing the revision petition.
- b) Petitioner also filed writ petition before the High Court of Karnataka which while dismissing the writ petition observed that alternative remedy was available to the petitioner. Petitioner was therefore under obligation to file the revision petition immediately. There was no reasonable explanation for condonation of delay of 67 days.
- c) The following judgements have been cited while rejecting the application for condonation of delay: (i) *R.B.Ramlingam Vs. R.B.Bhavaneshwari* 2009 (2) Scale 108, (ii) *Ram Lal & Ors. Vs. Rewa Coalfields Ltd.* AIR 1962 SC 361, (iii) *Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation* (2010) 5 SCC 459, (iv) *Post Master General & Others Vs. Living Media Ltd. & Anr* (2012) 3 SCC 563, (v) *Anshul Aggarwal Vs. New Okhla Industrial Development Authority* 2012 (2) CPC 3(SC).
- d) Since the application for condonation of delay was dismissed, revision petition being barred by limitation was also dismissed.

vii) Citation:

II (2015) CPJ 141; 2015(1) CPR 31.

16. Cox & Kings Ltd. Vs. Smt. Bahnisikha Ghatak

i) Case in Brief:

Complainants/Respondents filed complaint before District Forum for refund of amount deposited for visa processing etc. District Forum directed OP to refund amount along with compensation and litigation cost. OP filed appeal before State Commission along with application for condonation of delay. The State Commission dismissed application for condonation of delay and subsequently dismissed appeal against which this revision petition has been filed. Petition allowed.

ii) Order appealed against:

From the order dated 14.2.2014 in S.C. Case No.FA/1241/2013 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

iii) Parties:

Cox & Kings Ltd. - Petitioner/Opposite Party

Vs.

Smt. Bahnisikha Ghatak - Respondents/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.2198 of 2014 with IA/3272/2014 (for Stay) &

Date of Judgement: 27-11-2014.

v) Acts and Sections referred:

Sections 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Petitioner submitted that delay in filing appeal may be condoned by relying on the judgements of *M/s. Cox & Kings Ltd. Vs. Shri Vijay Baburaoji Chandawar* in which delay of 135 days was condoned subject to cost and *Mahindra Holidays & Resorts India Ltd. Vs. Vasantkumar H.Khandelwal* in which delay of 70 days was condoned subject to cost,
- b) Held that there was a delay of 30 days only in filing appeal and in the light of judgments relied on by Counsel for the petitioner, delay deserved to be condoned. Revision petition was allowed and order dated 14.02.2014 passed by the State Commission, in S.C. Case No.FA/1241/2013 *Cox & Kings Ltd. Vs. Smt. Bahnisikha*

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Ghatak was set aside. Delay in filing appeal before State Commission was condoned subject to payment of Rs.10,000/- as cost to the respondent. Appeal was restored at its original number and matter was remanded back to the State Commission with direction to decide appeal on merits after giving an opportunity of being heard to both the parties.

vii) Citation:

2014(4) CPR 813.

17. Cox & Kings Ltd. Vs. Smt. Shakuntala Dutta

i) Case in Brief:

Complainants/Respondents filed complaint before District Forum for refund of amount deposited for visa processing etc. District Forum directed OP to refund amount along with compensation and litigation cost. OP filed appeal before State Commission along with application for condonation of delay. The State Commission dismissed application for condonation of delay and subsequently dismissed appeal against which this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 14.2.2014 in S.C. Case No. FA/1240/2013 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

iii) Parties:

Cox & Kings Ltd. - Petitioner/Opposite Party

Vs.

Smt. Shakuntala Dutta - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.2197 of 2014 with IA/3271/2014 (for Stay) & Date of Judgement: 27-11-2014.

v) Acts and Sections referred:

Sections 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Petitioner submitted that delay in filing appeal may be condoned by relying on the judgements of *M/s. Cox & Kings Ltd. Vs. Shri Vijay Baburaoji Chandawar* in which delay of 135 days was condoned subject to cost and *Mahindra Holidays & Resorts India Ltd. Vs. Vasantkumar H.Khandelwal* in which delay of 70 days was condoned subject to cost,
- b) Held that there was a delay of 28 days only in filing appeal and in the light of judgments relied on by Counsel for the petitioner, delay deserved to be condoned. Revision petition was allowed and order dated 14.02.2014 passed by the State Commission, in S.C. Case No.FA/1240/2013 *Cox & Kings Ltd. Vs. Smt. Shakuntala Dutta* was set aside. Delay in filing appeal before State Commission was condoned subject to payment of Rs.10,000/- as cost to the respondent. Appeal was restored at its original number and matter was remanded back to the State Commission with direction to decide appeal on merits after giving an opportunity of being heard to both the parties.

vii) Citation:

2014(4) CPR 811.

18. Cox & Kings Ltd. Vs. Sri Kalyan Kumar Biswas and another

i) Case in Brief:

Complainants/Respondents filed complaint before District Forum for refund of amount deposited for visa processing etc. District Forum directed OP to refund amount along with compensation and litigation cost. OP filed appeal before State Commission along with application for condonation of delay and State Commission dismissed application for condonation of delay and subsequently dismissed appeal against which this revision petition has been filed. Petition allowed.

ii) Order appealed against:

From the order dated 14.2.2014 in S.C. Case No.FA/1239/2013 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

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iii) Parties:

Cox & Kings Ltd. - Petitioner

Vs.

Sri Kalyan Kumar Biswas and another - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2196 of 2014 with I.A/3270/2014 (For stay) & Date of Judgement: 27-11-2014.

v) Acts and Sections referred:

Sections 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Petitioner submitted that delay occurred in filing appeal may be condoned by relying on the judgements of *M/s. Cox & Kings Ltd. Vs. Shri Vijay Baburaoji Chandawar* in which delay of 135 days was condoned subject to cost and *Mahindra Holidays & Resorts India Ltd. Vs. Vasankumar H. Khandelwal* in which delay of 70 days was condoned subject to cost.
- b) Held that there was a delay of about 28 days only in filing appeal and in the light of judgments relied on by Counsel for the petitioner, delay deserved to be condoned. Revision petition was allowed and order dated 14.02.2014 passed by the State Commission, in S.C. Case No.FA/1239/2013 *Cox & Kings Ltd. Vs. Kalyan Kumar Biswas & Anr.* was set aside. Delay in filing appeal before State Commission was condoned subject to payment of Rs.10,000/- as cost to the respondent and appeal was restored at its original number and matter remanded back to the State Commission with direction to decide appeal on merits after giving an opportunity of being heard to both the parties.

vii) Citation:

I (2015) CPJ 165; 2014(4) CPR 808.

19. M/s. Fiat India Automobiles Ltd. Vs. Mrs. Kusum Bhandari and others

i) Case in Brief:

The Complainant/Respondent No.1 & 2 filed complaint before District Forum against OP/petitioner. The District Forum proceeded ex-parte against OPs and allowed complaint and directed OPs to replace the vehicle with new one and further awarded compensation of Rs.15,000/- and Rs.5,000/- as cost of litigation. Appeal filed by OP was dismissed by State Commission vide order dated 23.8.2012 as barred by 182 days. Revision Petition filed by OP was allowed by National Commission vide order dated 1.3.2013 and matter was remanded back to State Commission to decide application afresh after considering documents mentioned in the order. SLP No.30036/2013 filed by Respondent was also dismissed by Hon'ble Supreme Court on 4.10.2013. State Commission after hearing both the parties dismissed application vide impugned order against which, this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 09.10.2013 in Appeal No.85 of 2012 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

M/s. Fiat India Automobiles Ltd. - Petitioner/OP

Vs.

Mrs. Kusum Bhandari and others - Respondents/Complainants

iv) Case No and Date of Judgement:

Revision Petition No.1092 of 2014 & Date of Judgement: 27-11-2014.

v) Acts and Sections referred:

Sections 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Held that no benefit was to incur to the petitioner by delaying in filing appeal and it appears that on account of mistake of Counsel for the petitioner, necessary averments could not be incorporated in application for condonation of delay and appeal could not be filed just after getting affidavit from the notary. In such

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circumstances, it would be appropriate to condone delay subject to cost so that petitioner may contest ex-parte order passed by District Forum.

- b) The revision petition filed by the petitioner was allowed and impugned order passed by the State Commission *M/s. Fiat India Automobiles Ltd. Vs. Mrs. Kusum Bhandari & Ors.* was set aside and application for condonation of delay filed by the petitioner before State Commission was allowed subject to payment of Rs.10,000/- as cost to Respondent No. 1/Complainant within 4 weeks and appeal was remanded back to the State Commission to decide it on merits after treating appeal in limitation and after giving an opportunity of being heard to both the parties.

vii) Citation:

2014(4) CPR 806.

20. Lucknow Development Authority Vs. Manoj Sharma

i) Case in Brief:

The Respondent/Complainant filed complaint before the District Forum which allowed complaint partly and Petitioner/OP was directed to execute sale deed in favour of the Complainant subject to depositing entire cost of the plot within 30 days and it was further directed to pay 16% p.a interest on the deposited amount till the date of registry. Appeal filed by OP was dismissed by the State Commission as barred by limitation as well as for non-depositing statutory amount against which this revision petition is filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 21.1.2014 in Appeal No.74/2006 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

Lucknow Development Authority - Petitioner

Vs.

Manoj Sharma - Respondent

iv) Case No and Date of Judgement:

Revision Petition No. 2428 of 2014 with IA/3817/2014, IA/3818/2014, IA/3819/2014 (for Stay, C/Delay, Exemption of filing translation documents) & Date of Judgment : 28-11- 2014.

v) Acts and Sections referred:

Sections 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Petitioner contended that on account of translation of documents in Hindi, delay of 35 days occurred.
- b) Held that appeal was filed on 9.1.2006 without depositing requisite statutory amount for filing appeal and even after lapse of 8 years, petitioner could not deposit statutory amount for filing appeal. In such circumstances, State Commission rightly dismissed appeal for non-depositing statutory amount with the State Commission.
- c) Held further that the State Commission rightly dismissed the application for condonation of delay in the light of the following judgments: (i) *Oriental Aroma Industries Ltd. Vs. Gujarat Industrial Development Corporation and Anr. (2010)5 SCC 459* (ii) *Office of the Chief Post Master General and Ors Vs. Living Media India Ltd and Anr. (2012)3 SCC 563* and (iii) *Anshul Aggarwal Vs. New Okhla Industrial Development Authority 2012 (2) CPC 3 (SC)*

vii) Citation:

2014(4) CPR 794.

21. Mohit Lal Sao Vs. United India Insurance Co. Ltd.

i) Case in Brief:

Petitioner/Complainant had insured his vehicle through Respondent/OP. The vehicle met with an accident on 10.05.2012 at about 9 p.m. It was checked by garage on 11.05.2012 and a police report was lodged on 12.05.2012. Complainant claimed to have incurred expenses of Rs.2,61,168/-. The Respondent repudiated the claim on the ground that the complainant did not furnish the necessary details and submit the

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required documents. District Forum granted a sum of Rs.2,45,000/-. The State Commission reduced it to Rs.80,180/- only relying on the surveyor's report. Present Revision petition against the State Commission's order dismissed on merits. Petition for condonation of delay is also rejected.

ii) Order appealed against:

Against the order dated 03.05.2014 in Appeal No.FA/13/411 of the Chhattisgarh State Consumer Disputes Redressal Commission, Raipur.

iii) Parties:

Mohit Lal Sao - Petitioner

Vs.

United India Insurance Co. Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3597 of 2014 with I.A.No.6511 of 2014 (Condonation of Delay) & Date of Judgement: 01-12-2014.

v) Acts and Sections referred:

Sections 2(1)(g) (o), 19 and 21(b) of the Consumer Protection Act,1986.

vi) Issues raised and decided:

- a) There was a delay of 45 days in filing the revision petition. The reasons given for the delay were not found satisfactory. Application for condonation of delay was rejected on the basis of the decisions in the following cases:- (i) *Anshul Aggarwal Vs. New Okhla Industrial Development Authority, IV(2011) CPJ 63 (SC)*; (ii) *State of West Bengal Vs. Brojesh Chandra Singha Barman, 2005(3) CHN 19, at p.24*; (iii) *Bikram Dass Vs. Financial Commissioner and others, AIR, 1977 SC 1221*; (iv) *R.B.Ramlingam Vs. R.B.Bhavaneshwari, I(2009)CLT 188 (SC)=I (2009) SLT 701=2009(2) Scale 108*; (v) *Ram Lal and others Vs. Rewa Coalfields Ltd. AIR 1962 SC 361*; (vi) *Balwant Singh Vs. Jagdish Singh & Ors. (Civil Appeal No.1166 of 2006), decided on 08.10.2010*; (vii) *M/s. Ambadi Enterprises Ltd. Vs. Smt. Rajalakshmi Subramanian in SLP No.19896 of 2013 decided on 12.07.2013* and (viii) *Chief Off. Nagpur Hous. & Area Dev. Boa & Anr. Vs. Gopinath Kawadu Bhagat, SLP No.33792 of 2013 decided on 19.11.2013*.

- b) On merits also, it was held that the State Commission's order is unassailable since the Commission relied on the Surveyor's report while coming to its decision. The State Commission also took into account the decisions in *United India Insurance Co. Ltd. Vs. Roshan Lal Oil Mills Ltd. & Ors. (2000) 10 SCC 19, para 7, and D.N. Badoni Vs. Oriental Insurance Co. Ltd. I(2012) CPJ 272 (NC).*

vii) Citation:

Not reported in CPJ and CPR.

22. Nalla Kommalu Vs. Warangal District TNGOs Cooperative Housing Society Ltd. and another

i) Case in Brief:

Complainant/Petitioner filed complaint before District Forum alleging deficiency in service. District Forum allowed complaint and directed Opposite Party/Respondent to register plot in the name of complainant and further awarded cost of Rs.500/-. Appeal filed by the opposite party was allowed by the State Commission. This revision petition has been filed challenging the State Commission's order along with application for condonation of delay. Application for Condonation of delay dismissed. Consequently, Revision Petition was also dismissed as barred by limitation.

ii) Order appealed against:

Against the order dated 07-06-2012 in Appeal No.836/2010 of the State Commission, Andhra Pradesh.

iii) Parties:

Nalla Kommalu - Petitioner

Vs.

Warangal District TNGOs Cooperative Housing Society Ltd. and another - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.966 of 2014 with IA/741/2014 (Condonation of delay) & Date of Judgement: 01-12-2014.

v) Acts and Sections referred:

Sections 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was noted that the Petitioner had given different reasons for the delay in filing the revision petition in his affidavit and in his application for condonation of delay.
- b) Held that the Petitioner has not filed any document pertaining to treatment of his father from December, 2012 to December, 2013. Petitioner had filed some medical prescriptions and purchase bill of medicine pertaining to prescription dated 24-03-2014 which had no relevance with application for condonation of delay.
- c) As there is delay of 309 days in filing revision petition without any reasonable explanation, the National Commission dismissed the revision as barred by limitation by relying on the Supreme Court decisions in (i) *Ram Lal and ors Vs. Rewa Coalfields Ltd. AIR 1962 SC 361* (ii) *R.B.Ramlingam Vs. R.B.Bhavaneshwari 2009(2) Scale 108* (iii) *Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation (2010) 5 SCC 459* (iv) *Anshul Aggarwal Vs. New Okhla Industrial Development Authority 2012 (2) CPC 3 (SC) and (v) Post Master General & Ors. Vs. Living Media Ltd. and Anr. (2012) 3 SCC 563.*

vii) Citation:

1 (2015) CPJ 169.

23. Dr. S.R. Gurumukhi Vs. Greater Noida Industrial Development Authority

i) Case in Brief:

The case of the complainant was that he was allotted flat by OP but the possession was not handed over to the complainant within the prescribed period. A complaint was filed before the District Forum which ordered the opposite party to handover possession of the flat as early as possible within six months, and to pay interest @ 12% p.a., on all deposited amount from 23.12.2005 till handing over the possession

to the complainant. Again ordered the opposite party to refund the amount of Rs.1,19,200/- paid towards stamp fee with 6% p.a. and to pay to the complainant amount of Rs.10,000/- towards mental agony and harassment and Rs.3,000/- towards costs. Aggrieved by that order, both the parties filed appeals before the State Commission, which dismissed the same. This revision petition has been filed by the complainant seeking enhancement of interest. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 03.06.2014 in First Appeal No.1625/09 & 2244/09 of 2014 of the State Consumer Disputes Redressal Commission, Uttar Pradesh.

iii) Parties:

Dr. S.R. Gurumukhi

- Petitioner

Vs.

Greater Noida Industrial Development Authority

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4115 of 2014 with IA/8007/2014 (For Stay), IA/8008/2014 (Condonation of Delay), IA/8009/2014 (For exemption), IA/8010/2014 (For exemption) & Date of Judgement: 02-12-14.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Application for condonation of delay was rejected as the petitioner has not bolstered his case with evidence. No medical certificate was produced. Mere old-age and without disclosing the actual age is no ground for condonation of delay. (1) *Anshul Aggarwal Vs. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC)* (2) *R.B.Ramlingam Vs.R.B. Bhavaneshwari, I (2009) CLT 188 (SC) = 1 (2009) SLT 701 = 2009 (2) SCALE 108.*
- b) As regards merits of the case, the issue was whether the failure on the part of OP to provide the flat to the complainant amounted to deficiency in service. Held that it amounted to deficiency in service.

Condonation of Delay

c) Held that the order of the District Forum did not suffer from any illegality, or impropriety while the amount granted by the State Commission was on the higher side.

d) Revision petition was dismissed as it was without merit.

vii) Citation:

Not reported in CPJ and CPR.

24. Secretary, GRIDCO and others Vs. Ramesh Chandra Kedia

i) Case in Brief:

Appeal filed by the petitioners was dismissed by State Commission for non-prosecution. Revision petition filed seeking condonation of delay of as many as 467 days. Held, there is no convincing explanation from the delay except a bald averment that the decision to file revision petition involved various authorities in the administrative hierarchy of the petitioner corporation. Application seeking condonation of delay dismissed. Revision petition was also dismissed as barred by limitation.

ii) Order appealed against:

From the order dated 27.12.2012 in C.D. Appeal No.193 of 1999 of the Odisha State Consumer Disputes Redressal Commission, Cuttack.

iii) Parties:

Secretary, GRIDCO and others - Petitioner(s)

Vs.

Ramesh Chandra Kedia - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2704 of 2014 with IA/4396/2014, IA/4397/2014, IA/4398/2014 (For Stay, Condonation of delay, Exemption from filing the certified copy) & Date of Judgement: 16-12-2014.

v) Acts and Sections referred:

Section 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) There is no explanation of abnormal delay of 7 months in filing of simple application seeking restoration of appeal which the State Commission has dismissed for non-prosecution. Though it is alleged in the application that the decision to prefer revision petition involved various authorities in the administrative hierarchy of Petitioner Corporation, there is no such averment as regards filing of application seeking restoration of appeal.
- b) The objective behind enactment of Consumer Protection Act, 1986 will be defeated if abnormal delay is condoned without having been satisfactorily explained.

vii) Citation:

I (2015) CPJ 251; 2015(1) CPR 285.

25. Union of India & Anr. Vs. Chandreshwar Rai

i) Case in Brief:

The District Forum in its order, had directed the Petitioner No.2, Superintendent of Post Offices to pay a sum of Rs.27,909/- to the Complainant towards LTC bill along with compensation amounting to Rs.3,000/- and cost of litigation amounting to Rs.1,500/-. The appeal filed by the Petitioner was dismissed on 27.03.2014. The photocopy of the order was served by the Respondent in the office of the Petitioner No.2 on 21.04.2014. Present Revision Petition along with application for condonation of delay was filed after a delay of 81 days. Application for condonation of delay dismissed. Consequently revision petition was also dismissed as barred by limitation.

ii) Order appealed against:

Order dated 27.03.2014 in Appeal No.996/2011 of the U.P State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

Union of India & Anr.

- Petitioners

Vs.

Chandreshwar Rai

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3828/2014 with I.A/7337/2014 (Condonation of Delay) & Date of Judgement: 17.12.2014.

v) Acts and Sections referred:

Section 19 & 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Petitioner No.2 contended that no communication or copy of judgement was sent by the State Commission. This was not accepted by the National Commission since a duly signed and dated copy of the order of the State Commission was made available to the complainant and a photocopy of the order was duly served by him in the office of Petitioner No.2 on 21.04.2014. Nothing prevented the Petitioner from challenging the order of the State Commission within the stipulated time.
- b) The Judgement of the Honourable Supreme Court in *Housing Board, Haryana Vs Housing Board Colony Welfare Association & Ors*, AIR 1996 SC92 and the decision in *Singam Shetty Attendrooloo & Ors. Vs State of T.N & Ors.* (2001) 5 SCC 700 are not applicable to the present case.
- c) No sincere attempt has been made to explain the delay in filing the revision petition.

vii) Citation:

Not reported in CPJ and CPR.

26. Aviva Life Insurance Co. Ltd. Vs. Mrs. Mohinder Kaur

i) Case in Brief:

Complainant/Respondent filed complaint before District Forum which was allowed directing petitioner/O.P to pay Rs.1,87,500/- with 10% p.a., as interest and Rs.5,000/- as costs. Appeal filed by O.P was dismissed by State Commission as appeal was filed after 70 days. Held, delay of 70 days in filing appeal should have been condoned by State Commission subject to costs as there was reasonable explanation for condonation of delay. Revision Petition allowed.

ii) Order appealed against:

Against the order dated 14.2.2014 in Appeal No.257/2013 of U.P. State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

Aviva Life Insurance Co. Ltd.

- Petitioner

Vs.

Mrs. Mohinder Kaur

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2300 of 2014 & Date of Judgement: 17-12-2014.

v) Acts and Sections referred:

Section 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Hon'ble Apex Court in Civil Appeal Nos. 10120 – 10121 of 2014 *Jeevanti Devi Vs. Commerical Motors and Anr.* observed that the delay in filing the revision should have been condoned and the controversy should have been addressed on merits.
- b) Hon'ble Apex Court in Civil Appeal No. 10289 of 2014 in *A.T.S Govindarajane Vs. Chief Manager, SBI* while allowing the appeal set aside the State Commission's order dismissing the revision petition as barred by 149 days and remanded the matter to the State Commission for deciding the revision petition on merits.
- c) Hon'ble Apex Court in C.A.No.5071 of 2014 in *Taipen Traders Ltd and Anr v. M/s. Bhawanti Cold Storage and others* while allowing appeal set aside the State Commission's order refusing to condone the delay of 218 days.
- d) On the same analogy, delay in filing appeal is condoned subject to payment of costs Rs.5,000/- to Respondent and the matter remanded to State Commission to decide the appeal on merits.

vii) Citation:

2015(1) CPR 128.

27. Sri Bijit Bose Vs. Sri Soumen Saha and another

i) Case in Brief:

Revision Petition filed with delays ranging from 193 days which is over and above the statutory period of 90 days. Petitioner's plea was that delay happened because of the mistake, laches and negligence on the part of the advocate who did not give proper advice. Held that 'sufficient cause' for condoning, the delay was not given. Application for condoning the delay dismissed. Consequently revision petition was also dismissed as barred by limitation.

ii) Order appealed against:

From the order dated 10-02-2014 in FA No.698 of 2013 of the West Bengal State Consumer Disputes Redressal Commission at Kolkata.

iii) Parties:

Sri Bijit Bose - Petitioner

Vs.

Sri Soumen Saha and another - Respondent(s)

iv) Case No and Date of Judgement:

Revision Petition No.4367 of 2014 with I.A.No.8710 of 2014 & I.A.No.8711 of 2014 (For Stay and Condonation of Delay) &

Date of Judgement: 19-12-2014.

v) Acts and Sections referred:

Sections 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Petitioner did not claim to be unaware of the order of the State Commission dated 10-02-2014 whereby his appeal was dismissed being barred by limitation. It was vaguely alleged in para 7 of the application that the counsel had advised the petitioner not to be worried and had assured that the order passed in the consumer complaint would be challenged in execution proceedings and the petitioner went by the aforesaid advice of the counsel. No affidavit of the counsel or any written advice tendered by her had been produced.

- b) Petitioner did not show any urgency in the matter even after he was arrested and released on bail on 04-09-2014, as would be evident from the fact that the revision petition came to be filed by him only on 05-12-2014. The petitioner had been grossly negligent in the matter and had failed to furnish a satisfactory explanation for the abnormal delay of more than six months in filing this revision petition.
- c) The conduct of the petitioner throughout the proceedings clearly indicated gross negligence and contempt for the process of law. He remained absent before the District Forum, he did not prefer appeal before the State Commission within the prescribed period of limitation and then he failed to file this revision petition despite having lost the appeal before the State Commission only on account of limitation.
- d) Held that there was no justification for condoning the delay of 193 days in filing the revision petition. The application for condonation of delay was, therefore, dismissed. Consequently, the revision petition was also dismissed as barred by limitation.

vii) Citation:

Not reported in CPJ and CPR.

28. K.K. Ramasamy Vs. The Chief Executive Officer and another

i) Case in brief:

Revision petitions had been filed with delays ranging from 472 to 473 days which is over and above the statutory period of 90 days. It was held that "Sufficient Cause" for condoning the delay in each case is a question of fact and that day-to-day delay had not been explained. Applications for condonation of delay were dismissed. Consequently revision petitions were also dismissed as barred by limitation.

ii) Order appealed against:

Revision Petition No.4054 of 2014

Against the order dated 8.4.2013 in Appeal No.333/2012 & 448/2011of the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai.

Condonation of Delay

Revision Petition No.4055 of 2014

Against the order dated 8.4.2013 in Appeal No.334/2012 & 450/2011 of the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai.

Revision Petition No.4056 of 2014

Against the order dated 8.4.2013 in Appeal No.335/2012 & 449/2011 of the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai.

iii) Parties:

Revision Petition No.4054 of 2014

K.K. Ramasamy - Petitioner

Vs.

The Chief Executive Officer and another - Respondents

Revision Petition No.4055 of 2014

Mr. S. Mohammed Parvaes and another - Petitioners

Vs.

The Chief Executive Officer and another - Respondents

Revision Petition No.4056 of 2014

K.K. Ramasamy and another - Petitioners

Vs.

The Chief Executive Officer and another - Respondents

iv) Case No and Date of Judgement:

- a) Revision Petition No.4054 of 2014 with I.A No.7859/2014 (For Condonation of Delay).
- b) Revision Petition No.4055/2014 with I.A No.7860/2014.
- c) Revision Petition No.4056 of 2014 with I.A. No.7861/2014 (For Condonation of Delay) & Date of Judgement: 19-12-14.

v) Act and Sections referred:

Section 21(b) and 24A (2) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The expression 'sufficient cause' in Section 5 of the Indian Limitation Act, 1963 and similar other statutes are elastic enough to enable the courts to apply the law in a meaningful manner.
- b) Hon'ble Supreme Court has advocated adoption of a liberal approach in condoning the delay of short duration and a strict approach where the delay is inordinate.
- c) Petitioners in R.P.No.4055 of 2014 have not produced medical records in support of their contention.
- d) Day-to-day delay has not been explained.

vii) Citation:

I (2015) CPJ 300 (NC); 2015(1) CPR 111 (NC).

III. CONSUMER - DEFINITION AND SCOPE

1. The Chairman, Bihar School Examination Board and others Vs. Kundan Kumar and another

i) Case in Brief:

Complainant/Respondent applied for revaluation of his answer sheets in Mathematics and physical science theoretical since he was declared failed in those subjects in the Secondary School Examination 1988. In the revaluation, he got 33 marks instead of 13 in mathematics and 15 instead of 11 in physical science theoretical and was declared passed with second division. Complainant continued his studies but OP did not issue original certificate/mark sheet to the Complainant on the ground that he had failed. The District Forum before whom a complaint was filed by the Complainant allowed the complaint and directed OPs 1 to 7 to issue revised mark sheet and original certificate to the complainant. The State Commission dismissed the appeal of the OPs against which this revision petition has been filed. Revision petition allowed.

ii) Order appealed against:

From the order dated 11-01-2013 in Appeal No.283/2012 of the Bihar State Consumer Disputes Redressal Commission, Patna.

iii) Parties:

The Chairman, Bihar School Examination Board and others - Petitioners/Opp. Parties

Vs.

Kundan Kumar and another - Respondents/Complainants

iv) Case No and Date of Judgement:

Revision Petition No.576 of 2013 & Date of Judgement: 07-10-2014.

v) Acts and Sections referred:

Sections 2(1) (d), 12, 13, 14, 18, 19 and 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was held that when the Examination Board conducts an examination in discharge of its statutory functions involving holding periodical

examinations, evaluating the answer scripts, declaring the results and issuing certificates, then there is no relationship of consumer and service provider between the parties and as such, complaint was not maintainable before the District Forum. Consequently the Revision Petition was allowed and the orders of the Fora below were set aside.

vii) Citation:

I (2015) CPJ 97; 2014(4) CPR 145.

2. Chief Manager, UCO Bank and another Vs. Akhileshwar Kumar Srivastava

i) Case in Brief:

Respondent/Complainant filed complaint before the District Forum at Patna alleging that he had mortgaged the basement of the three storeyed building with UCO Bank against cash credit loan amounting to Rs.2.5 lakhs for their mineral water plant in the name of Sri Ganga Water and Allied Products Pvt. Ltd, Patna. The said plant was closed in May/June, 2002. The Complainant's grievance is that though only the basement of the building had been mortgaged to the bank, it locked not only the basement but also the first and second floors of the building. Alleging deficiency in service, the Complainant approached the District Forum. The District Forum directed the Opposite Parties to return the sale deed of the building and other documents to the Complainant and directed them to pay the rent of the ground floor and first floor of the building at the rate to be fixed by the House Controller, Patna. The Petitioner Bank filed an appeal before the State Commission which dismissed the same vide impugned order against which this revision petition has been filed. Revision Petition allowed and the order of the Fora below set aside. Complainant was given the liberty to seek remedy in the appropriate forum as per law.

ii) Order appealed against:

From the order dated 02-05-2014 in Appeal No.401 of 2007 of the Bihar State Consumer Disputes Redressal Commission, Patna.

iii) Parties:

Chief Manager, UCO Bank and another - Petitioners

Vs.

Akhileshwar Kumar Srivastava - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3095 of 2014 & Date of Judgement: on 09-10-2014.

v) Acts and Sections referred:

Sections 2(1) (d), 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission accepted the contention of the Petitioner that the Complainant cannot be considered to be a consumer with the Petitioner Bank within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986 on the ground that the Complainant himself had alleged that he had taken loan in the name of the Sri Ganga Water and Allied Products Pvt. Ltd., a company functioning in the basement of the commercial complex of the Complainant. It was held that loan from the bank was taken for a commercial purpose and the borrower was not a consumer within the meaning of Section 2(1) (d) of the Act. Consequently, the District Forum had no jurisdiction to entertain and adjudicate the complaint on merits. Therefore, the orders of the fora below were set aside and the complaint was dismissed. The Complainant was however given liberty to avail such other remedy as may be available to him as per law.

vii) Citation:

Not reported in CPJ and CPR.

3. M/s. Samkit Art & Craft Pvt. Ltd. Vs. State Bank of India and others

i) Case in Brief:

There are two cases with similar facts. The facts of the C.C.No.11 of 2007 have been taken for consideration here. The Complainant was engaged in the business of export of Indian handicrafts and was having bank account with State Bank of India which had sanctioned Cash

Credit (Hpy.), Cash Credit (EPC), Cash Credit (Bills) and Term Loan facilities to it. It was also the case of the complainant that it had submitted two bills for collecting the amount of the said bills from M/s. Spain Select, Madrid, Spain but the Bank never traced the said bills. It was also the grievance of the complainant that it had requested the Bank to release money against EPC limit of Rs.35 lakh sanctioned by it, against purchase orders of the value of British Pound 93,849.02, but the Bank did not release the aforesaid amount. Yet another allegation of the complainant was that the Bank did not release amount sanctioned against MTL limit which resulted in delay in manufacturing of goods and caused loss of Rs.1.5 lakh to it. The complainant company also alleged that the Bank had declined payment of two cheques of Rs.22,750/- each which it had taken towards payment of freight charges, which resulted in the complainant suffering a loss of Rs.2.5 lakh besides losing business. The complainant company claimed loss of business on account of aforesaid acts of the Bank and the said loss was estimated by the complainant at Rs.1,61,25,000/-. Alleging deficiency in service, complaint was filed before the National Commission by the Complainant Company, viz., M/s. Samkit Art & Craft Private Limited against State Bank of India and its officers. Complaint was dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Consumer Complaint No.11 of 2007

M/s. Samkit Art & Craft Pvt. Ltd. - Complainant

Vs.

State Bank of India and others - Opp. Parties

Consumer Complaint No.12 of 2007

M/s. Shree Vadera - Complainant

Vs.

State Bank of India and others - Opp. Parties

iv) Case No and Date of Judgement:

- i. Consumer Complaint No.11 of 2007
- ii. Consumer Complaint No.12 of 2007 & Date of Judgement:
14.10.2014.

v) Acts and Sections referred:

Sections 2(1) (d), (g) & (o), 21(a) (i) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue was whether a company operating a current account with a bank and availing the banking services for commercial purpose comes within the definition of consumer or not.
- b) Relying upon the decisions of *Subhash Motilal Shah & Ors. Vs. Malegaon Merchants Co.-op Bank Ltd.*, R.P.No.2571 of 2012 decided on 12-02-2013, *M/s. Sam Fine O Chem Limited Vs. Union Bank of India*, C.C.No.39 of 2013, decided on 12-04-2013, OP No.2/2006 "*Vishwa Electronics (India) Ltd. Vs. Industrial Development Bank of India & Anr*, the National Commission in the present case held that the complainants had obtained various cash credit facilities for the purpose of export of goods, which undeniably was a commercial purpose. Therefore, it was held that the complainant companies were not consumers within the meaning of Section 2(1)(d) of the Act. Accordingly, the complaints were dismissed. However, complainants were given liberty to approach the appropriate forum/civil court for redressal of their grievance in accordance with law.

vii) Citation:

Not reported in CPJ and CPR.

4. Force Motors Limited Vs. Branch Manager, Punjab and Sind Bank and another

i) Case in Brief:

The Complainant - Punjab & Sind Bank, paid a cheque for a sum of Rs.3,87,626/- on 2.1.1997 towards the purchase of a Cash Van model F-307, manufactured by the OP-2/Petitioner - Force Motors Ltd (formerly known as M/s. Bajaj Tempo). The cheque was made in favour of its authorized Dealer, the OP-1 M/s. Auto Sales, Patna, who assured for delivery of the said Van as per specifications of the bank, within a month of the full payment. Thereafter, the dealer (OP-1) failed to

supply the van. OP-1 neither refunded money nor paid interest for the delay as assured. Hence, the Complainant - Bank filed a case of deficiency in service against both the OPs i.e. Manufacturing Company (OP-2) and the Dealer (OP-1) before District Forum claiming the refund of the deposited amount, with interest, along with other compensation. District Forum ordered both the OPs jointly and severally to refund the deposit of Rs.3,87,626/- with 18% interest p.a. from the date of deposit till the date of payment as also to pay compensation to the tune of Rs.50,000/-. The OP-2, the manufacturer, preferred the first appeal, which was dismissed by the State Commission. Hence, aggrieved by the order of State Commission, the OP-2 filed this revision petition. Revision Petition allowed.

ii) Order appealed against:

From the order dated 05.09.2012 in First Appeal No.468/2000 of State Consumer Disputes Redressal Commission, Patna, Bihar.

iii) Parties:

Force Motors Limited - Petitioner

Vs.

Branch Manager, Punjab and Sind Bank & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4703 of 2012 & Date of Judgement: 15.10.2014.

v) Acts and Sections referred:

Section 2(1) (d), (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue involved was whether the complainant/bank is a consumer?
- b) Held that the bank was not a Consumer, hence, the complainant -bank could not seek its remedy through the Consumer Fora. In view of above, the revision petition was allowed and the complaint was dismissed. However, the complainant was given liberty to get its grievances redressed from the appropriate forum, as per Law. Reliance was placed on the judgements of *Subhash Motilal Shah (HUF) & Ors. Vs. Malegaon Merchants Co-op. Bank Ltd, Monstera Estate*

Private Limited vs. Ardee Infra. Pvt. Limited IV 2010 CPJ 299 (NC), *M/s Purusharth Associates Pvt. Ltd. Vs. M/s Uppal Housing Ltd. Plaza & Anr.* Consumer Complaint No.112 of 2012, on 05.07.2012.

vii) Citation:

IV (2014) CPJ 738; 2014(4) CPR 583.

5. Nirmal Singh Vs. Punjab State Power Corpn. Ltd. and others

i) Case in Brief:

Complainant/Petitioner possessed 5 acres of land in which he had sown paddy crop and to irrigate the same he had applied for temporary tube well connection to OP No.3/respondent and connection was released on 4.7.2007. On 5.7.2007, according to the Complainant, OP No.4 to 7 illegally disconnected electric supply and removed material from the spot with connivance of employees of OP No.1 to 3. Complainant moved application on 5.7.2007 to OP No.3 for restoration and also moved application to SSP for taking action against OP No.4 to 7, but neither any action was taken, nor electricity connection was restored and in such circumstances, complainant suffered loss of crop. Complainant also filed writ petition before Hon'ble High Court and Hon'ble High Court directed complainant to make representation to OP No.2 for passing necessary orders. Complainant made representation and connection was restored by OP No.1 to 3 on 5.9.2007. Complainant suffered loss due to disconnection and ultimately he was compelled to sow fodder in the land. Alleging deficiency on the part of OPs, complainant filed complaint before District Forum which directed OP.4 to 7 to pay compensation of Rs.20,000/- with interest. Complainant as well as OP No.4 to 7 filed appeals before learned State Commission and State Commission dismissed appeal of complainant with cost of Rs.10,000/- and allowed appeal of OP No.4 to 7 against which, these revision petitions have been filed. Revision petitions were dismissed.

ii) Order appealed against:

Revision Petition No.1269 of 2013

From the order dated 21.12.2012 in Appeal No.1002/2008 of the State Consumer Disputes Redressal Commission, Punjab.

Revision Petition No.1270 of 2013

From the order dated 21.12.2012 in Appeal No.1032/2008 of the State Consumer Disputes Redressal Commission, Punjab.

iii) Parties:

Revision Petition No.1269 of 2013

Nirmal Singh - Petitioner/Complainant

Vs.

Punjab State Power Corpn. Ltd. & Ors. - Respondents/Opp. Parties

Revision Petition No.1270 of 2013

Nirmal Singh - Petitioner/Complainant

Vs.

Lakhwinder Singh @ Pamma & Ors. - Respondents/ Opp. Parties

iv) Case No and Date of Judgement:

- a) Revision Petition No.1269 of 2013
- b) Revision Petition No.1270 of 2013 &
Date of Judgement: 27.10.2014.

v) Acts and Sections referred:

Sections 2(1) (d), (g) & (o), 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Perusal of record clearly revealed that OP No.1 to 3 by letter dated 29.8.2007 asked complainant to provide necessary material for restoration of connection and vide letter dated 5.9.2007, complainant provided material after purchase and connection was restored on 6.9.2007. In such circumstances, no deficiency can be imputed on the part of OP No.1 to 3 and District Forum rightly dismissed complaint against Respondent No.1 to 3 and State Commission had not committed any error in dismissing appeal against OP No.1 to 3 with cost of Rs.10,000/-.
- b) As far deficiency of service on the part of OP No.4 to 7 is concerned, Hon'ble High Court dismissed Criminal Misc. Case against OP No.4 to 7. State Commission rightly observed that complainant nowhere mentioned in the complaint that he availed

any service from OP No.4 to 7 for any consideration and as there was no relationship of consumer and service provider between complainant and OP No.4 to 7 or any relationship between OP No.1 to 3 and OP No.4 to 7 as master and servant, District Forum committed error in allowing complaint and State Commission had not committed any error in allowing appeal of OP No.4 to 7. Therefore, it was held that in the present case, the Petitioner had failed to prove that there was any relationship of consumer and service provider between complainant and OP No.4 to 7 and in such circumstances, State Commission rightly allowed appeal of OP No.4 to 7.

vii) Citation:

IV (2014) CPJ 756; 2014(4) CPR 560.

6. The Branch Manager, Punjab National Bank Vs. M/s. Bhaskar Textiles

i) Case in Brief:

In this case, the respondents were engaged in the business of textiles at Bheelwara. The said two firms sold certain material to M/s. Sharda Traders of Bihar. They sent the goods through transport and sent the papers for collection through Bheelwara Branch of the petitioner Bank. It was undisputed that the Amawan Bazar, District Kaimoor, Bihar branch of the petitioner Bank received goods receipt through registered AD post. The goods were delivered to M/s. Sharda Traders on production of bilties (goods received) but the consideration amount of respective bills were not collected by the petitioner bank. Claiming this to be deficiency in service the respective respondents filed consumer complaints before the District Forum. The Forum rejected the complaints observing that the complaints raised complex factual issues which cannot possibly be decided summarily without recording voluminous evidence and granting liberty of cross examination to the parties and such a dispute could be decided only by the Civil Court. Being aggrieved of the order of the District Forum, the respondent filed appeal before the State Commission which set aside the order of the District Forum against which this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

Revision Petition No.2533 of 2013

From the Order dated 10.04.2013 in First Appeal No.1451 of 2011 of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench No.3, Jaipur.

Revision Petition No.2534 of 2013

From the Order dated 10.04.2013 in First Appeal No.1451 of 2011 of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench No.3, Jaipur.

iii) Parties:

a) Revision Petition No.2533 of 2013

The Branch Manager, Punjab National Bank - Petitioner
Vs.

M/s. Bhaskar Textiles - Respondent

b) Revision Petition no. 2534 of 2013

The Branch Manager, Punjab National Bank - Petitioner
Vs.

M/s M.G. Textiles - Respondent

iv) Case No and Date of Judgement:

a) Revision Petition no. 2533 of 2013

b) Revision Petition no. 2534 of 2013 &

Date of Judgement: 29-10-2014.

v) Acts and Sections referred:

Sections 2(1) (d), (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was pointed out by the National Commission that the services of the petitioner was availed by both the respondents complainants in relation to commercial purpose i.e. their business transaction. Therefore, the respondents are not covered within the definition of consumer. As such, they could not have maintained the consumer complaint. Hence,

the both the revision petitions were allowed and the order of the State Commission was set aside. Reliance was placed on the case of *Laxmi Engineering Works Vs. P.S.G. Industrial Institute* (1995) 3 SCC 583 for arriving this decision. The Complaints were dismissed.

vii) Citation:

Not reported in CPJ and CPR.

7. Samrendra Nath Singh Diljan Vs. State Bank of India

i) Case in Brief:

In this case, the complainant had obtained credit facility from the OP Bank by mortgaging his property. He defaulted in repayment of the loan. The OP Bank initiated recovery proceedings and in pursuance of the onetime settlement between the parties the entire loan was repaid. Subsequently, the Complainant applied to the bank for reverse mortgage of the said property, but his application was declined on the ground that he was the Managing Director of a company, which had defaulted in repayment of the loan and, therefore, had a poor credit history. The complainant who got the said property in a family settlement, alleging deficiency on the part of the Bank filed this complaint. Complaint was dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Samrendra Nath Singh Diljan - Complainant

Vs.

State Bank of India - Opp. Party

iv) Case No and Date of Judgement:

Consumer Complaint No.411 of 2014 with I.A. No.7424 of 2014 (For exemption to file typed copies) & Date of Judgement: 30-10-2014.

v) Acts and Sections referred:

Sections 2(1) (d) and Section 21(a) (i) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission held that the complainant cannot be considered as consumer because he obtained credit facility to a company which was involved in commercial activity and therefore, he cannot be covered under the explanation below clause (d) of Section 2(1) of the Act i.e he cannot be considered as earning his livelihood by means of self-employment.
- b) It was pointed out by the National Commission that as regards refusal of the bank to sanction credit against reverse mortgage of the property, the bank declined the request on account of poor credit history of the complainant, and not for want of the title deed lost by it. More importantly, the complainant cannot be said to be a consumer of the bank in respect of credit facility, which its bank did not sanction to him. Only in the event of such a facility being sanctioned to him, he could be said to be a consumer of the bank, as far as the said facility is concerned.
- c) It was held that a consumer forum was not the appropriate forum to decide a case of this nature. Therefore, the complaint was dismissed. It was also held that the dismissal of the complaint shall not come in the way of the complainant availing such other remedy as may be available to him in law and if he chooses to approach a civil court, he could also claim the benefit of Section 14 of the Limitation Act, in respect of the period spent in prosecuting this complaint.

vii) Citation:

Not reported in CPJ and CPR.

8. Consumer Education and Research Society and another Vs. Sr.Branch Manager, LIC and another

i) Case in Brief:

Sh.Vijay N.Jani, OP.2 who is the agent of OP.1 approached the Complainant No.2, a company registered under the Companies Act to take out a policy under “Keyman Insurance Scheme” for Dr. Rakesh Chand Gupta, Director of Complainant No.2. The object of the scheme

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was to indemnify the company from adverse financial effects of an employee's premature death by making funds available to the company. Four policies were taken by Dr. Rakesh Chand Gupta and the total sum insured was Rs.1.25 crores. Dr. Gupta passed away on 12-04-1996 but the Complainant No.2's claim was repudiated by the company by OP.1 on the ground that in respect of three policies, the premium was not paid within the grace period of one month and therefore the policies had lapsed. In respect of the fourth policy, it was repudiated on the ground that there was suppression of pre-existing disease by the insured while taking the policy. The Complaint was dismissed on the ground that the Complainant No.2 was not a consumer within the definition of Section 2(1)(d)(ii) of the Act and that the Commission has no jurisdiction to try the case.

ii) Order appealed against:

Original Petition

iii) Parties:

Consumer Education and
Research Society and another - Complainants

Vs.

Sr. Branch Manager, LIC and another - Opp. Parties

iv) Case No and Date of Judgement:

Original Petition No.196 of 2000 & Date of Judgement: 03-11-2014.

v) Acts and Sections referred:

Section 2(1) (d) (ii), 12(b) and 21(a)(i) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was held that the insurance policies in question were obtained for commercial purpose and were hit by Section 2(1)(d)(ii) of the Consumer Protection Act, 1986. The Keyman insurance scheme was meant to compensate the company for the loss allegedly suffered by it. It was noted that the insurance amount will not go to the family members of Dr.Rakesh Chand Gupta and the policy was not taken for domestic benefit. The insurance amount would go to the company which will generate profit due to the death of

Dr.Gupta. Consequently, the policy was held to be taken for commercial purpose to benefit the company.

- b) Since the Complainant company was not a consumer within the definition of the Act, the Commission held that it has no jurisdiction to try the case. The Commission did not go into other issues like validity of the policy, suppression of pre-existing disease etc.
- c) The complaint was accordingly dismissed. However, liberty was given to the complainants to approach the appropriate forum for redressal of their grievances.

vii) Citation:

Not reported in CPJ and CPR.

9. Sarvan Vs. Haryana Urban Development Authority and others

i) Case in Brief:

Sh. Rajesh Kumar S/o Sh. Banwari Lal, since deceased, was owner of 400 sq. yrds. The said land was acquired by the Opposite Parties. Mr.Rajesh Kumar applied for allotment of 10 Marlas plot on the ground that he was entitled to that under the HUDA "oustee policy". However his application was considered for allotment of plot under the General category. He was accordingly allotted plot No.980 of 10 Marlas in Naurnaul. Sh. Rajesh Kumar failed to deposit Rs.37,525/- towards 15% of the price of plot within the requisite period of 30 days from the date of issue of letter dated 17.08.2000. Consequently, his plot was cancelled by the OPs. Meanwhile, Sh. Rajesh Kumar passed away on 12.06.2000 prior to issuance of letter dated 17.08.2000 or cancellation of plot. A case was filed by Smt. Sarvan Devi, his mother before the District Forum against the cancellation of the above said plot without notice. District Forum directed to allot plot No. 1852, Sector I, Part I, HUDA, Naurnaul to the complainant or if not possible, allot some alternative plot. Against the decision of the District Forum, appeal was preferred before the State Commission. The State Commission held that the case is fully covered by *Om Prakash & Anr Vs. Haryana Urban Development Authority & Ors.* IV (1012) CPJ 2012 CPJ 288 (NC) and the complainant does not fall within the definition of 'consumer', and thereby set aside

the order of the District Forum and directed the OPs to re-consider the case of the complainant. Against the decision of the State Commission, this revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the order dated 01.03.2013 in First Appeal No. 960/2012 of the State Consumer Disputes Redressal Commission, Haryana, Panchkula.

iii) Parties:

Sarvan - Petitioner

Vs.

Haryana Urban Development Authority & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1864 of 2013 & Date of Judgement: 03-11-2014.

v) Acts and Sections referred:

Section 2(1) (d), (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The National Commission held that:

- i. The petitioner is not entitled to 'oustees quota' as rightly held by the State Commission and
- ii. The petitioner is not entitled for general category as well. The said plot was never allotted in her favour. She will become the consumer only when the plot is allotted in her favour.

The Commission wondered why the authorities of HUDA were interested to harass the petitioner who is a widow and caused mental agony to her. Noting that the said plot was still lying vacant with the Respondents, the Commission advised them to consider the petitioner's application and if possible take a sympathetic view and allot the plot in her favour as per law.

vii) Citation:

2014(4) CPR 747.

10. M/s.Recorders & Medicare System Pvt. Ltd. Vs. State Bank of Patiala and another

i) Case in Brief:

Complainant, through its Director, filed this complaint against the opposite parties claiming deficiency in service on account of its failure to renew the insurance policy which it had been doing in its capacity as Monitoring Institution of the Complainant Company for which it had charged Rs.12 Lakhs as fees. The Complainant's grievance is that because of the said failure, the company suffered a loss of Rs.16.14 crore due to the fire that broke out in the factory of the complainant company on 13-06-2013. The Original Complaint was dismissed as not maintainable on the ground that the Complainant was not covered under the definition of Consumer as per the Act.

ii) Order appealed against:

Original Complaint

iii) Parties:

M/s. Recorders & Medicare System Pvt. Ltd. - Complainant

Vs.

State Bank of Patiala and another - Opp.Parties

iv) Case No and Date of Judgement:

Consumer Complaint No.154 of 2014 & Date of Judgement: 05-11-2014.

v) Acts and Sections referred:

Sections 2(1) (d) & 21(a) (i) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was noted from a bare reading of the complaint that the services of the Respondent Bank were being used for business purposes. It was also seen that fees of Rs.12 Lakhs which the Respondent bank had charged from the Complainant for its services as Monitoring Institution was purely for commercial/business purposes. In view of this, it was held that the company cannot be covered by the definition of a consumer by virtue of the provisions of Section 2(1) (d) of the Consumer Protection Act.

- b) It was further held that although the explanation appended to Section 2(1) (d) of the Act provides that the 'commercial purpose' does not include the services availed by the Person exclusively for the purpose of earning his livelihood by means of self-employment, this explanation will be of no avail to the complainant which is a body corporate and not a natural person who needs to indulge to earn his livelihood.
- c) Complaint was therefore dismissed as not maintainable. Complainant was given liberty to seek remedy before the appropriate forum in accordance with the provisions of law.

vii) Citation:

II (2015) CPJ 286; 2014(4) CPR 720.

11. Maya Engineering Works Vs. ICICI Bank Ltd

i) Case in Brief:

Complainant/Petitioner, a manufacturer and exporter of engineering goods having current account with the OP/ Respondent shipped goods vide invoice dated 12-07-2004 and submitted export documents to OP for collection but OP failed to collect money and further failed to serve notice of dishonour. The District Forum before whom a complaint was filed by the Petitioner dismissed the complaint on the ground that the transaction between the two parties was a commercial one. Appeal filed by the Complainant before the State Commission was also dismissed. The present revision petition challenging the State Commission's order is also dismissed.

ii) Order appealed against:

Against the order dated 04-09-2013 in F.Appeal No.645 of 2010 of State Commission, Delhi.

iii) Parties:

Maya Engineering Works

- Petitioner

Vs.

ICICI Bank Ltd.

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3678 of 2013 & Date of Judgement: 05-11-2014.

v) Acts and Sections referred:

Sections 2(1) (d), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was held that the persons availing services for commercial purposes like the Petitioner in the present case cannot be considered as consumer under the Consumer Protection Act, 1986 as held by the Hon'ble Supreme Court in Civil Appeal No.10650 of 2010, *Birla Technologies Ltd Vs. Neutral Glass and Allied Industries Ltd.*

vii) Citation:

IV (2014) CPJ 777; 2014(4) CPR 707.

12. Major Singh Vs. State of Punjab and others

i) Case in Brief:

Complainant/Petitioner, employee of Police Department sustained injury while on duty on 21.1.2006 and was referred to Civil Hospital, Hoshiarpur. Complainant remained under treatment of OP No.3/ Respondent No.3 from 1.2.2006 to 6.3.2006. On 10.3.2006, OP No.3 operated on the complainant and cut wrong vein. Ultimately after treatment in Tagore Hospital and Pasricha Hospital, Jalandhar, Complainant's right foot was amputated on 27.4.2006 and he was declared 40% handicapped. It is complainant's case that he was appointed by OP No.1/Respondent No.1 and OP No.1 has to bear expenses of medical treatment of the complainant. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which dismissed complaint as no negligence was proved. Appeal filed by complainant was dismissed by State Commission also against which this revision petition has been filed. Revision petition dismissed.

ii) Order appealed against:

From the order dated 03.08.2012 in Appeal No. 06/2008 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Major Singh - Petitioner/Complainant

Vs.

State of Punjab and others - Respondents/ Opp. Parties

iv) Case No and Date of Judgement:

Revision Petition No.4734 of 2012 & Date of Judgement: 05-11-2014.

v) Acts and Sections referred:

Section 2 (1) (d), (o), 19 and 21(b) of the Consumer Protection Act, 1986

vi) Issues raised and decided:

- a) The issue was whether the Complainant was a consumer within the meaning of the Act as he availed the services free of cost.
- b) Held that no treatment charges have been paid by the petitioner or by the Government to OP No. 2 and in such circumstances, complainant does not fall within purview of consumer. Reliance was placed on the decision of the Commission in *Consumer Unity & Trust Society, Jaipur Vs. The State of Rajasthan &Ors - I* (1992) CPJ 259 (NC) wherein it was held that a person who avails facility of medical treatment in Govt Hospital is not a consumer and no complaint is maintainable under the Consumer Protection Act. The Revision Petition was accordingly dismissed.

vii) Citation:

IV (2014) CPJ 622; 2014(4) CPR 697.

13. M/s. Shivom Projects Private Limited Vs. Toyota Kirloskar Motor Pvt. Ltd and others

i) Case in Brief:

The complainant purchased a car manufactured by OP1, through a dealer, OP2, for a sum of Rs.14,45,217/-. The vehicle was insured until 27.02.2015. On 05.04.2014, the said vehicle met with a major accident and overturned which could have easily proved fatal to the occupants of the vehicle. The complainant, however, extricating himself from the severely damaged vehicle, first called OP2 and with no response

forthcoming from it, called his brother and got the helpline number of OP1. The case of the complainant was that the OPs 1 & 2 had sold a sub-standard vehicle to him and OPs 1 & 2 chose to sell the same to him with serious defects without adequate safety measures like air bags. It was alleged that the Complainant had been swindled by the OP. On 15.06.2014, the car was sent back to the complainant, without repairs. Ultimately, the present complaint was filed alleging deficiency in service. Complaint dismissed as not maintainable.

ii) Order appealed against:

Original Complaint

iii) Parties:

M/s. Shivom Projects Private Limited - Petitioner

Vs.

Toyota Kirloskar Motor Pvt. Ltd and others - Respondents

iv) Case No and Date of Judgement:

Consumer Complaint No.229 of 2014 & Date of Judgement: 11-11-2014.

v) Acts and Sections referred:

Sections 2(1) (d), (g) & (o) and Section 24 (a) (i) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue involved was whether the Complainant was covered by Section 2(1) (d) of the Consumer Protection Act or not.
- b) It was observed that the car was not purchased exclusively for the purposes of earning livelihood by means of self-employment for the Director of the Company. It was not for the livelihood of the Director or personal use of the Director. He had to use the car only for commercial purposes and that is why, he purchased it in the name of the company.
- c) Relying on its judgement in a number of cases e.g *Monstera Estate Pvt. Ltd. Vs. Ardee Infrastructure Pvt. Ltd.* – IV (2010) CPJ 299 (NC), the Commission held that the present case is not maintainable and the same is, therefore, dismissed *in limine*. It was noted that the Commission's judgements in *Shika Birla Vs. DLF Retailers Developers Ltd.*, Consumer Complaint No.183 of 2012 & in *Satish*

Kumar Gajanand Gupta Vs. M/s. Srushti Sangan Enterprises (India) Ltd., & Anr., Consumer Complaint No.296 of 2011 regarding the definition of the term 'consumer' within the meaning of the Act have been upheld by the Hon'ble Supreme Court. However, it was held that the complainant was free to seek remedy before any other appropriate forum or civil court, as per law.

vii) Citation:

I (2015) CPJ 422.

14. Ohmez Indegenous Drugs and Research India Ltd. and others Vs. Appu and others

i) Case in Brief:

Complainant/Respondent No.1 purchased 1000 shares of OP No.1/ petitioner for Rs.1,00,000/- and share certificates with No.359, 373, 395 and 398 were issued. It was alleged that at the time of deposit, complainant was assured to get Rs.25,000/- as dividend every year and share amount shall be considered as deposit. OP failed to pay any dividend in spite of demand. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which directed OPs to refund the amount with 12% p.a. interest. Appeal filed by OP was dismissed by State Commission against which, this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 25.1.2012 in Appeal No.58 of 2010 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

iii) Parties:

Ohmez Indegenous Drugs and
Research India Ltd. and others - Petitioners/OP

Vs.

Appu and others - Respondents/Complainants

iv) Case No and Date of Judgement:

Revision Petition No.1836 of 2012 & Date of Judgement: 25-11-2014.

v) Acts and Sections referred:

Sections 2(1) (d), 19 and 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Petitioner contended that by no stretch of imagination, amount invested by complainant in the purchase of shares can be treated as deposit with OP No.1. As far as dividend is concerned, no Company can assure grant of dividend because dividend depends on profits in the Company. It was further contended that despite all attempts, Company collapsed due to loss. In such circumstances, there was no occasion to distribute dividend.
- b) Held that investment in shares cannot be treated as amount deposited with the Company and complainant is not entitled to get refund of amount invested in shares. Therefore, there was no relationship of consumer and service provider between the complainant and OP. In the light of judgment of Hon'ble Apex Court in (1994) 4 SCC 225 – *Morgan Stainley Mutual Fund Vs. Kartick Das*, it was held that Complainant did not fall within purview of consumer under the Consumer Protection Act and complaint is liable to be dismissed.
- c) The National Commission further held that Complainant was free to approach Company Law Board or any other authority for initiating action against OP No.1, but complaint filed by complainant before Consumer Fora is not maintainable. District Forum committed error in allowing complaint and State Commission further committed error in dismissing appeal; hence, revision petition was allowed and orders of the District Forum and State Commission were set aside.

vii) Citation:

2015(1) CPR 21.

15. Sri Ravi Manna and another Vs. Basudev Koley

i) Case in Brief:

Complainant/Respondent was registered owner of the landed property as described in Schedule-A of the complaint. It is his case that opposite Party offered to purchase entire property from the Complainant and

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deal was finalized on the condition that consideration would be Rs.10.00 lakhs out of which Rs.6.00 lakhs would be paid to the Complainant in cash and for the balance sum of Rs.4.00 lakhs, a flat measuring 500 sq. fts. to be constructed on this land, will be given to the Complainant by Opposite Party. The Opposite Party raised construction but refused to give flat to the Complainant in spite of repeated requests. Alleging deficiency on the part of Opposite Party, Complainant filed complaint before District Forum which dismissed the complaint. Appeal filed by Complainant was allowed by State Commission vide impugned order that directed Opposite Parties to pay Rs.4.00 lakhs being value of agreed flat with compensation of Rs.1.00 lakh and litigation cost of Rs.40,000/- . This Revision Petition has been filed challenging the order of the State Commission. Petition allowed.

ii) Order appealed against:

Against the order dated 29.4.2013 in SC Case No.FA/176/2012 of West Bengal State Commission, Kolkata.

iii) Parties:

Sri Ravi Manna and another - Petitioners

Vs.

Basudev Koley - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2740 of 2013 & Date of Judgement: 26-11-2014.

v) Acts and Sections referred:

Sections 2(1)(d), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Petitioner contended that he never agreed to give flat of 500 sq. ft. and even if there was any agreement, it was without consideration.
- b) Records showed that sale deed was executed between Complainant and Opposite Parties and Complainant sold land to Opposite Parties for a consideration of Rs.6.00 lakhs and sale deed was executed on 17.5.2000. Another declaration was executed between the parties on 19.5.2000 in which it was agreed that Opposite Party would provide flat of 500 sq. ft on the second

floor free of cost to the Complainant. Agreement dated 19.5.2000 was cancelled by deed of declaration dated 15.7.2006 as Complainant was unable to get the tenant evicted from land sold by the Complainant to the Opposite Party.

- c) Held that Complainant does not fall within the purview of 'consumer' under the Consumer Protection Act, 1986 as he has not made or agreed to make payment for 500 sq. ft. flat.
- d) Held that the State Commission committed error in allowing complaint in spite of the fact that Complainant does not fall within the purview of 'consumer' as he has not paid any consideration for the aforesaid flat. District Forum rightly dismissed complaint. Revision Petition was allowed and order passed State Commission was set aside.

vii) Citation:

I (2015) CPJ 525; 2015 (1) CPR 19.

16. The Chairman & Managing Director A.P. Transco and others Vs. Ch.Bhimeswara Swamy, Sr. Manager and others

i) Case in Brief:

Wife of complainant No.1, died on 26.01.2004, due to electrocution at SIIL Campus, Paloncha. A police case was registered for negligence and for non-maintaining high-tension power transmission wires in residential colonies. The complainants demanded compensation in the sum of Rs.8,00,000/-, through legal notice. A complaint was filed before the District Forum which dismissed the complaint. An appeal was filed before the State Commission which directed the respondents to pay Rs.2,44,000/- along with interest @ 9% per annum from the date of filing of the complaint till payment and Rs.2,000/- towards costs. Aggrieved by that order, the petitioners/OPs filed the present revision petition with a delay of 41 days which was condoned. Petition dismissed.

ii) Order appealed against:

From order dated 31.03.2009 in First Appeal No. 466 of 2006 of the State Consumer Disputes Redressal Commission, Andhra Pradesh, Additional Bench at Hyderabad.

iii) Parties:

The Chairman & Managing Director
A.P. Transco & Ors. - Petitioners

Vs.

Ch. Bhimeswara Swamy, Sr. Manager & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3183 of 2009 & Date of Judgement: 08-12-2014.

v) Acts and Sections referred:

Section 2(1) (d), (g) & (o), 19 & 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Petitioner's contention that the deceased was not a "consumer" was rejected on the basis of the decision in *Rajasthan State Electricity Board Vs. Charan Singh, Rajasthan State Commission, 1(1999) CPJ 162*.
- b) National Commission in Karnataka Electricity Board, now known as *Karnataka Power Transmission Co. Ltd. & Anr. Vs. Smt. Sharavva & Ors* III(2002) CPJ 269(NC) had held that there is deficiency in service in laying power lines, "loose, hung very low, precariously connected to poles on either side" and causing death due to electrocution.
- c) In *OP 253(2002), Smt. Munesh Devi Vs. Uttar Pradesh Power Corporation Ltd & others* decided on 03.02.2014, a compensation of Rs.37 lakhs was awarded by the Commission to a person whose husband died in a similar case. The SLP filed against the said order was dismissed by the Hon'ble Supreme Court.
- d) Held that OPs had admitted that the wires were 25 years old. No effort was made by them to change the same with a new one. This itself showed the negligence on the part of the OPs. The revision petition was accordingly dismissed with costs.
- e) However, the compensation given to the complainant Nos.2 & 3 was found to be on the lower side and was enhanced to Rs.5 lakhs to be paid within 90 days.

vii) Citation:

I (2015) CPJ 195.

17. Major Vishwani Puri & 91 Others Vs. DLF Universal Ltd. Gurgaon, Haryana

i) Case in Brief:

Complainants are applicants for allotment of commercial spaces like shop, office etc., in the project of opposite party to construct commercial tower known as “DLF Towers”, Okhla, New Delhi. The bookings were done by making initial payments on different dates of March, 2008. Complainants claim that they have paid more than Rs.100 crores to the opposite party but the opposite party had failed to complete the project in time and get the necessary clearances. Complainants have prayed for refund of the amount paid by them with 18% interest besides compensation of Rs.2 lakhs and Rs.15,000/- as cost of litigation to each of the complainants. Held that the complaint is not maintainable in the present form since the complainants are not consumers as envisaged in the definition of “Consumer” under the Act.

ii) Order appealed against:

Original Complaint

iii) Parties:

Major Vishwani Puri & 91 Others - Complainants

Vs.

DLF Universal Ltd. Gurgaon, Haryana - Opposite Party

iv) Case No and Date of Judgement:

Consumer Complaint No.34 of 2010 & Date of Judgement: 15-12-2014.

v) Acts and Sections referred:

Section 2(1) (d) (ii) & 21(a) (i) of The Consumer Protection Act,1986.

vi) Issues raised and decided:

- a. A reading of the definition of the term “Consumer” under Section 2(1)(d) of the Act along with the explanation would show that it excludes a person who obtains goods for resale or for any commercial purpose. The complainants having booked spaces for commercial purpose are excluded from the definition of Consumer.

- b. The Complainants' claim that they all have booked the commercial spaces in the tower for earning their livelihood by means of self employment does not appeal to reason and is accordingly rejected.
- c. The onus of proving that the services were availed by respective complainant exclusively for the purpose of earning livelihood by means of self employment is on each and every complainant and they cannot be permitted to maintain a joint complaint. This is a case of misjoinder of parties.
- d. Complainants are at liberty to avail of remedy legally available to them before appropriate forum.

vii) Citation:

I (2015) CPJ 65; 2015(1) CPR 301.

18. Tata Power Delhi Distribution Limited Vs. Ramesh Kumar Rohilla

i) Case in Brief:

Complainant/Respondent, owner of office space is the Consumer of O.P/Petitioner, having permanent electricity connection (non-domestic light). Complainant filed three complaints before District Forum claiming different reliefs. O.P appeared and moved application for dismissal of complaint on the ground that complainant does not fall within the purview of consumer. District forum allowed application and dismissed complaints as not maintainable. Appeals filed by the complainants were allowed by the State Commission which is under challenge. Held, use of electricity connection in this case is not to generate profit directly, therefore, complainant falls within the purview of the consumer. State Commission's order upheld. Revision petition dismissed.

ii) Order appealed against:

- a) From the order dated 17.2.2014 in First Appeal No.271 of 2011 of the State Consumer Disputes Redressal Commission, Delhi.
- b) From the order dated 17.2.2014 in First Appeal No.272 of 2011 of the State Consumer Disputes Redressal Commission, Delhi.

- c) From the order dated 17.2.2014 in First Appeal No.273 of 2011 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

Tata Power Delhi Distribution Limited - Petitioner
Vs.
Ramesh Kumar Rohilla - Respondent

iv) Case No and Date of Judgement:

- a) Revision Petition No. 1651 of 2014
b) Revision Petition No. 1652 of 2014
c) Revision Petition No. 1653 of 2014 &
Date of Judgement: 16-12-2014.

v) Acts and Sections referred:

Sections 2 (1) (d), 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Complainant cannot be said to fall within purview of commercial connection. Because petitioner has not placed any tariff entry which classifies non-domestic connection within the purview of commercial tax. Therefore, judgement of Hon'ble Apex Court in Civil Appeal No. 1065/2000, *Chairman, M.P Electricity Board and Others Vs. Shiv Narayan and Anris* not applicable.
- b) Complainant's connection is only for electrifying of small office of 36 sq. meter which is apparently meant of earning livelihood by running office in the premises. Therefore, facts of III (2006) CPJ National Commission, *Hotel Corporation of India Ltd Vs. Delhi Vidyut Board and others* are also not applicable.
- c) In the application filed before district forum, opposite party has not taken the ground that the complainant had already approached the appropriate authorities U/S 42(5) of the Electricity Act. Therefore, this argument cannot be considered in the present revision petition.
- d) Held that there is no illegality, irregularity or jurisdictional error in the impugned order. Consequently, revision petitions were dismissed.

vii) Citation:

I (2015) CPJ 249; 2015(1) CPR 278.

19. R.L. Wadhwa Vs. Sudesh D/o. Sh. Amar Singh

i) Case in brief:

Respondents/Complainants in the Revision Petitions are aggrieved by the decision of the Petitioner with regard to their participation in the examinations conducted by the Petitioner Board. District Forum with whom complaint was filed decided in favour of the complainants. Appeal by the Petitioner to the State Commission was rejected. Petitioner's contention in the Revision Petition that there is no relationship of consumer and service provider between the complainants and petitioner within the meaning of Section 2(1) (d) of the Consumer Protection Act, 1986 upheld. Both the Revision Petitions allowed.

ii) Order appealed against:

Revision Petition No.3629/2009

The order dated 01-04-2009 in FA No.1028 of 2006 of the Haryana State Consumer Disputes Redressal Commission at Panchkula.

Revision Petition No.3630/2009

The order dated 17-07-2009 in FA No.1126 of 2004 of the Haryana State Consumer Disputes Redressal Commission at Panchkula.

iii) Parties:

Revision Petition No.3629 of 2009

R.L. Wadhwa - Petitioner

Vs.

Sudesh D/o Sh. Amar Singh - Respondent

Revision Petition No.3630 of 2009

R.L. Wadhwa - Petitioner

Vs.

Surender Kumar - Respondent

iv) Case No and Date of Judgement:

- i. Revision Petition No. 3629 of 2009
- ii. Revision Petition No. 3630 of 2009 &
Date of Judgement: 19-12-14.

v) Acts and Sections Involved:

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

vi) Issues raised and decided:

- a) As far as conducting of examination is concerned, the petitioner board cannot be said to be a service provider to the candidates appearing in the examination and students appearing in such examination cannot be said to be consumers of the Boards which holds such examinations.
- b) Hon'ble Supreme Court had held in **Bihar School Examination Board v. Suresh Prasad Sinha** 2009 (8) SCC 483 that a student taking examination was not a consumer.

vii) Citation:

Not reported in CPJ and CPR.

IV. DEFICIENCY IN SERVICE

A) AGRICULTURE:

1. Ankur Seeds Pvt Ltd and another Vs. Motilal and another

i) Case in Brief:

The question that came up for consideration in this revision petition was whether the seeds supplied by the Petitioner to the Respondents were of poor quality and therefore there was deficiency in service. Since the two members of the National Commission constituting the bench came to different conclusions, the matter was referred to a third member u/s 20(1A) (iii) of the Act for answering the following question:

“From the inspection report made by independent, Government agricultural experts, at the initiative of the complainant, whether the complainant has been able to prove that the seeds in question were sub-standard or of bad quality?”

The question was answered in the affirmative and the matter was directed to be placed before the bench which heard the case for passing final orders.

ii) Order appealed against:

From the order dated 05-11-2011 in First Appeal No.1695 of 2010 of M.P State Consumer Disputes Redressal Commission, Bhopal.

iii) Parties:

Ankur Seeds Pvt Ltd and another - Petitioners

Vs.

Motilal and another - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.381 of 2012; Date of Judgement: 17-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19, 20(1A)(iii) and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was stated that it is a cardinal principle of law that ordinarily the burden of proving the fact rests on the party who asserts the affirmative issues and not on the party who denies it. Nevertheless, there is a distinction between the phrase burden of proof and onus of proof; burden of proof lies on the person who has to prove a fact and it never shifts but the onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. (*A.Raghavamma and Anr v. A.Chenchamma & Anr.* AIR 1964 SC 136)
- b) To give effect to the objective of the Consumer Protection Act, 1986, its provisions have to be construed by resorting to the doctrine of 'Purposive Construction'. Considered from that perspective, it was stated that if a Complainant is able to create a high degree of probability of deficiency on the part of the opposite party, the onus would shift to the opposite party [the defendant] to discharge the onus to prove his denial.
- c) In the present case, noticing that cucumber fruit was deformed and the yield was less than expected, the complainant lodged complaint with the agricultural department officials. The officials' report, though did not comment directly about the quality of seeds, did raise a strong presumption in favour of the complainant that defective seeds were the cause of low yield and deformed cucumber crop. It was held that the Complainant, by placing on record the report of the agriculture officer, had discharged the initial onus to prove that the seeds in questions were sub-standard or defective and in the light of the said report, onus shifted to the petitioners to prove that the seeds were not defective as alleged.
- d) Accordingly, the question referred to the Hon'ble Member was answered in the affirmative and the revision petition was directed to be placed before the bench which originally heard the petition for pronouncing the order with the opinion of majority of the members.

vii) Citation:

Not reported in CPJ and CPR.

2. Indian Farmers Fertilizers Co-Op. Ltd. Vs. Shri Ram Swaroop

i) Case in Brief:

Complainant/Respondent purchased 5 kgs. Guar seeds from OP/Petitioner and had sown seeds in his field. Seeds germinated, but as variety was not pure and it was mixed with seeds of low quality; so, some plants were of long height with one flowering fruit whereas, others were of low height without any fruit. Complainant approached OP, but with no response. Complainant moved application before Deputy Director, Agriculture, who constituted a team of agriculture experts who visited field and submitted report according to which, there was loss of 40% of the crop. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which directed OP to pay Rs.42,000/- as loss to the crop, Rs.5,000/- as compensation and Rs.550/- as litigation expenses. Appeal filed by OP was dismissed by State Commission against which this revision petition filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 20.1.2014 in Appeal No.882/2013 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Indian Farmers Fertilizers Co-Op. Ltd. - Petitioner/Opp. Party

Vs.

Shri Ram Swaroop - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No. 1295 of 2014 & Date of Judgement: 26-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The National Commission pointed out that the report obtained by the complainant without notice to OP is against principles of natural justice. No reliance was placed on inspection report as it was not supplied to the OP to present his view on the report and Report of Agriculture Department in case in hand did not mention about inferior quality of seeds. Merely because some of

the plants were of low height without any fruit, it cannot be presumed that seeds were mixed with low quality of seeds. Complainant should have asked the inspecting team to intimate OP as well as Scientist for carrying out inspection and as inspection has not been done by the duly constituted Committee, no reliance can be placed on this inspection report and no deficiency can be attributed on the part of petitioner. Hon'ble Supreme Court in *Haryana Seeds Development Corpn. Ltd. V. Sadhu & Anr.*, II (2005) SLT 569 = 11 (2005) CPJ 13 SC = (2005) 3 SCC 198 as well as in *Mahyco Seeds Co. Ltd. V. Basappa Channappa Mooki & Ors.*, Civil Appeal No.2428/2008, had held that variation in condition of crops need not necessarily be attributed to quality of seeds but to other factors unless there is specific mention in the concerned report about the inferior quality of seeds. The Apex Court had held that the onus to prove that there was a defect in the seeds was on the complainant. Hence, the revision petition allowed.

vii) Citation:

I (2015) CPJ 530; 2014(4) CPR 829.

B) AIRLINES:

1. Mr. M. Jeyraj Victor and others Vs. M/s. Interglobe Aviation Ltd. (INDIGO)

i) Case in Brief:

The complainants who were working with St. John's Higher Secondary School, Palayamkottai booked 18 tickets with the opposite party-Interglobe Aviation Ltd. for travelling to Nepal. One person later got his ticket cancelled. The remaining 17 persons reported at Delhi International Airport for boarding the aircraft to Nepal. The officials of the airlines were ready to issue boarding passes to eight persons who possessed either the passport or the voter ID but refused boarding passes to the remaining nine persons who did not possess either the passport or the voter ID but had other valid photo ID such as driving license or PAN card with them. The eight persons who possessed voter ID/passport for whom airlines was willing to issue boarding passes

decided not to travel on the ground that the remaining nine persons had been denied boarding passes. The case of the complainants was that as per the information available on the website, most of the photo identification documents are considered as valid proof. It was also notified on the website that for all sectors originating or terminating outside India, except to and from Nepal, the passport will be the only form of identification allowed. Since the complainants were not allowed to travel to Nepal, they have filed this complaint seeking refund of the air fare besides Rs.1,00,000/- towards the amount spent in advance for stay at Nepal and Rs.1,70,00,000/- as compensation. Complaint was dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Mr. M. Jeyraj Victor and others - Complainants

Vs.

M/s. Interglobe Aviation Ltd. (INDIGO) - Opposite party

iv) Case No and Date of Judgement:

Consumer Complaint No.360 of 2014 with I.A.No.6449 of 2014 (For directions) & Date of Judgement: 10-10-2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) Perusal of the e-tickets which the opposite party had issued to the complainants which was available on pages 36 to 38 of the paper book showed that it was clearly stipulated therein that Indian nationals travelling to and from Kathmandu are required to carry either passport or voter ID only as their valid photo identity and no other photo identity will be considered as valid which was known to the complainants at the time they booked the tickets for travel to Nepal and, therefore, the airlines was fully justified in denying the boarding tickets to those who did not possess either the passport or the voter ID. Admittedly, the airlines was ready to issue boarding tickets to eight persons who possessed passport/voter ID but considering that their nine

colleagues had been denied boarding tickets, since they did not possess either passport or voter ID, they also decided not to travel to Nepal.

- b) Held that there was no deficiency on the part of the opposite party in providing services to the complainants. The complaint was accordingly dismissed.

vii) Citation:

Not reported in CPJ and CPR.

2. Mr. Santosh Sethi and others Vs. Jet Lite (I) Ltd and another

i) Case in Brief:

In this case, the complainant had decided to go in the flight of OP-1 by reserving confirmed ticket and the flight was scheduled to fly on 31.05.2006 but it departed on the next date, i.e., 01.06.2006 at 02.45 a.m for which complainant was informed. The OP 1 has not made it clear as to what time the information was given. The complainant had booked in advance the train ticket from London to Rhyl but since the flight arrived late the train was missed and the ticket went waste which had cost him Rs.4,576/-. On return journey also the flight was late by one day and OP.1 did not make any arrangement for their boarding and lodging and the complainant had to spent Rs.11,000/- on boarding, lodging and transport. Complainant suffered great inconvenience, mental agony and harassment because of the act of the OPs. Alleging deficiency in service, complainants filed complaint before the District Forum which directed the OP to reimburse Rs.15,576/- to the complainant; Rs.30,000/- towards mental agony and harassment and another Rs.10,000/-. Aggrieved by the order of the District Forum, respondent No.1 (M/s. Sahara Airlines Ltd., now known as Jetlite (India) Ltd., filed an appeal before the State Commission which allowed the appeal partly and modified the District Forum's order to the extent that the complainants/respondent No.1-4 were declared entitled to the reimbursement of Rs.15,576/- from the Jet Airways, Respondent No.5/ OP No.2 and also Rs.15,000/- as compensation for mental agony and harassment from Jet airways, Respondent No.5/OP-2. Dissatisfied by the order of the State Commission, the petitioner filed this present

revision petition against the modification of the order of the District Forum. Revision Petition partly allowed.

ii) Order appealed against:

Against the order dated 22.02.2013 in Appeal No.911 of 2009 of the Delhi State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

Mr. Santosh Sethi and others - Petitioners

Vs.

Jet Lite (I) Ltd and another - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1898 of 2013 & Date of Judgement: 15-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that the State Commission had fallen in error in concluding that award of Rs.10,000/- by the District Forum was arbitrary and whimsical. Hence, the present revision petition was partly allowed and order of the State Commission was modified to the extent that amount of Rs.10,000/- awarded by the District Forum was restored towards cost of litigation.

vii) Citation:

IV (2014) CPJ 519; 2014(4) CPR 372.

C) ALLOTMENT OF HOUSE SITES /PLOT / KIOSK:

1. Smt. Bishnu Prabha Gauda Vs. Sanjay Gupta and another

i) Case in Brief:

The complainant/petitioner deposited a sum of Rs.10,000/- with the opposite parties on 20-05-2005 for allotment of a flat for a consideration of Rs.10,80,000/- Later on, he made further payment of Rs.2,00,000/- on 12.07.2005 and an agreement between the parties was executed on that date. According to the complainant, on completion of the building

the opposite parties refused to make allotment of the aforesaid flat to him. He, therefore, filed a civil suit before the Civil Judge, Karkardooma Court but later withdrew that suit with liberty to file a complaint. The complainant then approached the concerned District Forum which directed the opposite parties to allot the flat in question to the complainant after taking Rs.8,70,000/- from him and execute and register the sale deed of the said flat in his favour. The opposite parties were also directed to pay Rs.5,000/- as compensation and Rs.1,000/- as cost of litigation to the complainant. Being aggrieved from the order of the District Forum, the opposite parties approached the concerned State Commission by way of an appeal. The State Commission remitted the matter back to the District Forum for fresh trial. Against the decision of the State Commission, this revision petition has been filed. Revision petition dismissed.

ii) Order appealed against:

From the order dated 19-08-2014 in FA No.677 of 2011 of the Delhi State Consumer Disputes Redressal Commission at New Delhi.

iii) Parties:

Smt. Bishnu Prabha Gauda - Petitioner

Vs.

Sanjay Gupta and another - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3738 of 2014 with I.A.No.7254 of 2014 (for stay) & Date of Judgement: 14-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue involved in this case was that whether there was default on the part of the complainant or on the part of the opposite parties.
- b) The National Commission observed that it would not be proper on the part of it to exercise the revisional jurisdiction to take a view on the question as to whether the default was on the part of the

complainant or on the part of the opposite parties. It also observed that the District Forum was best suited to decide this issue on the basis of evidence which the parties would lead before it. Hence, the present revision petition devoid of any merit was dismissed.

vii) Citation:

Not reported in CPJ and CPR.

2. Umesh Kumar Vs. The Improvement Trust, Rupnagar

i) Case in Brief:

Complainant/Petitioner purchased a built up Booth from OP/Respondent in open auction and deposited $\frac{1}{4}$ amount and remaining $\frac{3}{4}$ amount was to be paid in five equal half yearly instalments along with interest. Complainant could not pay the first two instalments of Rs.1,10,100/- each with interest. Later on OP asked Complainant to pay Rs.5,09,155/- by charging interest at 12%. Complainant deposited the amount under protest and filed a complaint in the District Forum seeking refund of excess amount of Rs.74,232/- along with compensation. District Forum allowed the complaint partly and directed OP to refund Rs.41,969/- with 9% p.a interest and further allowed Rs.1,000 as cost. Appeals filed by both the parties were dismissed by the State Commission against which this revision petition has been filed by the Petitioner. Revision Petition dismissed.

ii) Order appealed against:

Against the order dated 30.08.2012 in First Appeal No.307 of 2011 of the Punjab State Commission, Chandigarh.

iii) Parties:

Umesh Kumar

- Petitioner

Vs.

The Improvement Trust, Rupnagar

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4653 of 2012 & Date of Judgement:10-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Petitioner's contention that as per Land Disposal Rules which were adopted by the Respondents, Petitioner was not liable to pay interest more than 6% p.a was not accepted by the Commission because parties are bound by the terms and conditions of the agreement and as per agreement, 12% p.a interest is payable.
- b) Held that there was no material irregularity, illegality or jurisdictional error in the order of the State Commission. Consequently, revision petition was dismissed.

vii) Citation:

II (2015) CPJ 108; 2014(4) CPR 667.

3. Rajasthan Housing Board Vs. Dhan Raj

i) Case in Brief:

Complainant/Respondent applied to OP/Petitioner for allotment of Kiosk in auction on the basis of advertisement published in paper. Complainant's bid was the highest but it was rejected. Alleging unfair trade practice and deficiency in service, Complainant approached the District Forum. The Forum allowed the complaint and directed the OP to accept Complainant's offer bid along with compensation of Rs.5,000/- and Rs.3,000/- as litigation expenses. Appeal filed by OP was dismissed by the State Commission vide impugned order against which this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order against dated 10.4.2013 in the Appeal No.316/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench at Jodhpur.

iii) Parties:

Rajasthan Housing Board

- Petitioner/OP

Vs.

Dhan Raj

- Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.2334 of 2013 with IA/3881/2013 (Stay) & Date of Judgement: 18-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) No terms and conditions or judgement in support of the contention of the respondent that the petitioner was bound to accept bid merely on the basis of the bid being highest was placed before the Commission.
- b) No concluded contract came into force between the parties and complainant's offer was only an offer and petitioner had every right to accept or reject the bid.
- c) It was noted that petitioner had reserved the right to reject any bid in the bid advertisement. As per written statement, previous bid for the same kiosk was Rs.90,052/- whereas complainant bid was only Rs.76,151/-. In such circumstances the petitioner had not committed any deficiency in rejecting bid.

vii) Citation:

2015(1) CPR 79.

D) AUTOMOBILES:

1. M/s. Ford India Pvt. Ltd. Vs. N.K. Paliwal and others

i) Case in Brief:

The Complainant/Respondent No.1 purchased a Ford Fiesta (Diesel) car from M/s. A.B. Motors Pvt. Ltd, Dehradun, (Respondent No.3) on 20-06-2007. The car is manufactured by the Petitioner and in Dehradun the

vehicle was sold by M/s. Bhagat Ford, c/o A.B. Motors Pvt. Ltd. (Respondent.4/OP.4). Claiming that OP.4 had published a misleading advertisement in newspapers claiming an average mileage of 31.4 km/litre whereas the actual mileage was 15-16 km/litre, the Complainant filed a complaint before the District Forum. The Complaint was allowed and OPs including the Petitioner were directed to make a payment of Rs.7,43,200/- to the Complainant on return of the vehicle to the OPs. A sum of Rs.10,000/- was also awarded towards costs. The Petitioner filed an appeal before the State Commission which was also dismissed. The other OPs namely M/s. A.B Motors Pvt. Ltd. and M/s. Bhagat Ford did not challenge the order of the District Forum. Aggrieved by the order of the State Commission, the present revision petition has been filed. Revision Petition allowed and complaint to the extent it pertains to the Petitioner was dismissed.

ii) Order appealed against:

From the order dated 09-05-2014 in F. Appeal No.111 of 2010 of Uttarkhand State Consumer Disputes Redressal Commission, Dehradun.

iii) Parties:

M/s. Ford India Pvt. Ltd.

- Petitioner

Vs.

N.K. Paliwal and others

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No:3003 of 2014 & Date of Judgement: 07-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19, and 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission noted that the vehicle was purchased on 09-03-2007 by way of Demand Draft which would mean that the advertisement claiming mileage of 31.4 km/litre should have been read by the complainant before 09-03-2007. However, the complaint was conspicuously silent as regards the date of alleged advertisement. It was further noted that neither the District Forum nor the State Commission had adverted to any advertisement prior to 09-03-2007.

The earliest advertisement referred by them was of 20-06-2007. Since the complainant failed to establish any representation to him by the manufacturer or by the authorised dealer prior to 09-03-2007 and claiming average of 31.4 km/litre, it was held that the Petitioner cannot be said to have failed to deliver on the said promise. Consequently, the orders of the fora below were set aside and the complaint to the extent it pertained to the Petitioner was dismissed.

vii) Citation:

Not reported in CPJ and CPR.

2. FIAT India Pvt. Ltd. Vs. Mr. Syed Hasan Bukhari and another

i) Case in Brief:

The Complainant purchased Fiat Palio Car on 23-02-2002 from the dealer, M/s. Vivek Automobiles (OP.2/Respondent No.2) who was the dealer of the Car manufacturer M/s. Fiat India (OP.1). On 09-04-2002, complainant noticed defects and approached OP.2 on the same day. Thereafter, he visited OP.2 ten times in 2002, four times in 2003, four times in 2004 and four times in 2005. Although the car was serviced six times, the defects continued to remain. The Complainant took two years extended warranty. At the instance of OP.2, he also took the vehicle to another workshop in Noida but the defects continued to remain. Alleging deficiency in service, he filed a complaint before the District Forum which allowed the complaint and awarded an amount of Rs.40,000/- as compensation to be paid by the Petitioner. Aggrieved, the Complainant appealed to the State Commission which enhanced the amount awarded by the District Forum to Rs.80,000/- and further directed the Petitioner to pay a sum of Rs.3,60,000/- as price of the car and Rs.10,000/- as cost to the Respondent. The Petitioner challenged the order of the State Commission by filing this revision petition. Revision Petition allowed. However, it was held that OP.2 was liable for after sales service. OP.2 directed to repair the vehicle and make it road worthy in 30 days and further pay a sum of Rs.1,00,000/- to the Complainant as compensation for the loss and mental agony suffered by him.

ii) Order appealed against:

From the order dated 27-11-2013 in F.Appeal No.615 of 2010 of the Delhi State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

FIAT India Pvt. Ltd.

- Petitioner

Vs.

Mr. Syed Hasan Bukhari and another

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1235 of 2014 & Date of Judgement: 10-10-2014.

v) Acts and Sections referred:

Sections 2(1) (f), 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission accepted the contention of the Petitioner that the car had run for three years, had covered 47,781 K.Ms and therefore, no manufacturing defect or deficiency in service can be attributed on the part of Petitioner / OP.1. The Revision Petition was therefore allowed and State Commission's order was set aside.
- b) Held that as per Dealership Agreement between OP.1 & OP.2, after sales services are to be rendered by the dealer. OP.2 had sold the car to the Complainant independently in perfectly running/roadworthy condition. The Commission asked the Complainant why he waited for three years to file a complaint. It was held that Complainant was also responsible for contributory negligence. Since the defects mentioned in the job cards were repairable, it was observed that the Complainant did not deserve full price of the car except for compensation towards repairs only. It was also held that the Complainant was forced to visit OP.2 several times for which compensation of Rs.1,00,000/- was considered as just and proper. It was ordered that this amount should be paid by OP.2 within 60 days.

vii) Citation:

IV (2014) CPJ 733.

3. M/s.Radha Gardens and others Vs. Volkswagen India (P) Ltd, Represented by its Managing Director

i) Case in Brief:

Complainant/ Petitioner booked Polo car on 21-04-2010 by paying Rs.50,000 to the OP/Respondent. The car was delivered on 09-07-2010 but the complainant found some problems in the vehicle. It was left at the workshop but even after three days the car was not repaired. Alleging deficiency in service, Complainant filed complaint before the District Forum which after hearing the parties dismissed the complaint. The State Commission on appeal, directed OP No. 1 – 4 to replace the vehicle with cost of Rs.5,000. Complainant filed this revision petition for refund of price along with the application for condonation of delay. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 21-01-2013 in Appeal No.203 of 2012 of the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad.

iii) Parties:

M/s.Radha Gardens and others - Petitioners/Complainants
Vs.

Volkswagen India (P) Ltd, Represented
by its Managing Director
Mr.K.K.Swamy - Respondents/Opp.Parties

iv) Case No and Date of Judgement:

Revision Petition 1993 of 2013 with IA/3292/2013 (C/Delay) &
Date of Judgement on 16-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

Perusal of record revealed that the petitioner had not placed any evidence to substantiate his claim that there was manufacturing defect in the car. It was therefore held that the District Forum rightly dismissed the complaint. Perusal of record further revealed that the

State Commission allowed complaint on the basis that the complainant opted for replacement of car with a new car of highline model and the State Commission rightly observed that complainant should pay the difference amount. The National Commission found no illegality, irregularity or jurisdictional error in the impugned order and consequently dismissed the revision petition.

vii) Citation:

IV (2014) CPJ 714; 2014(4) CPR 452.

4. Force Motors Limited Vs. DPS Secondary School and another

i) Case in Brief:

Respondent No.1/Complainant purchased Minidoor Auto Rickshaw from Respondent No.2/Opposite Party No.1. This vehicle had been manufactured by the Petitioner. As per case of respondent no.1, since the vehicle was defective he made various complaints but the same was not rectified by the dealer as well as by the manufacturer. Alleging deficiency, on the part of the manufacturer and dealer, respondent no.1 filed complaint before the District Forum which partly allowed complaint and directed the petitioner and respondent no.2 jointly and severally, to repair the vehicle to the satisfaction of respondent no. 1. Accordingly, Petitioner as well as Respondent No.2 repaired the vehicle to the satisfaction of respondent No.1 and obtained 'Receipt-cum-Undertaking' dated 14.10.2010, from him to the effect that the said vehicle has been repaired. But still, Respondent No.1 filed second complaint against the petitioner and respondent no.2 with regard to the same vehicle and raising similar allegations seeking replacement/refund of the cost of the vehicle. The District Forum allowed the second complaint and directed the petitioner to repair the vehicle within 15 days at its cost, to the satisfaction of respondent no. 1. Being aggrieved, petitioner filed appeal before the State Commission, which was dismissed. Hence, the present revision petition had been filed. Revision Petition allowed.

ii) Order appealed against:

From order dated 01.02.2013 in First Appeal No.1283 of 2012 of State Consumer Disputes Redressal Commission, Rajasthan, Jaipur.

iii) Parties:

Force Motors Limited

- Petitioner

Vs.

DPS Secondary School and another

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No. 1243 OF 2013 with I.A. No. 2289 of 2013(for Stay);
I.A No.2290 of 2013 (for Exemption from filing English Translation) &
Date of Judgement: 03-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act,
1986

vi) Issues raised and decided:

- a) Held that both the Fora below have overlooked and ignored the fact that respondent no. 1 was totally satisfied with the conditions and working of the vehicle after due repairs carried out by Respondent No.2 and had also confirmed that he has no claim of any nature pending or subsisting on receipt of the above vehicle and have committed grave error in allowing the second complaint.
- b) Further held that the act of respondent no. 1 in filing the second complaint before the District Forum on similar cause of action, is barred by principle of res-judicata and it amounted to gross misuse and gross abuse of the process of law. Accordingly, present revision petition was allowed and orders passed by both the fora below were set aside. Respondent no. 1 was directed to deposit the cost of Rs.5000/- by way of demand draft in the name of "Consumer Legal Aid Account" of the Commission within one month from the date of judgement.

vii) Citation:

IV (2014) CPJ 683; 2014(4) CPR 495.

5. Ind-Swift Laboratories Ltd. Vs. M/s. Skoda Auto India Private Limited and another

i) Case in Brief:

Petitioner/Complainant purchased a Skoda vehicle from Respondent/ OP No.1 i.e. M/s Skoda Auto India Pvt. Ltd. and got it serviced from OP No.2 i.e. authorized service station of OP No.1. On 24.11.2008 when the vehicle had covered 80,521 KM, OP No.2 changed oil filter, fuel filter, weight balance, bulb and engine oil and nothing else was noticed by the engineers of OP No.2. On 31.3.2003, the vehicle suddenly stopped on the main road and had to be towed to the service station of OP No.2 who found that the timing toothed belt kit had gone out of order. Due to that other parts of the car were also damaged. The case of the complainant is that the belt needed replacement when the vehicle was serviced by OP No.2 on 24.11.2008 but no information was given to the petitioner, either on 24.11.2008 or on the previous date of service on 9.7.2008, which was done at 63,058 Kms. The car went out of order due to the negligence of service engineers of respondent no. 2 and also due to the inferior quality of timing belt, for which petitioner was forced to make payment Rs.1,19,439/- without any fault on his part. It is further stated that the car remained parked for about one month in the service station of respondent no. 2 due to which company suffered huge losses. Alleging deficiency in service, a complaint was filed before the District Forum which allowed the complaint and directed the respondents to make following payments to the petitioner: refund the amount of Rs.1,19,439/- representing repairs; replacement of spare parts including timing tooth belt kit, in full, to the Complainant; to pay compensation of Rs.20,000/- for causing mental agony, harassment and pain; to pay litigation expenses Rs.5,000/- to the complainant.” Being aggrieved, both respondents filed appeal before the State Commission, which allowed the same and set aside the order of the District Forum. The present revision petition has been filed challenging the order of the State Commission. Petition dismissed.

ii) Order appealed against:

From the order dated 18.05.2010 in Appeal No.678 of 2009 of the State Consumer Disputes Redressal Commission, U.T, Chandigarh.

iii) Parties:

Ind-Swift Laboratories Ltd. - Petitioner

Vs.

M/s. Skoda Auto India Private Limited & Anr. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2914 of 2010 & Date of Judgement: 27-11-2014.

v) Acts and Sections referred:

Sections 2(1)(g)&(o), 19 and 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Held that it is admitted fact that the vehicle in question was purchased by the petitioner/complainant on 16.09.2005 and the warranty was for a period of two years, i.e., up to 15.09.2007. Therefore, at the time of accident the vehicle in question was not in warranty period. Respondent in its written statement have taken the stand that vehicle of the petitioner has met with accident for about 6 times till covering the distance of 70,974 Kms. The initial onus was upon the petitioner to show that Timing Toothed Belt Kit required check up, when vehicle had covered a distance of 90,000 Kms. In the present case, Timing Toothed Belt Kit got damaged when the vehicle had covered the distance of 96,000 Kms. Thus, it was the petitioner who was negligent in not taking proper care of its car. So there was no deficiency on the part of the respondent.
- b) Orders of the State Commission confirmed and the present revision petition dismissed.

vii) Citation:

I (2015) CPJ 485.

6. M/s. Krishna Auto Sales Vs. Ind-Swift Laboratories Ltd.

i) Case in Brief:

Respondent/Complainant purchased a Skoda vehicle from OP No.1 i.e. M/s. Skoda Auto India Pvt. Ltd. and got it serviced periodically from OP No.2 ie. M/s. Krishna Auto Sales, Chandigarh (authorized service

station) of OP No.1. When the vehicle was serviced on 24.10.2008, when it had covered 87,700 KMs, Petitioner informed Complainant that Toothed Time Belt would need check up and replacement, if necessary, when the vehicle had covered 90,000 km. It is averred that the next paid service was done by OP No.2 on 24.2.2009 at 96,605 KMs and it was informed that Toothed Timing Belt needed replacement but the same was not replaced on 24.2.2009 due to its non availability with the OP. The complainant, as per the averments made in the complaint, was told to contact OP No.2 after 15 days but the same was not available even after 15 days. On 31.3.2003, the vehicle suddenly stopped on the main road and had to be towed to the service station of OP No.2 who found that the timing toothed belt kit had gone out of order. The case of the complainant is that the belt needed replacement when the vehicle was serviced by OP No.2 on 24.10.2008 at 87,700 KMs as per the service manual and instructions contained therein. The complainant filed complaint before the District Forum alleging deficiency in service on the part of OPs in not getting the timing toothed belt kit changed at the appropriate time, when it was needed. The District Forum directed to refund the amount of Rs.1,16,903/- being the cost of replacing the timing tooth belt kit, Rs.20,000/- as compensation for harassment and financial loss and Rs.7,000/- as costs of litigation. Being aggrieved, the Petitioner filed an appeal before the State of Commission which dismissed the same. This revision petition filed against the State Commission's order was allowed.

ii) Order appealed against:

From the order dated 03-03-2011 in Appeal No.464 of 2010 of the State Consumer Disputes Redressal Commission, U.T, Chandigarh.

iii) Parties:

M/s. Krishna Auto Sales - Petitioner

Vs.

Ind-Swift Laboratories Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1092 of 2011 & Date of Judgement: 27-11-2014.

v) Acts and Sections referred:

Sections 2(1)(g)&(o), 19 and 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The National Commission pointed out that the Complainant has not placed any document on record to support his case that it was the duty of the service engineers of the Petitioner to inform the Complainant to get the Toothed Timing Belt replaced at 87,700 Kms. Moreover, Complainant has not placed on record the complete copy of the Manual of Instructions issued by the Petitioner. It is complainant's own case that Timing Toothed Belt was not available with the Petitioner and Complainant was advised not to run the car any further. However, as per Complainant's own case, that despite such advice the vehicle had covered a distance of 96,605 Kms which is much beyond 90,000 Kms. Therefore, Timing Belt of the Vehicle has gone out of order due to negligence of the Complainant itself and no blame can be laid at the door of the petitioner. Therefore, the National Commission held that there was no deficiency in service on the part of the petitioner, allowed the Revision Petition and set aside the orders of the fora below. Complaint filed by the Respondent was dismissed.

vii) Citation:

I (2015) CPJ 519.

7. Dr. Rajeev Kapoor Vs. Joshi Auto Zone Pvt. Ltd. & Others

i) Case in Brief:

Petitioner/Complainant purchased a Tata Manza Indigo Car from OP1, who is an authorized dealer of OP2 in March, 2010. The vehicle carried a warranty for 2 years with a provision for extension by another 2 years. On 18.07.2012, during the extended period, Banarsi Dass Automobiles Pvt. Ltd. (OP3), the authorized service station replaced the Turbo of the vehicle after getting approval from Global Administration Services Pvt. Ltd. (OP5). However on 06.08.2012, when the complainant was going to Rohtak in his car, it broke down again. Sawan Motors Pvt. Ltd. OP4, after inspecting the vehicle observed that Turbo Charger and Engine were seized due to oil pump failure and sent a bill for Rs.1,34,749/-. OP5, however repudiated the claim on the ground that

there was dust in the engine and it was not mentioned in the terms and conditions of exclusion clauses. District Forum before whom complaint was filed dismissed the complaint. The State Commission also dismissed the appeal filed by the complainant. Present Revision Petition filed against the State Commission's order allowed.

ii) Order appealed against:

From the order dated 14.06.2013 in First Appeal No.99 of 2013 of the UT, Chandigarh State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Dr. Rajeev Kapoor

- Petitioner

Vs.

Joshi Auto Zone Pvt. Ltd. & Others

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3312 of 2013 & Date of Judgement: 01-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a. OP5's contention that due to improper maintenance and servicing of the vehicle the warranty ceased to exist was not accepted by the Commission. Since the warranty period had been extended, it was the duty of OP5 to repair the vehicle during the extended warranty period.
- b. OP5's contention that Turbo had to be replaced by the complainant as it was a case of normal wear and tear was also not accepted since the Turbo was replaced only on 31.01.2012 and it became defective again within a span of 6 days.
- c. OP4 to recover Rs.1,34,749/- from OP5 and parking charges @ Rs.18,000/- per month. OP4 directed to hand over the vehicle without defect to the complainant within one month.

vii) Citation:

I (2015) CPJ 581.

8. Shri R B Sharma Vs. Proprietor, Sahu Automobiles

i) Case in Brief:

The Petitioner/Complainant engaged the services of the Respondent/OP, a garage owner, for repair of his vehicle including denting and painting, dashboard work, brake change, steering booster, pipe line filling and claimed to have paid for the required work. The repair work was not carried out for several months in spite of several requests from the Complainant. Alleging deficiency in service, complaint was filed before the District Forum. The District Forum came to the conclusion that there was no deficiency in service on the part of the garage owner and the complaint was dismissed. The appeal filed by the Petitioner before the State Commission was also dismissed. Present Revision Petition filed against the State Commission's order was also dismissed.

ii) Order appealed against:

Revision Petition No. 2880 of 2010

From the order dated 29.04.2010 of the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow in Appeal No.1324 of 2004.

First Appeal No. 439 of 2008

From the order dated 22.09.2008 of the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow in Appeal No.1324 of 2004.

iii) Parties:

Revision Petition No. 2880 of 2010

Shri R B Sharma - Petitioner

Vs.

Proprietor, Sahu Automobiles - Respondent

First Appeal No. 439 of 2008

M/s. Sahu Automobiles - Petitioner

Vs.

Shri R B Sharma - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2880 of 2010 & First Appeal No.439 of 2008 & Date of Judgement: 05-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 & 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a. Respondent/OP contended that due to the delay in advance payment for different vendors as promised by the complainant, they were unable to complete the repair work timely, because, denter, painter, electrician had left the work in the process due to non-payment and the Complainant had failed to pay the balance amount and collect the vehicle.
- b. Held that the order of the State Commission dated 29.04.2010 did not call for any interference as it does not suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity.
- c. Respondent/OP had also appealed against the conviction and sentence imposed by the State Commission for non-compliance of the order. Held that the said order cannot be sustained because the State Commission had proceeded to prosecute, convict and sentence the appellant without following the principles of natural justice.

vii) Citation:

I (2015) CPJ 507; 2015(1) CPR 376.

9. Raj Kumar Vs. Tayal India Motors Pvt. Ltd. and another

i) Case in brief:

Petitioner/Complainant purchased a Tata Nano Lx Car on 31.01.2011 from the Respondent/O.P. At the time of sale, O.P assured that the vehicle would be of 2011 model but when the car was handed over to him, he found that it was a 2009 model. District Forum directed the OP to replace the said vehicle by a brand new Tata Nano Car of 2013 model. The respondent/opposite party was also directed to pay Rs.10,000/- as compensation and Rs.2,200/- as litigation expenses to the complainant. OP approached the State Commission by way of an appeal which was also allowed. Present Revision Petition filed by the Petitioner dismissed.

ii) Order appealed against:

From the order dated 20.05.2014 in FA No.40/2014 of Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Raj Kumar - Petitioner

Vs.

Tayal India Motors Pvt. Ltd. and another - Respondent(s)

iv) Case No and Date of Judgement:

Revision Petition No.3358 of 2014 & Date of Judgement: 11-12-2014.

v) Acts and Sections referred:

Section 2 (1) (g), (o), 19 & 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Respondent contended that in the sale certificate dated 31.01.2011 which is available at page 26 of the paper-book, it is clearly mentioned that the vehicle was manufactured in March 2009. The sale certificate was issued to the complainant along with the invoice, on the same day.
- b) There was no misrepresentation as regards the age of the vehicle made to the complainant at the time of the sale.
- c) Since the complainant did not lodge any protest and accepted the delivery of the vehicle, along with the aforesaid sale certificate, it was presumed that he knew, at the time of purchase of vehicle itself, that he was purchasing a March 2009 model and not a 2011 model.
- d) There was nothing illegal in selling a vehicle manufactured in March 2009 to a customer in June 2011, provided that the month and year of manufacture of the vehicle was disclosed to him at the time of its sale.
- e) Held, that there was no deficiency on the part of the opposite party.

vii) Citation:

I (2015) CPJ 253; 2015(1) CPR 337.

10. Maruti Suzuki India Ltd. Vs. Dr. Hirak I. Desai and another

i) Case in Brief:

Respondent No.1/Complainant purchased a Maruti Baleno car from the Petitioner/OP1, through a dealer, Respondent 2/OP3 for a sum of Rs.5,88,086/- which included lifetime tax of Rs.25,000/-. During the warrantee period, when the car had travelled for 13,000 kms. its engine broke down dead on 26.04.2007. The said vehicle was taken to Respondent 2/OP3. The complainant was informed that the engine had broken down and would be replaced within 12 to 15 days. Subsequently, Respondent 2/OP3 informed him that it would not change the half engine but would change the crank bolt No.17. On enquiries, it transpired that the half engine was not available in the market and therefore, it could not be replaced. Since the car could not be repaired, the present complaint was filed. The District Forum directed that the OPs should refund Rs.5,88,086/- being the cost of the car and to pay Rs.5,000/- and Rs.10,000/- as compensation and costs. Petitioner/OP-1 was permitted to take the car from Respondent 2/OP-3. Aggrieved by that order, the Maruti Udyog Ltd. OP-1 filed an appeal before the State Commission. The State Commission dismissed the appeal against which this Revision Petition is filed. Petition disposed of imposing cost of Rs.1 lakh on the OPs with direction to return the car in road worthy condition to the complainant or refund the cost of the car as ordered by the fora below.

ii) Order appealed against:

From order dated 24.09.2008 in First Appeal No.510 of 2008 of the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

iii) Parties:

Maruti Suzuki India Ltd.

- Petitioner

Vs.

Dr. Hirak I. Desai and another

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4709 of 2008 & Date of Judgement: 11-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 & 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The report of the surveyor indicated that “engine was not working, all lights and meters are not working, wiring was cut from places, clutch and brakes, steering and Comp. were found to be jammed, gear box was not working. Suspension system front and rear suspension were corroded”. Till 2010 the car was not in a road-worthy condition. This report is very important and belies the arguments advanced by the OPs.
- b) Held that that the OPs-1 & 3 will return the car in road-worthy position to the complainant, within fifteen days from the receipt of copy of this order. They will also give further warranty and three free services during the period of one year. They are given liberty to produce or provide the requisite spare parts and rectify the defects, within 15 days, from the date of receipt of this order, otherwise the complainant will be entitled to costs of Rs. 500/- per day till the car is handed over to him. The Commission further imposed costs of Rs.1,00,000/- on the OPs in favour of the complainant for harassment and mental agony to the complainant, since the complainant did not have the benefit of the car for a period of 7 years. In the alternative, if the OPs have stopped manufacturing the said model and spare parts, the order of the State Commission upholding the District Forum’s order shall prevail.

vii) Citation:

I (2015) CPJ 70; 2015(1) CPR 327.

11. Ess Pees Automotives Ltd. Fraser Road Vs. SPN Singh and another

i) Case in Brief:

The Complainant/Respondent purchased a motor car, for his personal use in September, 1996, from Hindustan Motors Limited, OP1 through its dealer, Ess Pee Automotives Ltd. OP2. Complainant noticed several defects while using the car. Despite the repair services rendered by OPs, the car did not perform properly. Complainant filed complaint before the District Forum which directed the OPs to take/receive all

the parts of the engine of the car lying in the premises of the complainant and to replace the said engine with a new one or with the one which was identical to the engine which was fitted in the car at the time of purchase thereof, within two months of receipt of the order, failing which, the OPs must pay to the complainant the amount of money which was the price of the value of the engine at the time of purchase thereof, with interest @ 9% p.a. In appeal before the State Commission, the State Commission directed to deliver a new car to the complainant or to pay to him the present market sale value of the car with interest thereon @ 18% per annum with effect from the date of filing of the complaint. Against the decision of the State Commission, the present revision petitions are filed by the OPs. Revision Petition of OP.2 partly allowed & Revision Petition of OP.1 dismissed.

ii) Order appealed against:

Against the order dated 19.03.2009 in First Appeal Nos.345/06 & 355/06 of the State Consumer Disputes Redressal Commission, Bihar, Patna.

iii) Parties:

Revision Petition No.1818 of 2009

Ess Pees Automotives Ltd. Fraser Road - Petitioner

Vs.

SPN Singh and another - Respondent(s)

Revision Petition No.2058 of 2009

The Hindustan Motors Ltd. - Petitioner

Vs.

SPN Singh and another - Respondent(s)

iv) Case No and Date of Judgement:

a) Revision Petition No.1818 of 2009

b) Revision Petition No.2058 of 2009 &

Date of Judgement: 12-12-2014.

v) Acts and Sections referred:

Section 2(1) (g) and (o) & Section 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) OPs contended that the complainant is not a consumer, because the car was purchased by Ashok Chitra Pvt. Ltd., Patna and not by the complainant and the car was used for commercial purposes. This was not accepted because the car was booked by Ashok Chitra Pvt. Ltd. through the complainant. For 18 years nobody else has claimed ownership of the car. Moreover, there is not even an iota of evidence that the car was used for commercial purposes.
- b) Held that OP2 cannot be held liable for the manufacturing defects. However, he has no explanation to give as to why he detained the car for one month. He is also held liable for negligence, inaction and passivity for which costs of Rs.50,000/- were imposed upon him, which would be paid by him to the complainant for harassment, mental agony and for making him come to his service station time and again, within 90 days' from the date of receipt of this order, otherwise, it will carry interest @ 9% p.a. till its realization.
- c) As regards OP1, the State Commission's order for refund of money along with interest, compensation and costs directed to be paid to the complainant was upheld. Alternatively, O.P.1 was directed to return the car in road-worthy condition to the complainant, after changing the engine of the car, within 15 days' of receipt of the copy of this order. OP1 will further give warranty and three free services for a period of one year. The Commission further imposed costs of Rs.1,00,000/- on OP1, to be paid to the complainant, for harassment and mental agony. The said costs to be paid within 90 days, from the date of receipt of the order, otherwise, it will carry interest @ 9% p.a., till its realization.

vii) Citation:

I (2015) CPJ 192; 2015(1) CPR 321.

E) BANKING:

1. Union Bank of India Vs. Kamlavati Devi and another

i) Case in Brief:

Husband of the complainant (Late Shri Parmeshwar Prasad) opened a recurring deposit account with Union Bank of India whereby he was to deposit Rs.2,000/- per month under the Union Insured Recurring Deposit Scheme of the said Bank. As per the terms of the scheme, the Bank was to pay the entire maturity amount in the event of the death of the depositor before the deposit had matured. The complainant was the nominee of her husband in the said account. The husband of the complainant died on 03.01.96. After his death, the complainant requested the Bank to make payment in terms of the aforesaid scheme. Responding to her notice, the Bank claimed that they had been paying premium to LIC on regular basis but the LIC was not making the requisite payment. Alleging deficiency in service on the part of the opposite parties, the complainant approached the District Forum which directed the petitioner bank to pay a sum of Rs.2,09,500/- alongwith interest @9% p.a., besides cost of litigation amounting to Rs.1,500/-. It was held by the District Forum that this being a group insurance, there was no contract between the deceased and the LIC though there was such a contract between him and the Bank and, therefore, the complainant was entitled to recover the amount in question from the petitioner Bank. Being aggrieved from the order of the District Forum, the petitioner approached the concerned State Commission by way of an appeal. However, the said appeal came to be dismissed for default of appearance. Being aggrieved from the dismissal of its appeal, the petitioner Bank has filed this revision petition along with application for condonation of delay. Revision Petition dismissed as barred by limitation.

ii) Order appealed against:

From the order dated 29.08.12 in Appeal No.601/2009 of U.P. State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

Union Bank of India - Petitioner/OP

Vs.

Kamlavati Devi and another - Complainants/Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3481 of 2014 with I.A.6181/2014, I.A.6182/2014, I.A.6183/2014 (For Stay, Condonation of delay, Exemption from filing translation) & Date of Judgement: 18-09-2014.

v) Acts and Sections referred:

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Regarding the claim made by the Complainant, the National Commission held that there was no dispute that the amount claimed was payable to her and the dispute was only as to whether the payment had to come from the Bank or from the LIC. In this connection, the Commission held that if the Bank felt that the amount in question was required to be paid by the LIC and not by them, nothing prevented them from making the payment to the complainant and thereafter suing the LIC for recovery of the amount in accordance with law.
- b) Regarding the condonation of delay of 653 days, the Commission held the averments from the petitioner Bank that it was in July 2013, that it came to know that the lawyer was not attending to the cases entrusted to him and thereafter the file was taken back from him and entrusted to another Advocate. It was further contended that the new Advocate tried to find out the fate of the case but Registry of the State Commission could not locate the file, which ultimately was traced only during summer vacations of 2014 (which would mean in June 2014) but the revision came to be filed only in September 2014. This clearly showed that even after the file had been traced, no immediate steps were taken by the petitioner Bank to challenge the order of the State Commission. Therefore, the present revision petition was dismissed as barred by limitation.
- c) The Commission further held that it was open to the bank to sue LIC for recovery of the amount, if the bank felt so, after making payment to the complainant.

vii) Citation:

Not reported in CPJ and CPR.

2. Branch Manager, State Bank of Travancore and another Vs. Narendra and others

i) Case in Brief:

The Complainant/Respondent No.1 Narendra purchased five demand drafts, one from Union Bank of India and four from Petitioner No.1/OP.No.1 including one for a sum of Rs.25,000/- dated 28-01-1997 payable to one Mr.Pravin Gupta. All these five demand drafts were sent by speed post in a single envelope, vide Receipt No.463, dated 05.02.1997, addressed to Sh. Suresh Kumar Rastogi at Delhi. However, the addressee received only two demand drafts, instead of five. The demand draft of Rs.25,000/- in favour of Mr.Pravin Gupta was one of the three missing drafts. It is the case of the complainant that he received intimation to this effect from the addressee at Delhi on 07.02.1997 and on the very next day, i.e. on 08.02.1997, he approached Petitioner No.1/Opposite Party No.1 with a request that the payment of missing demand drafts should be stopped. Instructions were issued through telegram by Petitioner No.1/Opposite Party No.1 to Petitioner No.2/Opposite Party No.2, the branch at Delhi for stopping the payment. The complainant again met Petitioner No.1/Opposite Party No.1 on 11.02.1997. In his presence, Petitioner No.1/Opposite Party No.1 made a telephone call to Petitioner No.2/Opposite Party No.2 at Delhi, who confirmed that the draft in question was still unpaid. However, despite all these efforts, payment was made by Petitioner No.2/Opposite Party No.2 to an unknown person. The complainant again took up the matter with the petitioners/opposite parties who took the stand that the payment of the demand draft could not be stopped as per the legal provisions. The complainants then filed the consumer complaint before the District Forum in which the petitioners and postal authorities were arrayed as parties. The petitioners/opposite parties contested the complaint saying that petitioner No.2/opposite party No.2 had relied upon the endorsement made by the collecting bank i.e. Jai Laxmi Co-operative Bank, through which the drafts were presented for payment. The District Forum directed the petitioner no. 2/opposite party No.2 to pay Rs.25,000/- to the complainants along with 18% p.a. interest and a further compensation of Rs.1,000/- for mental/physical harassment and Rs.500/-, as cost of litigation. An appeal filed against this order by the petitioners/opposite parties has been dismissed. It is against this order that the present revision petition has been filed. Revision Petition was dismissed.

ii) Order appealed against:

From the order dated 30.09.2008 in First Appeal No.1356 of 1999 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Nagpur.

iii) Parties:

Branch Manager, State Bank of Travancore & Anr. - Petitioners

Vs.

Narendra and others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.147 of 2009 & Date of Judgement: 23-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 85A of the Negotiable Instruments Act.

vi) Issues raised and decided:

- a) From the perusal of the records, the National Commission upheld the concurrent findings of the District Forum and the State Commission that petitioner No.2/opposite party No.2 exhibited deficiency in service, because they made payment of Rs.25,000/- despite instructions to the contrary. Although, the petitioners had tried to take shelter under Section 85A of the Negotiable Instrument Act, saying that the payment of draft could not have been stopped, it was held that they should have exercised due care and caution to ensure that money was given to the person, in whose favour the draft had been made.
- b) It had been admitted by the petitioners in their reply to the complaint that it was their duty to exercise due care and caution, once the factum of loss of draft in transit came to their knowledge. However, they failed to exercise such due care and caution and hence, there was deficiency on their part vis-a-vis the complainant.
- c) In the light of the above circumstances, the present revision petition was dismissed and the orders of the fora below were upheld.

vii) Citation:

Not reported in CPJ and CPR.

3. ICICI Bank Ltd. Vs. Mr. Maharaj Krishan Datta and others

i) Case in Brief:

Complainants availed home loan from the Petitioner Bank in November, 2005 for purchase of a flat. Their grievance was that instead of charging interest at the agreed rate, the bank had charged a higher rate of 11.25% p.a for the period from 01-04-2007 to 31-03-2008 besides charging interest during pre-EMI period at 9.5% p.a. Complainants' complaint was allowed by the District Forum which directed the Petitioner Bank to charge interest at 7.25% p.a upto 31-03-2006, 7.75% for the period from 01-04-2006 to 30-10-2006 and thereafter at 8.75% p.a. It was also directed that the enhanced rate of interest shall not be more than the rate at which loan is advanced to new borrowers. A compensation of Rs.10,000/- along with interest at 12% p.a was also awarded to the complainant. On appeal by the Petitioner Bank, the State Commission permitted the bank to vary the rate of interest only as per the variation allowed by the Reserve Bank of India from time to time, granting the complainant benefit of minus 1.5% of the Floating Reference Rate (FRR). The award of compensation was upheld along with cost of litigation amounting to Rs.5,000/- Aggrieved by the order, the present revision petition has been filed by the Petitioner Bank. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 19-03-2010 in F. Appeal Nos.433/2009 and 434/2009 of the State Consumer Disputes Redressal Commission, UT Chandigarh.

iii) Parties:

ICICI Bank Ltd. - Petitioner

Vs.

Mr. Maharaj Krishan Datta and others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2216 of 2010 & Date of Judgement: 29-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

A conjoint reading of the clauses of the loan agreement showed that the complainant was liable to pay and the bank was entitled to recover Adjustable Rate of Interest which in turn would depend upon the ICICI bank Floating Reference Rate and the bank was entitled to revise the Floating Reference Rate from time to time. But this could be done only till the date of final disbursement of the loan. Since the final disbursement of the loan was made on 30-11-2006 and on that date FRR was 10.25%, the Bank was entitled to charge interest at FRR minus 1.5% p.a. It was held that the Bank was clearly negligent in rendering services to the complainant since it charged higher than 8.75% p.a even after 30-11-2006. It was therefore held that the State Commission's order did not call for any interference and the revision petition was accordingly dismissed.

vii) Citation:

IV (2014) CPJ 618; 2014(4) CPR 158.

4. Kalim Ansari Vs. Branch Manager, HDFC Bank Ltd. and others

i) Case in Brief:

Complainant/Petitioner received two cheques of Rs.6,08,038/- each from M/s. India Offset Printer against his job work which were deposited with OP/Respondent Bank. He withdrew Rs.1,00,000/- and Rs.15,000/- on two occasions using ATM facility. On 15-10-2009 & 22-03-2010, he tried to withdraw money from ATM of SBI, Kanpur and Axis Bank respectively but didn't succeed. He issued cheque for Rs.50,000/- dated 1-2-2010 to a third party which was returned by the bank with a note "No debit". Alleging deficiency, he filed complaint before the District Forum which dismissed the complaint with cost of Rs.5000/-. Appeal filed by the Complainant was partly allowed by the State Commission, imposition of cost was set aside and rest of the appeal was dismissed. Aggrieved by the said order, this revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 07-12-2012 in SC Case No.FA/295/2011 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

iii) Parties:

Kalim Ansari - Petitioner/Complainant

Vs.

Branch Manager,
HDFC Bank Ltd. and others - Respondents/Opp. Parties

iv) Case No and Date of Judgement:

Revision Petition No.1059 of 2013 & Date of Judgement: 14.10.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was noted that OP had resisted complaint in the Fora below on the ground that OP received written information from Okhla P.S to the effect that both the cheques deposited by the complainant were stolen cheques. It also transpired that there was litigation between M/s. India Offset Printer whose cheques were deposited by the complainant in his name and the complainant. It was also noted that Station House Officer Okhla P.S had asked respondent not to release money since an enquiry was pending. Hon'ble Apex Court in JT 1999(6) SC 92, *State of Maharashtra v. Tapas D. Neogy* had held that bank account is property within the meaning of Section 102 and Police officer can issue prohibitory orders in respect thereof. It was therefore held that Respondent had not committed any deficiency in refusing to encash cheques issued by the Complainant from his account after that date i.e 14-10-2009.
- b) The Commission held that there was no illegality, irregularity or jurisdictional error in the order of the State Commission and accordingly dismissed the revision petition.

vii) Citation:

IV (2014) CPJ 456; 2014(4) CPR 390.

5. Indian Overseas Bank Vs. K. Bal Reddy and another

i) Case in Brief:

Complainant/Respondent No.1 availed loan from the OP/Petitioner Bank by mortgaging the house that belonged to his wife, Complainant/Respondent No.2. The title deed of the property was deposited with the bank by way of an equitable mortgage. Though the entire loan had been repaid by April, 2009 the original sale deed was not returned by the Bank on the ground that it was not traceable. Alleging deficiency in service, the Complainant approached the District Forum which allowed the complaint and directed the OP to pay the complainant a sum of Rs.6,26,520/- (20% of the value of the property assessed by the Registration Department), Rs.1,00,000 towards compensation for mental agony and Rs.2,000/- towards cost. The bank was further directed to issue a certificate that the said original certificate was lost while in their custody and further to issue a paper publication about the loss. The State Commission on appeal by the Petitioner Bank reduced the quantum of compensation from Rs.6,26,520 to Rs.3,00,000/-. Aggrieved by the State Commission's order, the present revision petition has been filed. Revision Petition dismissed as devoid of merit with cost assessed at Rs.25,000/-.

ii) Order appealed against:

From the order dated 13-06-2014 in F.A.No.620 of 2013 of the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad.

iii) Parties:

Indian Overseas Bank

- Petitioner

Vs.

K. Bal Reddy and another

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3800 of 2014 with IA.No.7255 of 2014 (For Stay) & Date of Judgement: 15-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was noted that the Bank never disputed that the title deed was lost while in bank custody. It was held that the loss of title deed by the bank would inevitably result in substantial erosion in the resale value of the property that is the subject matter of the deed. Moreover, in case the owner of the property wants to raise a loan by mortgaging the said property, the lender may not accept the mortgage without the title deed. Considering the likely erosion in the resale value, it was held that the compensation awarded by the State Commission cannot at all be considered on the higher side. In fact, in the opinion of the National Commission, it was on the lower side. Consequently, the revision petition was dismissed as devoid of merit and the petitioner bank was directed to pay Rs.25,000/- as cost to be deposited with the Consumer Legal Aid A/c of the NCDRC.

vii) Citation:

2014(4) CPR 592.

6. State Bank of India Vs. Prakash Dhondiram Bhosale

i) Case in Brief:

The complainant obtained an FDR of Rs.4 lakhs from the petitioner Bank, in his personal name on 03.03.2007. The FDR was effective from 24.02.2007 and was to mature on 24.05.2007. The case of the complainant was that on 24.05.2007, he visited the concerned branch and submitted the original FDR to the Bank, for renewal for a further period of six months by putting a signature on its back side. Thereafter, vide letter dated 15-11-2007, the complainant claimed the amount of the FDR, but there was no response from the Bank. So, the complainant filed complaint before the District Forum, alleging deficiency on the part of the petitioner Bank. The District Forum directed the petitioner Bank to pay within 45 days, the amount of the FDR along with interest, compensation amounting to Rs.3,000/- and cost of litigation amounting to Rs.2,000/-, to the complainant. Being aggrieved from the order of the District Forum, the petitioner Bank approached the State Commission by way of an appeal. The said appeal having been rejected, the Bank has filed this revision petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 24.02.2014 in First Appeal No.423 of 2009 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Aurangabad.

iii) Parties:

State Bank of India

- Petitioner

Vs.

Prakash Dhondiram Bhosale

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2648 of 2014 & Date of Judgement: 29.10.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Once the complainant had taken the stand that he never instructed the petitioner Bank to credit the amount of the FDR to the account of Dulux Polymer Industries, it was incumbent upon the petitioner Bank to name the official, who made the above referred endorsement and file his affidavit by way of evidence. This was more so, when the endorsement envisaged payment to the account of a person, other than the FDR holder. That having not been done, the petitioner Bank has failed to establish that the aforesaid endorsement of the FDR was made on instructions of the complainant.
- b) As a result, there was no escape from the conclusion that the Bank wrongly credited the proceeds of the FDR to the account of Dulux Polymer Industries. Consequently, the deficiency on the part of the petitioner Bank in providing services to the complainant cannot be denied. Therefore, orders of the State Commission were upheld and the present revision petition was dismissed.

vii) Citation:

2014(4) CPR 548.

7. M.L. Sehgal Vs. Shalu Chandna and others

i) Case in Brief:

There are nine revision petitions between the same parties involving common questions of law and facts. Facts from the Case R.P.3733 of 2013 are discussed here. Respondent No.4/OP.2 is the President of Respondent No.3/OP.1 and Mr.M.L.Sehgal, Petitioner/OP.3 is the Vice-President of the society. The case of the Complainants 1 & 2/ Respondents 1 & 2 was that they had deposited huge amounts with the co-operative thrift society (Respondents 3 to 5) under fixed deposit receipts and the OPs did not make payment of the maturity amount of the deposits to the complainants. The District Forum before whom the complaint had been filed held that Mr.M.L.Sehgal did not have any role as he had already resigned from the society and granted reliefs to the complainant against OPs 1, 2 & 4. They were directed to pay the maturity amount of each FDR to the complainants with future interest at 8 % p.a from the date of respective maturity of each FDR till actual realization. The State Commission before whom the first appeal was filed by the Complainant accepted the appeal against OPs and all of them were saddled with the liability jointly and severally. The present revision petitions challenging the State Commission's order were dismissed with costs of Rs.25,000/- in each of the nine cases to be paid to each of the complainants in equal proportion through demand drafts within 90 days.

ii) Order appealed against:

Revision Petition No.3733 of 2013

From the order dated 22-07-2013 in F.Appeal No.215/2013 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

Revision Petition No.3734 of 2013

From the order dated 22-07-2013 in F.Appeal No.216/2013 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

Revision Petition No.3735 of 2013

From the order dated 22-07-2013 in F.Appeal No.217/2013 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

Revision Petition No.3736 of 2013

From the order dated 22-07-2013 in F.Appeal No.218/2013 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

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Revision Petition No.3737 of 2013

From the order dated 22-07-2013 in F.Appeal No.219/2013 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

Revision Petition No.3738 of 2013

From the order dated 22-07-2013 in F.Appeal No.220/2013 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

Revision Petition No.3739 of 2013

From the order dated 22-07-2013 in F.Appeal No.221/2013 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

Revision Petition No.3740 of 2013

From the order dated 22-07-2013 in F.Appeal No.222/2013 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

Revision Petition No.3741 of 2013

From the order dated 22-07-2013 in F.Appeal No.223/2013 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Revision Petition No.3733 – 3741 of 2013

M.L. Sehgal - Petitioner

Vs.

Shalu Chandna and others - Respondents

iv) Case No and Date of Judgement:

- i. Revision Petition No.3733 of 2013 with IA No.6631 of 2013, IA No.5606 of 2014 (for Stay, Substituted Service);
- ii. Revision Petition No.3734 of 2013 with IA No.6632 of 2013 (for Stay);
- iii. Revision Petition No.3735 of 2013 with IA No.6633 of 2013 (for Stay);
- iv. Revision Petition No.3736 of 2013 with IA No.6634 of 2013 (for Stay);
- v. Revision Petition No.3737 of 2013 with IA No.6635 of 2013 (for Stay);

- vi. Revision Petition No.3738 of 2013 with IA No.6636 of 2013 (for Stay);
- vii. Revision Petition No.3739 of 2013 with IA No.6637 of 2013 (for Stay);
- viii. Revision Petition No.3740 of 2013 with IA No.6638 of 2013 (for Stay);
- ix. Revision Petition No.3741 of 2013 with IA No.6639 of 2013 (for Stay) &

Date of Judgement: 03-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The main contention of the Petitioner before the State Commission and also in the revision petitions was that he had already resigned on 14.4.2004 and his resignation had been accepted by the Asst. Registrar, that he had no role play and he cannot be burdened with the liability. This contention was rejected by the State Commission for the reasons that: (1) the Deputy Registrar had set aside the order passed by the Asst. Registrar (2) the Petitioner had signed a number of cheques in 2005, 2006 and 2007 and (3) the Petitioner had written various letters including one dated 13-11-2005 which was received in the office of the Registrar of Co-operative societies.
- b) Upholding the State Commission's findings, the National Commission held that the main liability lies with the Petitioner himself. The Revision Petitions were therefore dismissed with costs of Rs.25,000/- in each of the nine cases to be paid to each of the Complainants/Consumers by the Petitioner in equal proportion through Demand Drafts within 90 days.

vii) Citation:

Not reported in CPJ and CPR.

8. Branch Manager, ICICI Bank Ltd. and another Vs. Sh.Ramkishan Choudhary and others

i) Case in Brief:

The Complainant/Respondent No.1 received the cheque for Rs.1,00,000/- drawn on ICICI Bank, OPs.1 & 2 from Mr.Madan Gopal, OP.4/ Respondent No.3 which was deposited with OP.3/Respondent No.2. ICICI Bank returned the cheque by a memo with the endorsement "Cheque destroyed." Alleging deficiency in service, a complaint was filed with the District Forum which partly allowed the complaint and directed that the complainant can get the balance amount from OP No.4. It also granted a sum of Rs.5,000/- as compensation and Rs.2000 as legal cost. The State Commission before whom an appeal was filed modified the order and directed the OPs 1 & 2 to pay to the complainant a sum of Rs.1 Lakh with interest at 9% p.a from the date of filing of the complaint till realization. The present revision petition has been filed challenging the State Commission's order. Petition was allowed partly. The order passed by the State Commission was set aside and the order of the District Forum restored with certain modifications.

ii) Order appealed against:

From the order dated 4-3-2014 in F.Appeal No.40 of 2013 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

Branch Manager, ICICI Bank Ltd and another - Petitioners

Vs.

Sh.Ramkishan Choudhary and others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1806 of 2014 & Date of Judgement: 03-11-2014.

v) Acts and Sections referred:

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It has held that the ICICI Bank had no business to destroy the cheque. If the account of OP.4 was closed as claimed by the Petitioners, they should have returned the cheque to OP.3/Respondent No.2 with remarks. Citing earlier judgements of the Commission viz. *Canara Bank*

v. *Sudhir Ahuja I* (2007) CPJ 1 (NC), *Vijaya Bank v. M/s.Nectar Beverages Pvt. Ltd. and Ors.* R.P No.4201 of 2007 wherein it was held that on grounds of deficiency in service, the Bank can be ordered to pay the compensation and not the entire amount of the cheque, the Commission directed the petitioners No.1 & 2/OPs 1 & 2 to pay an amount of Rs.30,000/- jointly to the complainant within 6 weeks. Since the Petitioner was held to be terribly remiss in discharge of its duties, further cost of Rs.20,000/- was imposed to be paid to the Consumer Welfare Fund of the Central Government.

vii) Citation:

II (2015) CPJ 269.

9. Harjit Singh Vs. The Punjab National Bank and another

i) Case in Brief:

The case of the complainant/petitioner is that he went to the ATM booth of the opposite party No.1-Punjab National Bank for withdrawing a sum of Rs.5,000/. After he had inserted the ATM card inside the machine, an unknown person entered the ATM booth. The aforesaid person offered to help the complainant in withdrawing cash through the ATM. In good faith, the complainant took his help. While the complainant was counting the cash the aforesaid person deceitfully changed the ATM card of the complainant by another similar card. Complainant claims that he came to know later that a sum of Rs.3,42,000 had been fraudulently drawn from his account between 6-7-2012 and 21-7-2012. Alleging deficiency in service on the part of the Punjab National Bank by not deploying a guard outside the ATM booth, the complainant approached the concerned District Forum. The Forum directed the Respondent No.1 Bank to refund the amount of Rs.3,42,000/- to the complainant, along with interest on that amount at the rate of 9% per annum. The bank was also directed to pay Rs.10,000/- as compensation and Rs.5,000/- as cost of litigation, to the complainant. Being aggrieved from the order of the District Forum, the Punjab National Bank approached the State Commission by way of an appeal. The State Commission allowed the appeal and set aside the order passed by the District Forum. Being aggrieved from his complaint being dismissed, the complainant filed this revision petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 08-07-2014 in FA No.1183 of 2013 of the Punjab State Consumer Disputes Redressal Commission, at Chandigarh

iii) Parties:

Harjit Singh - Petitioner

Vs.

The Punjab National Bank and another - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3945 of 2014 & Date of Judgement: 07-11-2014.

v) Acts and Sections referred:

Section 2 (1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that the complainant should not have shared the ATM card and the pin with a stranger and he should not have inserted the card and entered the ATM pin in the presence of a stranger. If the Complainant had taken minimum precautions, it would not have been possible for the stranger to know the pin allocated to the complainant. Therefore, it was held that the incident took place solely on account of negligence of the complainant and consequently the present revision petition was dismissed.

vii) Citation:

Not reported in CPJ and CPR.

10. The Manager, UCO Bank Vs. Santosh Kumar Ray

i) Case in Brief:

Complainant/Respondent had a locker in the petitioner's Bank. They used to keep gold ornaments of about 16.5 Bharris in the locker. On 31.7.2009, when he went to the Bank to operate the locker, he found that locker box was empty and all the ornaments lying in the locker were stolen. His FIR was not recorded by Police Station. Later on, he filed complaint before Additional Chief Judicial Magistrate and complaint was sent under Section 156 (3) Cr.P.C. to the Police Station and FIR

was registered. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which directed Petitioner Bank to pay compensation of Rs.3,53,380/- towards the value of the stolen ornaments and further allowed Rs.1,000/- as litigation cost. Appeal filed by the petitioner was dismissed by the State Commission against which this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 13.11.2013 in S.C. Case No. FA/190/2011 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

iii) Parties:

The Manager, UCO Bank - Petitioner/Opp. Party (OP)

Vs.

Santosh Kumar Ray - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.909 of 2014 with IA/603/2014 (For Stay) & Date of Judgement: 13-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- 1) The issue was whether the orders of the District Forum are vitiated on the ground that OP Bank was not impleaded and no fair hearing was given to OP which in turn nullifies the orders of the State Commission also.
- 2) It was noted that the Senior Manager and Manager as on 31.07.2009 were impleaded by the complainant as OPs before the District Forum but not the bank. While the OPs did not appear before the Forum and were proceeded ex-parte, no order was passed against them while complaint was allowed against the petitioner bank and it was directed to pay compensation.
- 3) Held that revision petition should be allowed and the matter should be remanded back to the District Forum with liberty to complainant to move an application for impleadment of petitioner as OP and the forum, if law permitted, will implead petitioner as

OP and decide the complaint in accordance with law. The orders of the fora below were set aside.

vii) Citation:

Not reported in CPJ and CPR.

11. Sh. Raj Kumar and others Vs. Punjab National Bank and another

i) Case in Brief:

The Petitioners took a loan of Rs.3,30,000/- from Punjab National Bank for purchasing a tractor. The Government of India with a view to grant debt waiver and debt relief to certain farmers formulated a scheme known as Debt Waiver & Debt Relief Scheme, 2008. The scheme provided for waiver of eligible amount which was defined in Clause 4.1 of the scheme. Clause 5 of the scheme provided that in the case of a small or marginal farmer, the entire "eligible amount" shall be waived. In the case of 'other farmers' there was a One Time Settlement (OTS) Scheme under which the farmer was to be given a rebate of 25 percent of the 'eligible amount' subject to certain conditions. In the present case, the petitioner claimed for the rebate of entire amount for which this Revision Petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 08.08.2014 in First Appeal No.198 of 2014 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Sh. Raj Kumar and others - Petitioners

Vs.

Punjab National Bank and another - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4101 of 2014 with IA/7984/2014 (for Exemption from filing the Certified Copy) & Date of Judgement: 19-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue was whether the Petitioners can claim rebate of the entire loan amount on the ground that they are marginal farmers within the meaning of clause 3.5 of the scheme since they were cultivating agricultural land up to one hectare.
- b) Held that from a perusal of Clause 5.1 of the scheme it is clear that only the eligible amount and not the entire loan amount was to be waived under the scheme. Admittedly the overdue amount as on 31.12.2007 was only Rs.76,761/- and benefit for the said amount has already been given to the Petitioners/Complainants. So, the petitioners were not entitled to the waiver of the entire loan amount, which was payable to the Bank on the date the scheme came to be notified. Therefore, it was held that there was no deficiency on the part of the Bank in rendering services to the Petitioners/Complainant.
- c) The Revision Petition was dismissed and the orders of the fora below were upheld.

vii) Citation:

2015(1) CPR 75.

12. Bank of India & Anr. Vs. Smt. Bilquis Bano

i) Case in Brief:

Respondent/Complainant was issued an ATM cum Debit Card by the Petitioner Bank. The bank claimed that the card was collected by the representative of the complainant from the branch whereas the ATM pin was mailed to her on 22.03.2007. When the complainant sought to withdraw some cash from her account 22.06.2009, she was informed that there was no balance left in her account. On collecting the statement from the bank, the complainant came to know that a sum Rs.4,36,433/- had been withdrawn from her account on several dates between 20.04.2009 and 18.06.2009. Alleging deficiency in service, Complainant approached the District Forum which, allowing the complaint, directed the petitioner bank to transfer a sum of Rs.4,29,933/- in the account of the complainant, pay interest @ 9% p.a. along with compensation amounting to Rs.50,000/-. Both the

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complainant and the petitioner filed separate appeals before the State Commission which held that the complainant was entitled to receive Rs.4,55,000/- from the bank. However, the direction to pay compensation of Rs.50,000/- was set aside. Being aggrieved from the order of the State Commission, present revision petitions have been filed. Both the petitions dismissed.

ii) Order appealed against:

Revision Petition No.233 of 2012

From the order dated 02.11.2011 in First Appeal No.770 of 2010 of the M.P. State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.459 of 2012

From the order dated 02.11.2011 in First Appeal No.1147 of 2010 of the M.P. State Consumer Disputes Redressal Commission, Bhopal.

iii) Parties:

Revision Petition No.233 & 459 of 2012

Bank of India & Anr.

- Petitioner

Vs.

Smt. Bilquis Bano

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.233 of 2012 with IA/7366/2014;

Revision Petition No.459 of 2012 with IA/7367/2014; (For Early Hearing)
& Date of Judgement: 25-11-2014

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The question that arose for consideration was whether the ATM Card used for withdrawing cash from the bank account of the complainant was received by her through her authorized representative or not. The bank did not have any acknowledgement from the complainant as regards the receipt of the ATM cum debit card. Held that the alleged delivery of the ATM cum debit card to the alleged authorized representative of

the complainant without taking any authority letter from her was an act of deficiency in services by the bank to the complainant.

- b) The Petitioner bank also failed to prove the delivery of the ATM pin to the complainant. Held that the bank could not prove the delivery of the ATM pin to any person at all.
- c) Consequently, no merit was found in the revision petitions and they were accordingly dismissed.

vii) Citation:

2015(1) CPR 27.

13. Chairman, Cuttack Gramya Bank & Ors. Vs. Bansidhar Routray

i) Case in Brief:

Complainant/Respondent claimed that he had a balance of Rs.25,000/- in a Saving Bank Account in the Petitioner Bank. It was his grievance that the bank refused to pay the amount on the ground that there was very little balance on his account. Complainant/Respondent approached the District Forum which directed the petitioner to pay a sum of Rs.25,099/- to the complainant along with interest in addition to Rs.500/- as compensation. The State Commission dismissed the appeal filed by the Petitioner. This revision petition has been filed challenging the order of the State Commission. Orders of the State Commission and the District Forum were set aside and the matter remanded back to the District Forum for fresh adjudication.

ii) Order appealed against:

From the order dated 16-09-2008 in CD Appeal No.1298 of 2003 of the Odisha State Consumer Disputes Redressal Commission at Cuttack.

iii) Parties:

Chairman, Cuttack Gramya Bank & Ors. - Petitioner

Vs.

Bansidhar Routray - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4975 of 2008 & Date of Judgement: 25-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue was whether the deposit of Rs.25,000/- was made with the concerned branch during normal banking hours or it was made with the cashier at his residence. The High Court of Orissa which heard this case in which the Respondent was also one of the petitioners did not give any clear cut finding.
- b) Since no evidence was led by the parties before the District Forum, it was deemed necessary to remit the matter back to the District Forum to record a finding on the disputed question of fact after giving opportunities to both the parties to lead evidence.
- c) Impugned order passed by the State Commission and the District Forum was set aside and matter remitted back to the District Forum to return a finding whether the amount of Rs.25,000/- was deposited by the complainant during normal banking hours on 18.01.1999 or it was deposited with an employee of the bank outside the bank premises.

vii) Citation:

2015(1) CPR 24.

14. Inder Mohan Vs. The Manager (NRI Division), State Bank of India

i) Case in Brief:

Complainant/appellant, a Non-Resident Indian (NRI) working in Abu Dhabi, remitted 50,000 US\$ out of his foreign exchange account and was allotted NRI (Second Series) Bonds on 1.4.1991 with maturity on 1.4.1998. On 23.3.1999, OP/Respondent issued letter reminding complainant to surrender NRI Bonds for redemption. Complainant surrendered NRI Bond on 9.3.2000 with a request to re-invest the rupee maturity proceeds of Rs.41,60,213/- in a special term deposit for a period of 30 months. OP invested maturity proceeds for a period of 30 months commencing from 23.3.2000 and denied payment of interest

from 1.4.1998 to 17.3.2000. In spite of notice interest was not paid. Alleging deficiency on the part of OP, complainant filed complaint before State Commission which dismissed complaint against which this appeal has been filed. Appeal dismissed.

ii) Order appealed against:

From the order dated 29.12.2010 in Complaint No.93/2000 of the A.P. State Consumer Disputes Redressal Commission, Hyderabad.

iii) Parties:

Inder Mohan - Appellant/Complainant

Vs.

The Manager (NRI Division),
State Bank of India - Respondent/ Opp.Party

iv) Case No and Date of Judgement:

First Appeal No. 117 of 2011 & Date of Judgement: 26-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue is whether any interest was payable on the amount invested in NRI Bonds from the date of maturity i.e. from 1.4.1998 to 17.3.2000 when bonds were redeemed?
- b) The Commission rejected appellant's contention that appellant's son was previously paid interest after maturity period and in such circumstances, appellant was also entitled to get interest on this amount.
- c) Appellant requested OP to invest this amount in a special term deposit account for 30 months from 1.4.1998 and alleged that OP committed mistake in putting this amount in term deposit from 18.3.2000. He also added that OP should have returned maturity amount to the complainant instead of depositing it from 18.3.2000. Held that merely because the amount has been deposited for 30 months from 18.3.2000, no deficiency can be attributed on the part of OP in not depositing it from 1.4.1998. When complainant came to know about investment of money from 18.3.2000, he could have asked OP to return the amount instead of investing

it for 30 months, but he has not asked OP to return the amount and in such circumstances, appellant is not entitled to any relief.

- d) Further held that, OP acted as agent of RBI and whatever was received from RBI was given by OP to the complainant and no deficiency can be attributed on the part of OP without impleading RBI as necessary party in the complaint. Therefore, the appeal was dismissed and the orders of the fora below were confirmed.

vii) Citation:

I (2015) CPJ 528; 2015(1) CPR 16.

15. Sri MGK Murty Vs. Sri Umesh Kumar Gopala and another

i) Case in Brief:

In this case, Petitioner/Complainant availed a loan in the sum of Rs.38,000/- from SBI Credit. He was charged interest and processing fee in advance for two years and EMI was fixed at Rs.1,900/- per month for 24 months. Although, he paid the EMI regularly, yet, he was charged with penalties and he had to pay more than the required amount. The petitioner protested but did not get satisfactory reply. He approached the Banking ombudsman and ultimately filed a complaint before the District Forum which held that the complainant is entitled to the refund of amount in the sum of Rs.46,610/- from the date of filing of the complaint till realization, together with interest @ 9% per annum. It also awarded compensation in the sum of Rs.10,000/-. The Complainant filed an appeal for enhancement of the compensation which was dismissed by the State Commission. This revision petition filed against the State Commission's order was also dismissed.

ii) Order appealed against:

From order dated 22.05.2013 in First Appeal No.677 of 2012 of the A.P. State Consumer Disputes Redressal Commission, Hyderabad.

iii) Parties:

Sri MGK Murty

- Petitioner

Vs.

Sri Umesh Kumar Gopala and another

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No. 3179 of 2013 & Date of Judgement: 01-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) In this case, the Complainant filed the appeal to get the compensation to be increased to the tune of Rs.2,00,000/- and he also claimed that he is an old person suffering from various ailments. He could not show to the satisfaction of the National Commission that those ailments had arisen due to this case.
- b) Held that it is true that exemplary damages vindicate the strength of Law and act as a check of arbitrary and capricious exercise of power but in the circumstances prevailing in India, the compensation granted by the Fora below is correct and cannot be faulted.

vii) Citation:

I (2015) CPJ 278.

16. The Manager, Cauvery Kalpatharu Grameena Bank Vs. Shri. H.S.Shivalingappa

i) Case in Brief:

Complainant/Respondent availed loan of Rs.40,000/- from OP1/ Petitioner No.1 on 06.05.2006 to grow coconuts and bananas. He claimed that the OPs had wrongly deprived him of the loan waiver under the Agricultural Debt Waiver and Debt Relief Scheme, 2008. Opposite party claimed that the complainant had already made payment of Rs.43,200/- in January,2008. However, District Forum allowed the complaint and directed OP to waive the loan and pay Rs.5,000/- as cost. Appeal filed by the OP in State Commission dismissed. Present Revision Petition against the State Commission's order allowed.

ii) Order appealed against:

Against Order dated 06-04-2011 in First Appeal No.2764/2010 of the State Commission, Karnataka.

iii) Parties

The Manager, Cauvery Kalpatharu Grameena Bank - Petitioner

Vs.

Shri. H.S. Shivalingappa - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1353 of 2012 & Date of Judgement: 09-12-2014.

v) Acts and Sections referred:

Section 2(1)(g) & (o), 19 & 21(b) of The Consumer Protection Act,1986.

vi) Issues raised and decided:

- a. OP contended that as no loan was outstanding against the complainant, he was not entitled to any waiver.
- b. As per documents, complainant deposited Rs.3,200/- on 21.01.2008 and Rs.40,000/- on 24.01.2008 and nothing remained due against the complainant. As per the scheme loan was to remain unpaid till 29.02.2008 whereas in the case on hand, the loan stood repaid by 24.01.2008.
- c. The amount of Rs.65 shown as outstanding in the passbook may be pertaining to interest. Even if this amount is unpaid, it stands waived in the light of the scheme.
- d. Orders passed by the District Forum and State Commission were set aside. Complaint became infructuous as repayment had already been made.

vii) Citation:

I (2015) CPJ 234; 2015(1) CPR 362.

17. Bharpur Singh Vs. Axis Bank Ltd. and another

i) Case in Brief:

Petitioner had opened an account with Respondent/Bank at Chandigarh and deposited Rs.11,93,304/- in the said account. Subsequently, when he approached the bank for withdrawing the amount he was told that amount has already been withdrawn through cheque No.063989 dated 12.6.2008 in favour of one Gurwinder Singh. According to the

petitioner, he never issued the said cheque allowing the said withdrawal. He filed consumer complaint seeking refund of Rs.11,83,000/- and compensation of Rs.2 Lacs on account of mental harassment besides cost of litigation. District Forum directed the O.Ps to jointly and severally credit the amount of Rs.11.83 lacs in the saving bank account of the complainant and to pay to the complainant the sum of Rs.2 lacs as compensation for causing harassment, mental agony besides paying Rs.5,000/- as cost of litigation. Being aggrieved, Respondent – Bank filed appeal before the State Commission, which allowed the same and set aside the order of the District Forum. Revision Petition filed by the Petitioner dismissed.

ii) Order appealed against:

R.P.No.02 of 2011

Against the order dated 16.11.2010 in Appeal No.141/2010 of the State Commission, UT Chandigarh.

R.P.No.03 of 2011

Against the order dated 16.11.2010 in Appeal No.142/2010 of the State Commission, UT Chandigarh.

R.P.No.04 of 2011

Against the order dated 16.11.2010 in Appeal No.143/2010 of the State Commission, UT Chandigarh.

R.P.No.05 of 2011

Against the order dated 16.11.2010 in Appeal No.144/2010 of the State Commission, UT Chandigarh.

R.P.No.06 of 2011

Against the order dated 16.11.2010 in Appeal No.145/2010 of the State Commission, UT Chandigarh.

R.P.No.07 of 2011

Against the order dated 16.11.2010 in Appeal No.146/2010 of the State Commission, UT Chandigarh.

R.P.No.08 of 2011

Against the order dated 16.11.2010 in Appeal No.147/2010 of the State Commission, UT Chandigarh.

iii) Parties:

R.P.No.02 of 2011

Bharpur Singh

- Petitioner

Vs.

Axis Bank Ltd. and another

- Respondent(s)

R.P.No.03 of 2011

Harman Singh

- Petitioner

Vs.

Axis Bank Ltd. and another

- Respondent(s)

R.P.No.04 of 2011

Harinderpal Singh

- Petitioner

Vs.

Axis Bank Ltd. and another

- Respondent(s)

R.P.No.05 of 2011

Pal Singh

- Petitioner

Vs.

Axis Bank Ltd. and another

- Respondent(s)

R.P.No.06 of 2011

Jasvir Singh

- Petitioner

Vs.

Axis Bank Ltd. and another

- Respondent(s)

R.P.No.07 of 2011

Prem Singh

- Petitioner

Vs.

Axis Bank Ltd. and another

- Respondent(s)

R.P.No.08 of 2011

Gurinder Singh

- Petitioner

Vs.

Axis Bank Ltd.

- Respondent(s)

iv) Case No and Date of Judgement:

a) Revision Petition No.02 of 2011

b) Revision Petition No.03 of 2011

- c) Revision Petition No.04 of 2011
- d) Revision Petition No.05 of 2011
- e) Revision Petition No.06 of 2011
- f) Revision Petition No.07 of 2011
- g) Revision Petition No.08 of 2011 &

Date of Judgement: 11-12-2014.

v) Acts and Sections referred:

Section 2(1) (g), (o), 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was pleaded that cheque of Rs.11.83 Lacs was issued by the petitioner to Gurwinder Singh. However, petitioner never reported the loss of the cheque book nor asked for “stop payment”. Petitioner’s contention that no cheque was issued by him to Gurwinder Singh, was therefore incorrect.
- b) It was stated by the Respondent Bank, that signatures of the petitioner on the cheque in question were duly compared by the staff of the Bank and appeared to be similar with the standard signature. Further, cheque itself was issued from the cheque book issued to the petitioner. Thus, there could be no doubt in the mind of the Bank officials not to encash the same. Hence, there was no deficiency in service on their part.
- c) It was noted that Gurwinder Singh has neither been made a party to the present complaint nor has been summoned as a witness by the complainant to prove his contention which gives rise to the suspicion that the complainant and Gurwinder Singh have joined hands with each other to defraud the Bank
- d) It was held that there is no deficiency in service on the part of OPs and all the complaints filed by the respective complainants were liable to be dismissed.

vii) Citation:

I (2015) CPJ 294; 2015(1) CPR 330.

18. M/s. Sushant Minerals Pvt. Ltd. Bhubaneswar, Odisha Vs. M/s. IndusInd Bank Ltd. Odisha

i) Case in Brief:

Complainant which was maintaining a current account in the OP Bank accepted the offer of the bank to avail the facility of forward contract and for providing this facility, OP bank also offered credit limit of Rs.15 crores. As part of the contract, Complainant Company furnished a fixed deposit of Rs.75 lakhs to the OP bank on 28.09.2010. It is the complainant's grievance that the OP bank indulged in crediting or deducting various sums in the account of the complainant on different dates without issuing advice after 28.09.2010. Complainant filed the present complaint alleging deficiency in service on the part of the OP Bank. Held that the services of the OP bank availed of by the complainant in respect of hedging against currency was for commercial purpose during the course of its business and involved profit motive and as such the complainant cannot be covered under the definition of Consumer. Complaint dismissed as not maintainable.

ii) Order appealed against:

Original Complaint.

iii) Parties:

M/s. Sushant Minerals Pvt. Ltd.
Bhubaneswar, Odisha

- Complainant

Vs.

M/s. IndusInd Bank Ltd. Odisha

- Opposite Party

iv) Case No and Date of Judgement:

Consumer Complaint No.328 of 2012 & Date of Judgement: 12-12-2014.

v) Acts and Sections referred:

Sections 2(1)(d)(ii),(g),(o) & 21(a)(i) of The Consumer Protection Act,1986.

vi) Issues raised and decided:

- a. Complainant's contention that the service availed of, by way of insurance through a contract for hedging against currency, will not be hit by provisions of Section 2(1)(d)(ii) of the Act is not acceptable because as per the definition of the terms "Hedging" and "Insurance" given in Black's Law Dictionary (6th Edition), the two terms have distinct and different meanings. Hedging even

though it provides protection to the person who avails of the facility under a contract cannot be called Insurance.

- b. The Services of the opposite party availed of by the complainant was for commercial purpose during the course of its business and involved profit motive. Therefore, complainant cannot be covered under the definition of “Consumer” as specified under Section 2(1)(d)(ii) of the Act.

vii) Citation:

I (2015) CPJ 404; 2015(1) CPR 306.

19. Bank of India, Agra Vs. Harendra Kumar & Anr.

i) Case in Brief:

Complainant/Respondent intended to purchase property of Mittal Flour Mill which was mortgaged by Mittal Flour Mill with the opposite party for a sum of Rs.12 lakhs. He deposited Rs.4 lakhs and submitted that remaining Rs.8 lakhs would be deposited on accepting offer. It was further mentioned that in case the proposal was not accepted, the amount deposited would be refunded back to the complainant. Later on complainant came to know that Mittal Flour Mill had entered into a compromise with the Petitioner. Since the deposit of Rs.4 lakhs with interest was not refunded, complainant approached the District Forum which allowed the complaint and directed the opposite party to refund Rs.4 lakhs with 6% interest and allowed Rs.2,000/- as cost of litigation. Both the parties preferred appeal before the State Commission which allowed the appeal of complainant and enhanced the rate of interest from 6% p.a. to 12% p.a. Revision petition filed by the petitioner against the State Commission’s order is dismissed.

ii) Order appealed against:

Order dated 20.11.2012 in Appeal No.659 of 2011 and 752 of 2011 of State Commission, U.P, Lucknow.

iii) Parties:

Bank of India, Agra

- Petitioner

Vs.

Harendra Kumar & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.542 of 2013 & Date of Judgement: 16-12- 2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 & 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) When the Complainant/Respondent's offer was not accepted, the bank should have refunded the deposit with interest. The opposite party should not have appropriated the amount of Rs.4 lakhs deposited by the respondent towards settling the outstanding loan of Mittal Flour Mill. Complainant never agreed for adjusting the aforesaid Rs.4 lakhs in the loan account of Mittal Flour Mill but this amount was deposited for purchase of Mittal Flour Mill which was mortgaged to opposite party.
- b) Held that the argument of the counsel for the petitioner that the complainant did not fall within the purview of "consumer" as he had not hired any services is devoid of any force. Hon'ble Supreme Court in Civil Appeal No.6237 of 1990 – *Lucknow Development Authority v. M.K.Gupta* had observed that when banks advance loan or accept deposit or provide facility of locker, they undoubtedly render service.
- c) The argument that the complaint is time barred was not substantiated.
- d) Held that there is no illegality, irregularity or jurisdictional error in the order of the State Commission.

vii) Citation:

I (2015) CPJ 189; 2015(1) CPR 150.

20. Raghendra Nath Sen and Another Vs. Punjab National Bank

i) Case in Brief:

The complainant checked his balance at the SBI ATM at 13.08 hrs. on 03.10.2011 and found that the balance in his account was Rs.54,500.00 Complainant again checked his balance on the same day at 2.14 p.m. with Punjab National Bank and found that the aforesaid balance at

reduced to Rs.49,500/- and a sum of Rs.5,000/- had been debited in his account. But the complainant pleaded that he had withdrawn only Rs.1,000/- from the account. In spite of complaint filed with the Customer Care the amount wrongly debited in his account as alleged by the Complainant was not credited back to his account for which he approached the District Forum. The District Forum having decided in favour of the complainant, the bank approached the concerned State Commission by way of an appeal which was allowed. Being aggrieved by the order passed by the State Commission, the complainant filed this revision petition. Petition dismissed.

ii) Order appealed against:

Against the order dated 25.9.2014 in S.C. Case No.FA/314/2013 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

iii) Parties:

Raghabendra Nath Sen and Another - Petitioner(s)

Vs.

Punjab National Bank - Respondent(s)

iv) Case No and Date of Judgement:

Revision Petition No.3973 of 2014 & Date of Judgement: 17-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The ATM pin is known only to the customer and therefore, it is not possible for a third person to withdraw any cash through the ATM even if he is able to clone the ATM/debit card issued to the customer.
- b) It is not the case of the complainant that he had lost the ATM card issued to him by the bank. The said card was duly used at the ATM machine for making the transaction in question. The ATM pin obviously, must have been used since no transaction at ATM machine is possible without use of the PIN.
- c) The contention of the complainant that the amount of Rs.5,000/- from his account was withdrawn by a third person and not by him cannot be accepted. Even if the said amount was withdrawn

by a third person, he would have done it using the ATM card provided to him by the complainant and the ATM pin disclosed by him.

- d) Another suspicious circumstance is that no complaint was immediately lodged with the Bank. The complaint came to be lodged only after Puja holidays on 07.10.2011. Even if the branch was closed on 4th, 5th and 6th October, 2011, the complainant could easily have lodged the complaint with the phone banking/customer care of the bank, which works even on holidays, at least during the bank hours.
- e) The revision petition was dismissed.

vii) Citation:

I (2015) CPJ 254; 2015(1) CPR 143.

21. Shri Ranjit Singh Minhas Vs. State Bank of India and Others

i) Case in Brief:

Complainant's son died in a road accident. He had availed an education loan from Respondent Bank which was covered by the Insurance Policy taken from SBI Life Insurance. Amount payable under the policy was not released on the ground that renewal premium was not paid. District Forum to whom the complaint was made dismissed it. Appeal before the State Commission was also dismissed. Complainant's case was that renewal premium should have been paid by the Bank in whose favour the policy had been assigned. Claim upheld. Order of the District Forum and the State Commission were set aside.

ii) Parties:

Shri Ranjit Singh Minhas - Petitioner

Vs.

State Bank of India and Others - Respondents

iii) Order appealed against:

From the order dated on 01-08-2014 in First Appeal No.268 of 2014 of the Chandigarh State Consumer Redressal Commission at UT Chandigarh.

iv) Case No and Date of Judgement:

Revision Petition No.4105 of 2014 & Date of Judgement: 19-12-14.

v) Acts and Sections:

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

vi) Issues raised and decided:

- a) At the time, the insured had taken the loan from the bank, the insurance company was chosen by the bank and it was for the bank to keep the policy alive by paying the renewal premium as and when it fell due. Initial premium had been paid by the bank by debiting the account of the insured and crediting the account of SBI Life Insurance.
- b) Ordinarily it would be for the insured to pay the insurance premium and keep the policy alive but when the policy is assigned to the bank which has not only sanctioned the credit limit but also paid the renewal premium in the past, the aforesaid obligation stands shifted from the insured to the assignee bank.
- c) The credit limit sanctioned by the bank had not been fully utilised by the time renewal premium was due for payment.
- d) Bank did not ask the insured to pay the premium on the ground that there was not sufficient amount in his account to pay the premium.
- e) Bank and SBI Life Insurance have been acting as one and the same entity for the purpose of sanction of loan and getting the same insured from SBI Life Insurance.

vii) Citation:

Not reported in CPJ and CPR.

F) BOND HOLDER'S RIGHTS:

1. Chairman, Sahara India and another Vs. Chetan Prakash

i) Case in Brief:

Complainant/Respondent is the legal representative of late Smt. Amar Bai Meena who obtained bond of Rs.3,000/- for the period of ten years in her life time on 22-10-1998 from OP/Petitioner. As per the bond, if

Deficiency in Service - Bond Holder's Rights

the applicant died between the age of 16-60 years or after 12 months after purchase of bond, OP shall give equal amount of bond for a period of ten years. Smt. Amar Bai Meena died on 13-11-2003. Complainant's claim to OP was repudiated by the later. Complainant approached District Forum which dismissed the complaint. However, the State Commission on appeal, allowed the complaint and directed OP to pay Rs.3,000/- from 13-11-2003 to the next ten years with Rs.1,000/- as cost against which the present revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 30-06-2008 in Appeal No.1814/07 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

Chairman, Sahara India and another - Petitioners/Opp. Parties

Vs.

Chetan Prakash - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No:3866 of 2008 & Date of Judgement: 25-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission noted that the bond holder died on 13-11-2003 i.e after five years purchase of bond. The complainant was to prove that at the time of purchase of bond, Amar Bai Meena was less than 55 years. Since no evidence was adduced to that effect, it was presumed that the bond holder was 55 years at the time of purchase of bond and as she died after more than five years of purchase of bond, she had crossed the age of 60 years and as per the terms and conditions of the bond, OP had not committed any deficiency in repudiating claim. The Commission did not accept the contention that the onus was on OP to have proved that the deceased was above 60 years at the time of death. Consequently, revision petition was allowed and the impugned order of the State Commission was set aside. The order of the District Forum dismissing complaint was confirmed.

vii) Citation:

2014(4) CPR 184.

G) CARRIAGE OF GOODS:

1. M/s. Gati Ltd. Vs. Dr. Chandra Mohan Prasad

i) Case in Brief:

The complainant engaged the petitioner company for transporting his goods from Gaya to Greater Noida and entrusted his household articles to it for the said purpose. The goods were transported from Gaya to Greater Noida in a Tata Truck. According to the complainant, a sum of Rs.12,000/- was demanded from him towards transportation of the goods and Rs.1,500/- towards packaging charges when he engaged the services of the petitioner, but on reaching Gaya office, a sum of Rs.35,108/- was demanded from him towards freight charges in addition to the packaging charges. The said amount was paid by the complainant. When the goods reached the destination on 26.06.2007, the same were received by a relative of the complainant and it transpired that steel almirah, sofa set, air conditioner, dressing table and crockery articles etc. had been damaged. The complainant reported the matter to the petitioner company, which promised to settle the matter. That, however, was not done. Being aggrieved, the complainant approached the District Forum which directed the petitioner to pay a sum of Rs.70,000/- to the complainant towards compensation for damage to the goods, along with interest on that amount at the rate of 6% per annum. The petitioner was also directed to pay Rs.10,000/- as compensation for the mental agony and Rs.25,000/- towards the costs of litigation. Being aggrieved from the order of the District Forum, the petitioner company approached the State Commission by way of an appeal. The said appeal having been dismissed, the petitioner has filed this revision petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 31.01.2014 in Appeal No.08/2011 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

M/s. Gati Ltd.

- Petitioner

Vs.

Dr. Chandra Mohan Prasad

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No. 2496 of 2014 with IA/3947/2014, IA/6693/2014 (exemption from filing the certified copy, Placing addl. Documents) & Date of Judgement: 10-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that the finding of fact has been recorded by the District Forum holding that the goods of the complainant were damaged by the petitioner company while transporting them from Gaya to Greater Noida. The said finding of fact had been affirmed by the State Commission by dismissing the appeal, filed by the petitioner company. The material on record clearly justified the aforesaid findings instead of showing it to be perverse. Therefore, the revision petition was dismissed.

vii) Citation:

Not reported in CPJ and CPR.

H) COLLEGE ADMISSION:

1. The Registrar, SASTRA University Vs. Consumer Protection Council, Tamilnadu & Anr.

i) Case in Brief:

In order to appreciate the question of law and facts involved in these revision petitions, Revision Petition No.4489 of 2013 was treated as a lead file, since the facts of the other revision petitions were more or less similar. In the above said petition, the Respondents, Consumer Protection Council Tamil Nadu Trichy & Devender Prasad, filed a consumer complaint before the District Forum alleging that for the academic year 2010-2011 son of the complainant got admission in B Tech course of the petitioner/deemed university. Pursuant to the admission offer, the complainant deposited a sum of Rs.62,000/- with the petitioner Institute. Subsequently son of the petitioner received a call for admission/counselling from NIIT Arunachal Pradesh. The Complainant, therefore, requested the Petitioner to return the original certificates of his son and to refund the fee already paid. The Petitioner

Institute refused to oblige. Claiming this to be deficiency in service, Respondent No.2, Complainant, filed the consumer complaint. The District Forum allowed the respective complaints. The Petitioner being aggrieved of the order of the District Forum preferred appeals before the State Commission which concurred with the order of the District Forum and dismissed the appeals. This has led to filing of these revision petitions. Revision Petitions dismissed.

ii) Order appealed against:

Revision Petition No.4489 of 2013

From the order dated 7.8.2013 in Appeal No.205/2012 of the Tamilnadu State Consumer Disputes Redressal Commission, Madurai Bench.

Revision Petition No.4490 of 2013

From the order dated 7.8.2013 in Appeal No.251/2012 of the Tamilnadu State Consumer Disputes Redressal Commission, Madurai Bench.

Revision Petition No.4491 of 2013

From the order dated 7.8.2013 in Appeal No.252/2012 of the Tamilnadu State Consumer Disputes Redressal Commission, Madurai Bench.

Revision Petition No.4492 of 2013

From the order dated 7.8.2013 in Appeal No.253/2012 of the Tamilnadu State Consumer Disputes Redressal Commission, Madurai Bench.

Revision Petition No.4493 of 2013

From the order dated 7.8.2013 in Appeal No.265/2012 of the Tamilnadu State Consumer Disputes Redressal Commission, Madurai Bench.

Revision Petition No.4495 of 2013

From the order dated 7.8.2013 in Appeal No.328/2012 of the Tamilnadu State Consumer Disputes Redressal Commission, Madurai Bench.

Revision Petition No.4496 of 2013

From the order dated 7.8.2013 in Appeal No.497/2012 of the Tamilnadu State Consumer Disputes Redressal Commission, Madurai Bench.

iii) Parties:

Revision Petition No.4489 of 2013

The Registrar, SASTRA University - Petitioner/OP

Vs.

Consumer Protection Council,
Tamilnadu and another - Respondents/Complainants

Deficiency in Service - College Admission

Revision Petition No.4490 of 2013

The Registrar, SASTRA University - Petitioner/OP

Vs.

Consumer Protection Council,
Tamilnadu and another - Respondents/Complainants

Revision Petition No.4491 of 2013

The Registrar, SASTRA University - Petitioner/OP

Vs.

Consumer Protection Council,
Tamilnadu and another - Respondents/Complainants

Revision Petition No.4492 of 2013

The Registrar, SASTRA University - Petitioner/OP

Vs.

Consumer Protection Council,
Tamilnadu and another - Respondents/Complainants

Revision Petition No.4493 of 2013

The Registrar, SASTRA University - Petitioner/OP

Vs.

Consumer Protection Council,
Tamilnadu and another - Respondents/Complainants

Revision Petition No.4495 of 2013

The Vice-Chancellor, SASTRA University - Petitioner/OP

Vs.

R. Pavithra - Respondent/Complainant

Revision Petition No.4496 of 2013

The Registrar, SASTRA University - Petitioner/OP

Vs.

Consumer Protection Council,
Tamilnadu and another - Respondents/Complainants

iv) Case No and Date of Judgement:

- a) Revision Petition No.4489 of 2013;
- b) Revision Petition No.4490 of 2013;
- c) Revision Petition No.4491 of 2013;
- d) Revision Petition No.4492 of 2013;
- e) Revision Petition No.4493 of 2013;
- f) Revision Petition No.4495 of 2013;
- g) Revision Petition No.4496 of 2013; &

Date of Judgement: 13-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue was whether failure to provide the original certificates and the return of the fees constituted deficiency in service or not?
- b) Petitioner/OP contended that the orders of the State Commission are not sustainable on the ground that those orders are against the judgment of Supreme Court in the matter of *Islamic Academy of Education & Anr. v. State of Karnataka & Ors.* (2003) 6 SCC 697. It was further contended that as per the admission brochure of the petitioner University, cutoff date for refund of fee was 31.07.2010 and it was made clear that no refund shall be made after the cutoff date. The request for refund of fee on the ground of the students having got admission in some other institute was made after the expiry of above noted cutoff date and, therefore, as per the contract between the parties, there is no justification for grant of refund.
- c) Held that when there is no evidence to show that the seat vacated by respective wards of complainants/complainant remained unfilled during the academic year and in absence of any evidence to show that the petitioner has suffered any financial loss because of withdrawal of the candidate, the orders of the fora below directing the petitioner to return the original certificates to the respective complainants and also to refund

50% of the fee deposited by them besides awarding compensation as also cost of litigation are confirmed. The said orders were based on the public notice issued by the UGC in April, 2007. The notice said that in the event of a student/candidate withdrawing before the start of the course, the waitlisted candidate shall be given admission against the vacant set and the entire fee collected from the student after deduction of processing fee of not more than Rs.1,000/- shall be refunded and returned to such student withdrawing from the course. This notice further directed that if the student leaves after attending the course and the seat consequently falling vacant has been filled by another candidate, the institution must return the fee collected with proportionate deductions of monthly fee and proportionate hostel rent, where applicable. The public notice further provided that it would not be permissible for institutions and universities to retain the School/Institution Leaving Certificate, mark sheet, cast certificate and other documents in original. The revision petitions were accordingly dismissed.

vii) Citation:

2014(4) CPR 618.

I) CONSTRUCTION:

1. Sardar Harinderpal Singh and another Vs. Sujata Meshram and another

i) Case in Brief:

Complainants/Respondents entered into tripartite agreement with OP No.2&3/Petitioners for construction of duplex house for Rs.5,60,000/- Complainant deposited Rs.4,63,000/- with the OPs. OP also executed sale deed in favour of complainant on 6.11.2003 of the land on which house was to be constructed. In the sale deed, a sum of Rs.2,47,000/- has been shown as sale consideration out of which, cheque of Rs.2,00,000/- was given and OP allegedly assured that this cheque will be returned back on payment of Rs.5,60,000/- as cost of construction. In spite of repeated requests from Complainant, cheque was not returned and construction was also not completed. Complainant took loan of Rs.4,00,000/- for payment. Alleging deficiency on the part of OP,

complainant filed complaint before District Forum which directed OP to transfer possession of duplex house on receipt of Rs.97,000/- from the complainant and further awarded interest on Rs.4,67,000/- at saving bank rate from 10.8.2004 till possession and further awarded Rs.30,000/- for mental agony and Rs.2,000/- as litigation cost. Appeal filed by OP was partly allowed by State Commission vide impugned order deleting cost of Rs.30,000/- against which, this revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 27.02.2008 in Appeal No.1944 of 2006 of the M.P. State Consumer Disputes Redressal Commission, Bhopal.

iii) Parties:

Sardar Harinderpal Singh & Anr. - Petitioners/Opp. Parties

Vs.

Sujata Meshram and another - Respondents/Complainants

iv) Case No and Date of Judgement:

Revision Petition No.2649 of 2008 & Date of Judgement: 22-09-2014.

v) Acts and Sections referred:

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 138 of the Negotiable Instruments Act.

vi) Issues raised and decided:

- a) The National Commission observed that the sale deed was executed prior to construction of house and there was no reference in the agreement for construction of house that sale price of plot was included in that cost. The National Commission also observed that regarding the outstanding amount in respect of sale deed, OPs were given liberty to approach the appropriate forum.
- b) It was pointed out by the National Commission that as the OPs were under an obligation to construct house for Rs.5,60,000/- and complainant had already paid Rs.4,63,000/-, OPs were under an obligation to give possession of the constructed duplex house on receipt of balance amount of Rs.97,000/-. The National Commission held that the OPs committed deficiency in not

completing the construction of duplex house. Therefore, the Revision petition was dismissed by giving the petitioner the liberty to initiate any action against Respondent No.1 regarding recovery of balance of Rs.2,00,000/- or for any other relief regarding cancellation of sale deed, etc.

vii) Citation:

IV (2014) CPJ 376; 2014(4) CPR 6.

2. Chattisgarh Housing Board Vs. Deviprasad Devangan & Anr.

i) Case in Brief:

The Complainant/Respondent booked a flat and paid the entire cost to the petitioner. However, possession was not offered to the complainant immediately after the payment. The Complainant received the possession letter on 22.04.2010 i.e a year after he made payment. But the construction of the house was not complete even by 11.08.2011 and the Complainant made an endorsement on 11.08.2011 in the letter that he was not in a position to take possession since the house was incomplete. An officer of the Petitioner Board signed the endorsement on 11.08.2011. Complainant approached the District Forum which directed the petitioner-board to give possession of the aforesaid flat to the complainant along with Rs.1,50,000/- towards estimated cost of repair. The petitioner-board was also directed to pay Rs.5,000/- per month towards rent from 22.04.2010 till actual possession. Interest at the rate of 6% per annum on the amount of Rs.6,13,919/- paid by the complainant to the petitioner-board was also awarded, besides Rs.10,000/- as compensation and Rs.1,000/- as cost of litigation. Being aggrieved, the petitioner-board approached the State Commission by way of an appeal. The State Commission dismissed the appeal. Being aggrieved the petitioner-board filed this revision petition. Revision Petition was disposed of confirming the order of the District Forum with some modifications.

ii) Order appealed against:

From the order dated 12-02-2014 in FA No.454 of 2012 of the Chhattisgarh State Consumer Disputes Redressal Commission at Raipur.

iii) Parties:

Chattisgarh Housing Board - Petitioner

Vs.

Deviprasad Devangan & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2132 of 2014 & Date of Judgement: 11-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue was whether the house which the petitioner-board offered to the complainant on 22-04-2010 was complete and whether there were defects in the house even on 11-08-2011. The fact that the Petitioner Board did not controvert the Complainant's endorsement dated 11-08-2011 that the house was incomplete led to the inference that the house was actually incomplete.
- b) Held that offering possession of a house which was not complete in all respects and/or had several defects in it was certainly a deficiency in the services provided by the petitioner-board to the complainant. Therefore, the petitioner-board was directed to rectify all the defects in the house and file a compliance report within 10 weeks from the date of the order. The National Commission also directed that the petitioner-board shall pay interest to the complainant at the rate of 9% per annum on the amount of Rs.6,13,919/- with effect from 22-04-2010 till the date on which the defects in the house are removed. It also directed the Petitioner-board to pay Rs.10,000/- as compensation and Rs.1,000/- as cost of litigation as awarded by District Forum.

vii) Citation:

Not reported in CPJ and CPR.

3. Sri. G. Adishesu Vs. Smt. P. Beena Devi

i) Case in Brief:

Respondent/Complainant entered into an agreement for construction of a house building on her plot with petitioner for a value of Rs.5,00,000/-. Petitioner agreed to construct the building within 90 days from the date of handing over of the site, with 30 days grace period. Even though, respondent paid the amount and performed her obligations, petitioner failed to perform his part of obligation including handing over the schedule property. Alleging deficiency of service on the part of petitioner in construction and also for delay in handing over the building, respondent filed consumer complaint. District forum directed petitioner to pay Rs.2,00,000/- (Rupees Two Lakhs only) with interest 18% p.a. from the date of filing of the complaint and to pay Rs.1,000/- towards the cost of litigation. Aggrieved by the order of District Forum, petitioner filed an appeal before the State Commission, which confirmed the majority decision of the District Forum, except that interest was reduced from 18% to 9% p.a. Hence, this revision petition is filed. Revision Petition dismissed.

ii) Order appealed against:

Against order dated 15.09.2006 in First Appeal No.790 of 2003 of the A.P. State Consumer Disputes Redressal Commission, Andhra Pradesh.

iii) Parties:

Sri. G. Adishesu

- Petitioner

Vs.

Smt. P. Beena Devi

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1414 of 2007 & Date of Judgement: 20-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue was whether delay in handing over the building to Complainant as per the agreement amounted to deficiency in service or not?

b) Held that as per the agreement, it was the responsibility of the petitioner to arrange dismantling of old building structure free of cost and for removal of garbage. Further construction period was 90 days with a grace period of 30 days. Thus, construction of the building was to be completed by 14.12.1998. But the building was handed over only in August, 1999. Thus, there was delay of about 8 months, which certainly amounted to deficiency in service on the part of the petitioner. Therefore the orders of fora below were confirmed and the present revision petition dismissed.

vii) Citation:

2015(1) CPR 59.

J) CROP INSURANCE:

1. Syndicate Bank, Sadabad Vs. Smt. Savitri Devi

i) Case in Brief:

Respondents in both the RPs are farmers having separate pieces of land. They have secured crop loan from the petitioner bank in October/ November 2007. Their case is that they had sown Bajra (Millet) and Arhar in the year 2008-09 and had paid premiums for the whole year but due to severe drought the crop failed and they had to incur a loss of Rs.40,000/- towards loss of Bajra, Rs.32,000/- towards destruction of Arhar crop and Rs.20,000/- on destruction of wood, total being Rs.92,000/-. When the claim was made to the bank, it refused to settle it. The District Forum allowed the claims of both the complainants. The State Commission dismissed the appeal filed by the bank. These Revision Petitions filed by the bank were also dismissed.

ii) Order appealed against:

Revision Petition No.2277 of 2014

From order dated 13.03.2014 in FA No.614/2013 of the State Consumer Disputes Redressal Commission, Uttar Pradesh.

Revision Petition No.2278 of 2014

From order dated 13.03.2014 in FA No.624/2013 of the State Consumer Disputes Redressal Commission, Uttar Pradesh.

iii) Parties:

Revision Petition No.2277 of 2014

Syndicate Bank, Sadabad - Petitioner

Vs.

Smt. Savitri Devi - Respondent

Revision Petition No.2278 of 2014

Syndicate Bank, Sadabad - Petitioner

Vs.

Sh. Foran Singh - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2277 of 2014 with IA/3462/2014 (For Stay) & IA/3463/2014 (For Exemption from filing certified copy);

Revision Petition No.2278 of 2014 with IA/3464/2014 (For Stay) & IA/3465/2014 (For Exemption from filing certified copy) &

Date of Judgement: 01.12.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Petitioner's claim that the insurance was given only for potatoes and for the crop of rabi did not carry conviction with the Commission. In the agreement between the farmers and the bank, there was no mention of the insurance company. The introduction of the name of the insurance company after a lapse of 2-3 years leads to harassment, mental agony, despair, frustration, etc to the consumers.
- b) Since premium was charged, it was the bounden duty of the petitioner/OP and the insurance company to hand over the policy to the complainants/respondents. The non-production of main document, proposal, acceptance of premium and the policies themselves, diminished the value of the petitioner's case.

- c) The order of the State Commission was upheld. However, it was held that nothing will debar the petitioner bank to get the amount from the insurance company as per law.

vii) Citation:

I (2015) CPJ 510.

2. Agriculture Insurance Company of India Ltd. Vs. Dhutarpar Seva Sahakari Mandali Ltd. & Ors.

i) Case in Brief:

Three sets of Consumer complaints were filed by the concerned Primary Agricultural Credit Society called Sewa Sankari Mandali (SSM) together with and on behalf of individual farmers questioning the amount of insurance paid against the claim made by them. State Commission allowed the complaints partly and gave certain directions to the opposite parties. Present Appeal was filed on the ground that

- 1) SSM are not consumers within the meaning of Section 2(1) (d) Consumer Protection Act, 1986.
- 2) There was excess coverage under the Scheme and consequently some insured was corrected and modified.

The said grounds were rejected and State Commission's orders upheld. The appeals were dismissed.

ii) Orders appealed against:

- a) From the order dated 27.12.2014 in C.No.803-868 of 2002 of the State Commission, Gujarat.
- b) From the order dated 27.12.2014 in C.No.27-62 of 2003 of the State Commission, Gujarat.
- c) From the order dated 27.12.2014 in C.No.67-68 of 2003 of the State Commission, Gujarat.
- d) From the order dated 27.12.2014 in C.No.79-81 of 2003 of the State Commission, Gujarat.
- e) From the order dated 27.12.2014 in C.No.95 of 2003 of the State Commission, Gujarat.

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- f) From the order dated 10.01.2014 in C.No.122-138 of 2003 of the State Commission, Gujarat.
- g) From the order dated 20.01.2014 in C.No.592-594 of 2002, order to be corrected vide order dated 08.08.2014 of the State Commission, Gujarat.
- h) From the order dated 20.01.2014 in C.No.609-612 of 2002, order to be corrected vide order dated 08.08.2014 of the State Commission, Gujarat.
- i) From the order dated 20.1.2014 in C.No.649-650 of 2002 order to be corrected vide order dated 08.08.2014 of the State Commission, Gujarat.
- j) From the order dated 20.1.2014 in C.No.655 of 2003 order to be corrected vide order dated 08.08.2014 of the State Commission, Gujarat.
- k) From the order dated 20.1.2014 in C.No.657 of 2002 order to be corrected vide order dated 08.08.2014 of the State Commission, Gujarat.
- l) From the order dated 20.1.2014 in C.No.660 of 2002 order to be corrected vide order dated 08.08.2014 of the State Commission, Gujarat.
- m) From the order dated 20.1.2014 in C.No.689 of 2002 order to be corrected vide order dated 08.08.2014 of the State Commission, Gujarat.
- n) From the order dated 20.1.2014 in C.No.691 - 692 of 2002 order to be corrected vide order dated 08.08.2014 of the State Commission, Gujarat.
- o) From the order dated 20.1.2014 in C.No.695 - 696 of 2002 order to be corrected vide order dated 08.08.2014 of the State Commission, Gujarat.
- p) From the order dated 20.1.2014 in C.No.699 of 2003 order to be corrected vide order dated 08.08.2014 of the State Commission, Gujarat.
- q) From the order dated 20.1.2014 in C.No.724 of 2003 order to be corrected vide order dated 08.08.2014 of the State Commission, Gujarat.

- r) From the order dated 20.1.2014 in C.No.736, 739 of 2002 order to be corrected vide order dated 08.08.2014 of the State Commission, Gujarat.
- s) From the order dated 20.1.2014 in C.No.742 of 2002 order to be corrected vide order dated 08.08.2014 of the State Commission, Gujarat.
- t) From the order dated 20.1.2014 in C.No.748, 751, 752, 754, 756, 762 765, 767, 769, 770-772 of 2002 order to be corrected vide order dated 08.08.2014 of the State Commission, Gujarat
- u) From the order dated 20.1.2014 in C.No.781 of 2002 order to be corrected vide order dated 08.08.2014 of the State Commission, Gujarat.

iii) Parties:

- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
Dhutarpar Seva Sahakari Mandali Ltd. & Ors. - Respondent(s)
[In First Appeal No.615 of 2014]
- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
Rampar Seva Sahakari Ltd. & Ors. - Respondent(s)
[In First Appeal No.616 of 2014]
- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
Rampar Seva Sahakari Mandali Ltd. & Ors. - Respondent(s)
[In First Appeal No.617 of 2014]
- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
Rampar Seva Sahakari Mandali Ltd. & Ors. - Respondent(s)
[In First Appeal No.618 of 2014]

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Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Vibhapar Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.619 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Jaga Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.620 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Moti Bangar Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.621 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Jamnagar Group Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.622 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Sahayog Krishi Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.623 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Swashraya Krishi Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.624 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Jaga Krishi Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.625 of 2014]	

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Dhutarpar Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.626 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Dhutarpar Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.627 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Medi Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.628 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Pasaya Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.629 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Fala Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.630 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Swashraya Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.631 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Dhudasiya Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.632 of 2014]	- Respondent(s)

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Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Vaniya Gam Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.633 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Shapar Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.634 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Jaga Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.635 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Fala Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.636 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Dhudasiya Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.637 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Moti Banugar Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.638 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Jamvanthali Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.639 of 2014]	- Respondent(s)

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Vs.	
Aliya Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.640 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Fala Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.641 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Bada Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.642 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Aliya Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.643 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Sewa Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.644 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Sewa Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.645 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Dhrol Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.646 of 2014]	

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Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Dhrol Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.647 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Mota Vaguda Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.648 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Kharva Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.649 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Kharva Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.650 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Mota Intaliya Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.651 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Haripar Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.652 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Latipar Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.653 of 2014]	

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Hamapar Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.654 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Hamapar Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.655 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Latipur Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.656 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Latipur Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.657 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Latipur Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.658 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Latipur Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.659 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Latipur Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.660 of 2014]	- Respondent(s)

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Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Mota Garediya Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.661 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Mota Garediya Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.662 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Manekpar Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.663 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Bhensdad Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.664 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Bhensdad Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.665 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Hadatoda Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.666 of 2014]	- Respondent(s)]
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Hadatoda Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.667 of 2014]	- Respondent(s)

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Vs.	
Keshiya Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.668 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Keshiya Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.669 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Kayali Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.670 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Vavdi Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.671 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Beraja Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.672 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Beraja Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.673 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Nesda Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.674 of 2014]	

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Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Limbuda Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.675 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Hadiyana Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.676 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Hadiyana Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.677 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Hadiyana Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.678 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Beraja Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.679 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Beraja Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.680 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Jodiya Sarvodaya Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.681 of 2014]	- Respondent(s)

Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Jodiya Sarvodaya Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.682 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Badanpar (Jodiya) Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.683 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Ananda Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.684 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Jiragadh Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.685 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Lakhtar Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.686 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Lakhtar Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.687 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Jamdudhai Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.688 of 2014]	

Deficiency in Service - Crop Insurance

Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Jashapar Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.689 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Jashapar Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.690 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Kotharia Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.691 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Bhadra Seva Sahakari Mandli Ltd. & Ors. [In First Appeal No.692 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Bhadra Seva Sahakari Mandli Ltd. & Ors. [In First Appeal No.693 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Kunnad Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.694 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Kerali Seva Sahakari Mandli Ltd. & Ors. [In First Appeal No.695 of 2014]	- Respondent(s)

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Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Dhulkot Seva Sahakari Mandli Ltd. & Ors.	- Respondent(s)
[In First Appeal No.696 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Dhulkot Seva Sahakari Mandli Ltd. & Ors.	- Respondent(s)
[In First Appeal No.697 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Kharachia Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.698 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Kharachia Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.699 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Roziya Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.700 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Roziya Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.701 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Shampar- Madhapar Seva Sahakari Ltd. & Ors.	- Respondent(s)
[In First Appeal No.702 of 2014]	

Deficiency in Service - Crop Insurance

Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Adarsh Seva Sahakari Mandli Ltd. & Ors.	- Respondent(s)
[In First Appeal No.703 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Adarsh Seva Sahakari Mandli Ltd. & Ors.	- Respondent(s)
[In First Appeal No.704 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Adarsh Seva Sahakari Mandli Ltd. & Ors.	- Respondent(s)
[In First Appeal No.705 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Badanpar (Amaran) Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.706 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Rajpar Juth Seva Sahakari Ltd. & Ors.	- Respondent(s)
[In First Appeal No.707 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Pithad Seva Sahakari Ltd. & Ors.	- Respondent(s)
[In First Appeal No.708 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Pithad Seva Sahakari Ltd. & Ors.	- Respondent(s)
[In First Appeal No.709 of 2014]	

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Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Pithad Seva Sahakari Ltd. & Ors.	- Respondent(s)
[In First Appeal No.710 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Pithad Seva Sahakari Ltd. & Ors.	- Respondent(s)
[In First Appeal No.711 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Bodka Seva Sahakari Madli Ltd. & Ors.	- Respondent(s)
[In First Appeal No.712 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Bodka Seva Sahakari Ltd. & Ors.	- Respondent(s)
[In First Appeal No.713 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Fatsar Seva Sahakari Mandli Ltd. & Ors.	- Respondent(s)
[In First Appeal No.714 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Fatsar Seva Sahakari Mandli Ltd. & Ors.	- Respondent(s)
[In First Appeal No.715 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Jamsar Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.716 of 2014]	

Deficiency in Service - Crop Insurance

Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Khengarka Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.717 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Khengarka Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.718 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Mavnagam Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.719 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Mavnagam Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.720 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Utbet Shampar Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.721 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Balmbha Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.722 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Ram Seva Sahakari Mandali Ltd. & Ors. [In First Appeal No.723 of 2014]	- Respondent(s)

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Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Lakheni Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.724 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Sarva Group Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.725 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Bhadravadi Juth Seva Sahakari Mandali Ltd.	- Respondent(s)
[In First Appeal No.726 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Gadhadiya Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.727 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Turkha Group Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.728 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Bhambhan Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.729 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Tajpar Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.730 of 2014]	

Deficiency in Service - Crop Insurance

Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Mota Zinzavadar Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.731 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Lathidad Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.732 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Vaikuthbhai Mehta SSM Ltd. & Ors.	- Respondent(s)
[In First Appeal No.733 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Rohishala Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.734 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Hadad Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.735 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Samadhiyala No.1 Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.736 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Pipaliya Group Seva Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.737 of 2014]	

Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Paliyad Seva Sahakari Mandali Ltd., Botad, Taluka Botad, Dist: Bhavnagar and Others	- Respondent(s)
[In First Appeal No.738 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Dhinkvali Seva Sahakari Mandali Ltd. Botad, Taluka Botad, Dist: Bhavnagar and Others	- Respondent(s)
[In First Appeal No.739 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Chidra Vikas Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.740 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Chidra Vikas Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.741 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
Chidra Vikas Sahakari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.742 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
The Nobar Group Vikas Sahakari Mandali Ltd. & Ors.-	Respondent(s)
[In First Appeal No.743 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
The Kalak Group Vikas Sahakari Mandali Ltd. & Ors.-	Respondent(s)
[In First Appeal No.744 of 2014]	

Deficiency in Service - Crop Insurance

- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
The Jantran Group Seva Sahakari Mandali Ltd.& Ors.- Respondent(s)
[In First Appeal No.745 of 2014]
- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
The Sarod Co. Op. Multipurpose Society Ltd. & Ors. - Respondent(s)
[In First Appeal No.746 of 2014]
- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
The Madafar Vikas Seva Sahakari Mandali Ltd.& Ors.- Respondent(s)
[In First Appeal No.747 of 2014]
- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
The Malpur Seva Sahakari Mandali Ltd. & Ors. - Respondent(s)
[In First Appeal No.748 of 2014]
- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
The Karmad Vikas Sahkari Mandali Ltd. & Ors. - Respondent(s)
[In First Appeal No.749 of 2014]
- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
The Runad Seva Sahakari Mandali Ltd. & Ors. - Respondent(s)
[In First Appeal No.750 of 2014]
- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
The Kantharia Seva Sahkari Mandali Ltd. & Ors. - Respondent(s)
[In First Appeal No.751 of 2014]

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Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
The Sindhav Vikas Sahkari Mandali Ltd. & Ors. [In First Appeal No.752 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
The Kora Co.Op. Multi Soc. Ltd. & Ors. [In First Appeal No.753 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
The Vavlia C.Op. Soc. Ltd. & Ors. [In First Appeal No.754 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
The Tankari Seva Sahkari Mandali Ltd. & Ors. [In First Appeal No.755 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
The Nadiyad Group Seva Sahkari Mandali Ltd. & Ors. [In First Appeal No.756 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
The Kamboi Group Seva Sahkari Mandali Ltd. & Ors. [In First Appeal No.757 of 2014]	- Respondent(s)
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
The Karmad Vikas Sahkari Mandali Ltd. & Ors. [In First Appeal No.758 of 2014]	- Respondent(s)

Deficiency in Service - Crop Insurance

Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
The Tundaj Group Co.Op. Multipurpose Society Ltd. & Ors.	- Respondent(s)
[In First Appeal No.759 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
The Kavi Co. Op. Multipurpose Society Ltd. & Ors.	- Respondent(s)
[In First Appeal No.760 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
The Chidra Vikas Sahkari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.761 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
The Nondhna Group Seva Vikas Sahkari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.762 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
The Kimoj Vikas Seva Sahkari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.763 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
The Kimoj Vikas Seva Sahkari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.764 of 2014]	
Agriculture Insurance Company of India Ltd.	- Appellant
Vs.	
The Vadadla Vikas Seva Sahkari Mandali Ltd. & Ors.	- Respondent(s)
[In First Appeal No.765 of 2014]	

- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
The Ankhi Vehlam Vikas Sahkari Mandali Ltd.& Ors.- Respondent(s)
[In First Appeal No.766 of 2014]
- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
The Kimoj Vikas Seva Sahkari Mandali Ltd. & Ors. - Respondent(s)
[In First Appeal No.767 of 2014]
- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
The Mangnad Seva Sahkari Mandali Ltd. & Ors. - Respondent(s)
[In First Appeal No.768 of 2014]
- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
The Kangam Group Co. Op. Multipurpose Society Ltd.
& Ors. - Respondent(s)
[In First Appeal No.769 of 2014]
- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
The Khanpur Deh Group Co. Op.
Multipurpose Society Ltd. & Ors. - Respondent(s)
[In First Appeal No.770 of 2014]
- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
The Sigam Group Co. Op.
Multipurpose Society Ltd. & Ors. - Respondent(s)
[In First Appeal No.771 of 2014]
- Agriculture Insurance Company of India Ltd. - Appellant
Vs.
The Amanpur Multipurpose Co. Op.
Society Ltd. & Ors. - Respondent(s)
[In First Appeal No.772 of 2014]

Deficiency in Service - Crop Insurance

Agriculture Insurance Company of India Ltd. - Appellant

Vs.

The Islampur Group Vikas Sahkari Mandali Ltd.
& Ors. - Respondent(s)

[In First Appeal No.773 of 2014]

Agriculture Insurance Company of India Ltd. - Appellant

Vs.

The Bhadkodara Seva Sahkari Mandali Ltd. & Ors. - Respondent(s)

[In First Appeal No.774 of 2014]

iv) Case No and Date of Judgement:

First Appeals No.615 - 774 of 2014 & Date of Judgement: 18-12-2014.

v) Acts and Sections referred:

Section 2(1) (g) & (o), 19 & 21(a)(ii) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) SSMS were the sole interface between the O.Ps and the loanee farmers who are the ultimate beneficiaries. Record showed that SSMS were the agencies that processed the claims of the farmers under the Insurance Scheme.
- b) There is no merit in the argument that they can't file complaints in a representative capacity.
- c) No details have been published as to how claim amount was deducted.
- d) Once Premium and declaration are accepted, subsequently dispute cannot be raised about less sowing of crop area.
- e) It is not permissible for OPs to penalise all farmers of the notified area for the default of a few farmers.
- f) Premium amount should not be deducted from the loan amount. Similarly share capital and outstanding loan deducted because of some farmer's default will not affect the right and interest of the other farmers.

- g) Under the Comprehensive Credit Insurance Scheme insured farmer is the basis and not the credit society. Such farmer cannot be penalised because of the irregularities committed by the Credit Society.

vii) Citation:

2015(1) CPR 114.

K) DIGGING OF BOREWELL:

1. The Manager, Baba Borewells Vs. H M Saraswathi

i) Case in Brief:

The complainant entrusted the work for digging up a bore-well to the petitioner, which was dug up to the depth of 100 ft. PVC pipes were also fixed. The water flow from the bore-well came out for about 15 days and thereafter flow of water from the bore-well stopped. According to the complainant, the petitioner was informed about the stoppage of flow of water from the bore-well but even after fixing done by him, the water did not flow from the bore-well. Alleging deficiency in service on the part of the petitioner, a complaint was filed before the District Forum which directed the petitioner to pay Rs.20,440/- which he had taken from the complainant along with compensation amounting to Rs.5,000/- and cost of proceedings amounting to another Rs.5,000/-. Being aggrieved from the order of the District Forum, the petitioner approached the State Commission by way of an appeal. The State Commission having dismissed the appeal, the Petitioner has filed this revision petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 15.07.2014 in Appeal No.872/2014 of Karnataka State Consumer Disputes Redressal Commission, Bangalore.

iii) Parties:

The Manager, Baba Borewells

- Petitioner

Vs.

H M Saraswathi

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3469 of 2014 & Date of Judgement: 18-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) A perusal of the orders passed by the Fora below showed that a local commissioner was appointed by the District Forum to inspect the site of the bore-well. On inspection, the Local Commissioner found that though the bore-well had been dug upto 100 ft., mud had got filled into it up to the height of 90 ft.
- b) State Commission had also opined (based on the report of the Local Commissioner) that had the pipes been fixed properly, the mud would not have entered into bore-well to the extent that it filled-up the bore-well up to the height of 90 ft. The very fact that the water stopped flowing and mud got filled in the bore-well up to the 90 ft. was a clear indicator that the pipes were not fixed properly and there was space left for the mud to enter into the bore-well. The work executed by the petitioner, therefore, was of an inferior quality.
- c) In the above said circumstances, the National commission held that the State Commission was fully justified in relying upon the report of the Local Commissioner and upheld the orders of the fora below. The present revision petition was accordingly dismissed.

vii) Citation:

Not reported in CPJ and CPR.

L) ELECTRICITY CHARGES:

1. Jodhpur Vidyut Vitran Nigam Ltd. Vs. Lal Singh

i) Case in Brief:

Complainant/Respondent had electricity connection from OP/Petitioner from 16-04-2004. The connection was disconnected on 24-03-2005 for non-payment of Rs.4,027/-. In 2008, Complainant applied for new connection and he was issued bill for previous outstanding of Rs.7,387.79/- inclusive of interest. Alleging deficiency in service, Complainant approached the District forum which quashed the demand of Rs.7,387.79/-. Appeal filed by the OP was dismissed by the State

Commission against which the present revision petition has been filed. Revision Petition allowed and the orders of the fora below were set aside.

ii) Order appealed against:

From the order dated 22-02-2010 in Appeal No.1481 of 2009 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

Jodhpur Vidyut Vitran Nigam Ltd. - Petitioner/Opp. Party

Vs.

Lal Singh - Respondent/ Complainant

iv) Case No and Date of Judgement:

Revision Petition No:2066 of 2010 & Date of Judgement: 25-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986, Sections 6, 8 and 9 of Rajasthan Governmental Electrical Undertaking (Dues Recovery) Act, 1969 & Section 56(2) of the Electricity Act, 2003.

vi) Issues raised and decided:

- a) The Commission noted that as per Sections 6, 8 and 9 of Rajasthan Government Electrical Undertaking (Dues Recovery) Act, 1969, Petitioner was entitled to recover outstanding dues and as per Section 9, limitation for recovery is 6 years. The Commission further noted that no evidence was adduced to show that the aforesaid Act of 1969 stood repealed by the Electricity Act of 2003.
- b) It was further held that as per Section 56(2) of the Electricity Act, 2003, due amount is not recoverable after two years from the date when such became due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supply meaning thereby, if the amount has continuously been shown as recoverable, limitation to recover amount does not lapse. The Consumer Ledger of the Petitioner undertaking revealed that Rs.5,472.44/- had been shown outstanding right from 2005. It was therefore held that the District Forum committed error in quashing demand as time-barred and the

State Commission committed further error in upholding the District Forum's order. Consequently, the revision petition was allowed, the orders of the fora below were set aside and the complaint stood dismissed.

vii) Citation:

IV (2014) CPJ 612; 2014(4) CPR 182.

M) ELECTRICITY SERVICES:

1. M.P. Eastern Region Electricity Distribution Company Ltd. Vs. Supdt. of Central Jail Sagar

i) Case in Brief:

The Respondent, Central Jail obtained a non-domestic electric connection from the petitioner with sanctioned load of 60.40 kws. The case of the petitioner was that during inspection conducted on 11.06.2009, the connected load in the premises was found to be 98.69 kw, as against sanctioned load of 60.40kw. The petitioner company made an interim assessment and issued the bill of Rs.6,10,263/- under section 126 of Electricity Act, 2003, for unauthorised use of electricity. The demand was disputed by the Central Jail on the ground that it was merely a case of load enhancement and not of unauthorised use of electricity and therefore, the bill should be revised. On the request of the respondent, a fresh inspection of the Jail premises was carried out on 25.09.2009 but even at that time, the connected load was more than the sanctioned load though it had reduced from 98.69 kw. to 74 kw. The request of the Central Jail for revision of the assessment having been declined, they approached the concerned District Forum by way of a complaint. The District Forum held the bill issued by the petitioner to be erroneous and directed the petitioner company to make an amended bill on the basis of 75 kw. Load as per the rate ordered by the M.P. Electricity Regulatory Commission. Being aggrieved from the order of the District Forum, the petitioner approached the M.P. State Consumer Disputes Redressal Commission by way of an appeal. The said Commission, holding that section 126 of the Electricity Act was not applicable to the instant case, remitted the matter back to the District Forum to decide whether the complainant was a consumer within the meaning of section 2(1)(d) of the Consumer Protection Act,

1986. Being aggrieved from the order of the State Commission to the extent it held that section 126 of the Electricity Act, 2003 was not attracted to the present case, the petitioner has filed this revision petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 30.04.14 in Appeal No.1565/2010 of M.P. State Consumer Disputes Redressal Commission, Bhopal.

iii) Parties:

M.P. Eastern Region Electricity Distribution
Company Ltd. - Petitioner

Vs.

Supdt. of Central Jail Sagar - Respondent

iv) Case No and Date of Judgement:

Revision Petition No. 3472 of 2014 with I.A. No.6153/2014, I.A. No.6154/2014 (For stay, condonation of delay) &

Date of Judgement: 24-09-2014.

v) Acts and Sections referred:

Sections 2(1) (d) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 126 of the Electricity Act, 2003.

vi) Issues raised and decided:

- a) The issue involved in the present case was that the respondent had consumed more electricity than the load that was sanctioned against him.
- b) Held that there was no unauthorized use of electricity in this case since no artificial means was found to be used by the respondent for extracting electricity. The order of the State Commission that Section 126 of the Electricity Act was not applicable in the present case was upheld. Revision Petition was dismissed along with the application for condonation of delay.

vii) Citation:

Not reported in CPJ and CPR.

2. Lalit Kumar Vs. Sub-Divisional Officer (SDO), Haryana State Electricity Board

i) Case in Brief:

An electric Pole was erected in front of the shop of the Complainant in the year 1986. The said electric pole got broken due to an accident and the respondent installed the said electric pole by way of binding of wire with the roof of the complainant's shop. The District Forum, vide order dated 30.09.1999, ordered that the binding wire on the roof of the shop was illegal and it was ordered that the broken pole be removed within 15 days. No appeal was preferred against this order and this order attained the finality. Thereafter, Execution Petition was filed before the District Forum which on 22-02-2001 directed the Respondent/OP to comply with the order within one month from the date of receipt of the said order, failing which, the Respondent would be liable to pay Rs.50/- per day to the Complainant for the delay. Again, another fresh Execution Petition was filed on 04.07.2003 by the Petitioner. The District Forum, after recording the statement of SDO HVPN, passed an order on 13.08.2004 holding that compliance of the order had been made since the pole had been erected and wires binding on the shop had been removed. Thereafter, the Complainant filed a fresh Execution Petition on 04.11.2006 wherein it was prayed that penalty (approx. Rs.55000/-) be paid to the decree holder. The Execution Petition was dismissed. Aggrieved by that order, appeal was preferred before the State Commission, which also dismissed the same vide impugned order against which this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 05.10.2012 in First Appeal No.2674/2007 of the State Consumer Disputes Redressal Commission, Haryana, Panchkula.

iii) Parties:

Lalit Kumar - Petitioner

Vs.

Sub-Divisional Officer (SDO),
Haryana State Electricity Board - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.88 of 2013 & Date of Judgement: 09-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue involved in the case was that whether the OP failed in his duty and was guilty of deficiency in service or not. It was held that OP had not complied with the order of the District Forum since he could not produce any record in support of his contention.
- b) The National Commission directed the OP to pay penalty of Rs.57,920/- to the petitioner, within a period of 90 days from the date of the order, failing which it would attract an interest of 9% till the date of its realization. The Commission further ordered that nothing would prevent the OP to recover this amount from the concerned S.D.O., who was responsible for disobedience of the order of the Fora below and had adopted contemptuous attitude towards the Consumer Forum.

vii) Citation:

IV (2014) CPJ 609; 2014(4) CPR115.

3. Delhi Public School Vs. The Managing Director/Chairman, Uttar Haryana Bijli Vitran Nigam Ltd.

i) Case in Brief:

Complainant/Petitioner was running educational institution having electricity connection from OP/respondent. Complainant was paying bills regularly, but OP demanded Rs.15,16,046/- from complainant as meter was showing 1/3 reading vide memo dated 12.2.2011. Complainant approached OPs for clarification, but OP demanded aforesaid amount from August 2008. Alleging deficiency on the part of OP, complainant filed complaint before District forum which set aside demand of Rs.15,16,046/-. Appeal filed by OP was allowed by State Commission against which, this Revision Petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 4.7.2012 in Appeal No.1682/2011 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Delhi Public School - Petitioner/Complainant

Vs.

The Managing Director/Chairman,
Uttar Haryana Bijli Vitran Nigam Ltd - Respondents/ Opp. Parties

iv) Case No and Date of Judgement:

Revision Petition No.3211 of 2012 & Date of Judgement: 29-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that electric connection obtained by petitioner didn't not fall within purview of electric connection for commercial purpose and complaint was maintainable before Consumer Fora. Holding that the State Commission committed error in dismissing complaint on this ground, the present revision petition was allowed. The impugned order was set aside and the matter was remanded back to the State Commission for disposal of appeal on merits.

vii) Citation:

I (2015) CPJ 212; 2014(4) CPR 539.

4. BSES Rajdhani Power Ltd. Vs. Praveen Kumar

i) Case in Brief:

Complainant/Respondent applied for new connection on 9.1.2006. OP/petitioner after processing application issued demand note for Rs.23,645/- which was deposited by complainant. OP installed electricity meter on 10.2.2006 and complainant also deposited electricity bill of Rs.1,170/-. It was further submitted that on account of sparking in the terminal of the meter, complainant lodged complaint on 12.4.2006 and on 17.4.2006, staff of OP came to his house, removed meter with assurance that they will install new meter on next day, but new meter was not installed and they demanded Rs.50,000/- as illegal gratification and threatened to implicate complainant in electricity

theft case. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which dismissed complaint. Appeal filed by complainant before the State Commission was allowed and OP was directed to reinstall electrical meter and restore the electricity and further directed to pay Rs.10,000/- as compensation for harassment, Rs.5,000/- as cost of litigation and to deposit Rs.50,000/- in Consumer Welfare Fund against which, this revision petition has been filed. Revision Petition partly allowed.

ii) Order appealed against:

From the order dated 13.5.2008 in Appeal No.FA-452/07 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

BSES Rajdhani Power Ltd. - Petitioner/ Opp. Party

Vs.

Praveen Kumar - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.2920 of 2008 & Date of Judgement: 20-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Petitioner submitted that he was ready to release connection if respondent submitted duly filled form for verification, etc.,
- b) Revision petition filed by the petitioner was partly allowed and order passed by State Commission was modified setting aside the direction to the petitioner to deposit Rs.50,000/- with Consumer Welfare Fund. Rest of the order was upheld. Petitioner was directed to re-install electric meter and restore the electricity within 3 days from receipt of appropriate duly filled form for connection to be submitted by respondent without charging any fees for re-install/reconnection.

vii) Citation:

I (2015) CPJ 487; 2015(1) CPR 57.

N) FINANCIAL SERVICES:

1. Mr. K.K. Khajuria Vs. Mr. D.D. Batra & Ors.

i) Case in Brief:

Complainant/Respondent No.1 deposited Rs.1,20,463/- with OP No.1/ Respondent No. 2 under different schemes. It was further alleged that OP No.2, 3 & 4/Petitioner/Respondent No.3 & 4 are Directors/Officers/ Employees of OP No.1. In spite of requests, OP did not return the money deposited by the complainant. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which allowed complaint and directed OPs jointly and severally to pay Rs.1,20,463/- to the complainant with 18% p.a. interest and further awarded Rs.20,000/- for mental agony and Rs.2,000/- as costs. Appeal filed by petitioner was dismissed by State Commission against which, this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 10.07.2008 in Appeal No.1805/SC/2003 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

Mr. K.K. Khajuria	-	Petitioner
	Vs.	
Mr. D.D. Batra	-	Complainant
M/s. Kuber Mutual Benefits Ltd. and others	-	Respondents/OPs

iv) Case No and Date of Judgement:

Revision Petition No.3589 of 2008 & Date of Judgement: 17-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was pointed out by the National Commission that a person could not be held responsible merely because he was employee of the company at the time of depositing amount. Merely because deposit receipt bore signature of the Petitioner who was an employee of the company, he could not be held responsible for refund of money which has gone in the account of OP No.1. Had

this money been utilized by petitioner, petitioner would have been held responsible. Perusal of record further revealed that petitioner along with other persons lodged FIR against the company and in such circumstances, petitioner could not be held responsible to the complainant for refund of money.

- b) The Commission further observed that the State Commission's observation that that while joining the company petitioner should have exercised reasonable discretion and assessed as to whether it was beneficial for him to be employee of the company was wrong. Petitioner was not claiming salary from the company in this case and such observation was held to be of no significance. Therefore, the present revision petition was allowed and the orders of the State Commission and that of District Forum allowing complaint to the extent of the Petitioner were set aside.

vii) Citation:

IV (2014) CPJ 387; 2014(4) CPR 18.

2. Raj Kumar Goyal and another Vs. Rajiv Sethi and others

i) Case in Brief:

Complainant/Respondent No.1 filed complaint before District Forum against OPs-Petitioners and Respondent Nos.2, 3 & 4 and District Forum allowed complaint and directed OPs to refund deposited amount to the complainant along with interest. Appeal filed by the petitioner was dismissed by State Commission against which revision petitions were filed by petitioners before the National Commission. The Commission passed interim orders directing the petitioners to deposit 50% of the awarded amount with the District Forum within 4 weeks. As petitioners did not deposit 50% of the awarded amount as directed, District Forum in Execution Petition issued warrants of arrest against the petitioners. Appeals filed by the Petitioners were dismissed by the State Commission against which these revision petitions have been filed. Petitions allowed and District Forum directed to withdraw warrants of arrest against the petitioners if the petitioners deposit the remaining amount, making 1/5 share in each case, within two weeks with the District Forum.

ii) Order appealed against:

Execution Revision Petition No.2 of 2013

From the order dated 18.11.2013 in First Appeal No.491 of 2013 of the State Consumer Disputes Redressal Commission, U.T., Chandigarh

Execution Revision Petition No.3 of 2013

From the order dated 18.11.2013 in First Appeal No.492 of 2013 of the State Consumer Disputes Redressal Commission, U.T., Chandigarh)

Execution Revision Petition No.4 of 2013

From the order dated 18.11.2013 in First Appeal No.494 of 2013 of the State Consumer Disputes Redressal Commission, U.T., Chandigarh

iii) Parties:

Execution Revision Petition No.2 of 2013

Raj Kumar Goyal and another - Petitioners

Vs.

Rajiv Sethi and others - Respondents

Execution Revision Petition No.3 of 2013

Raj Kumar Goyal and another - Petitioners

Vs.

Inderaswer Agnihotri - Respondents

Execution Revision Petition No.4 of 2013

Raj Kumar Goyal and another - Petitioners

Vs.

Devi Chand Chauhan and others - Respondents

iv) Case No and Date of Judgement:

- i. Execution Revision Petition No.2 of 2013
- ii. Execution Revision Petition No.3 of 2013
- iii. Execution Revision Petition No.4 of 2013 &
Date of Judgement: 03-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986

vi) Issues raised and decided:

- a) Held that OPs have not been held responsible jointly and severally by the District Forum and in such circumstances complainant cannot recover the whole awarded amount from any of the five OPs and he is entitled to recover only 1/5 of the awarded amount from each of the OP. It was further held that the petitioners are required to deposit 50% of the amount with interest only to the extent of his share i.e 1/5 which was to be paid by him to the complainant.
- b) Further held that petitioners were bound to deposit 1/5 share of their liability without deducting Rs.25,000 being the statutory amount of filing appeal. This amount had been wrongly deducted from the amount deposited with the District Forum.
- c) Consequently, the Execution Revision Petitions filed by the petitioners were allowed and orders passed by the State Commission and District Forum were set aside. District Forum was directed to withdraw warrants of arrest issued against petitioners if petitioners deposit remaining amount making 1/5th share within two weeks with the District Forum in each case from the date of pronouncement of the order.

vii) Citation:

Not reported in CPJ & CPR.

3. Raj Kumar Goyal and another Vs. Kamal Chaudhary and others

i) Case in Brief:

Complainant/Respondent No.1 filed complaint before District Forum against OPs-Petitioners and Respondent Nos.2, 3 & 4 and District Forum allowed complaint and directed OPs to refund deposited amount to the complainant along with interest. Appeals filed by petitioners were dismissed by State Commission against which, revision petition was filed before the National Commission. The Commission passed interim orders directing the petitioners to deposit 50% of the awarded amount with the District Forum within 4 weeks. As petitioners did not deposit 50% of the awarded amount as directed, District Forum in Execution Petition issued warrants of arrest against the petitioners.

Appeals filed by the Petitioners were dismissed by the State Commission against which the present revision petition has been filed. Revision petition allowed on condition that petitioners deposit remaining amount, making 1/5 share in each case, within two weeks with the District Forum.

ii) Order appealed against:

From the order dated 18.11.2013 in First Appeal No. 493 of 2013 of the State Consumer Disputes Redressal Commission, U.T., Chandigarh

iii) Parties:

Raj Kumar Goyal and another - Petitioners

Vs.

Kamal Chaudhary and others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4578 of 2013 & Date of Judgement: 03-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Held that OPs have not been held responsible jointly and severally by the District Forum and in such circumstances complainant cannot recover the whole awarded amount from any of the five OPs and he is entitled to recover only 1/5 of the awarded amount from each of the OP. It was further held that the petitioners are required to deposit 50% of the amount with interest only to the extent of his share i.e 1/5 which was to be paid by him to the complainant.
- b) Further held that petitioners were bound to deposit 1/5 share of their liability without deducting Rs.25,000 being the statutory amount of filing appeal. This amount had been wrongly deducted from the amount deposited with the District Forum.
- c) Consequently, the revision Petition filed by the petitioners was allowed and orders passed by the State Commission and District Forum were set aside. District Forum was directed to withdraw warrants of arrest issued against petitioners if petitioners deposit remaining amount making 1/5th share within two weeks with

the District Forum in each case from the date of pronouncement of the order.

vii) Citation:

IV (2014) CPJ 673; 2014(4) CPR 743.

4. Sarita Devi Prakashchand Jain, Chairperson & Others Vs. Ramchandra Shambu Chaudhari & Anr.

i) Case in Brief:

The Complainant/Respondent No.1 had a daily deposit account with the Petitioner's Bank. He deposited an amount of Rs.2,29,000/- with the above bank during the period from 1st June 2004 till 24th May 2005 through the bank's agent, OP4/Respondent No.2. Later on it was found out that only a sum of Rs.1,10,500/- was deposited whereas the passbook entries filled up by the agent revealed that a sum of Rs.2,29,000/- had been deposited. The Complainant issued a legal notice to the petitioners/OPs 1 to 3. He also filed a police report. While the petitioners alleged that the complainant had hatched a conspiracy with OP4, OP4 admitted that he had collected the entire money from the complainant and handed over the same to OPs1 to 3. The District Forum allowed the complaint and held that all the OPs were jointly and severally liable to pay an amount of Rs.1,18,500/- along with interest@4% p.a. from 24-05-2005 to 19-09-2007. The State Commission dismissed the appeal filed by the OPs 1 to 3 against which this revision petition filed. Revision Petition dismissed with costs.

ii) Order appealed against:

From the order dated 30.10.2013 in First Appeal No.1077 of 2007 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench, Aurangabad.

iii) Parties:

Sarita Devi Prakashchand Jain,
Chairperson & Others - Petitioners

Vs.

Ramchandra Shambu Chaudhari & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1025 of 2014 with I.A.No.802 of 2014 (Stay) & Date of Judgement: 18-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The argument of the petitioner that the bank was not arrayed as a party and the case was filed against personal names of the employees was found to be bereft of merit since it is filed in the names of the Chairperson, Manager and the Accountant of the Shahada People's Cooperative Bank. They were sued not in their personal names but as per their position in the bank.
- b) Held that OPs 1 to 3 are vicariously liable since OP4/Respondent No.2 was an agent employed by them. The Commission noted that surprisingly the Petitioners/OPs 1 to 3 had not filed any report against their agent. But the report had been filed by the complainant.
- c) OP4/Respondent 2 was under the control and supervision of the bank which is liable for his omissions and commissions. The bank is supposed to keep as employees and agents persons of good character.
- d) Revision petition was dismissed with costs in the sum of Rs.30,000/- out of which Rs.15,000/- is to be deposited with the Consumer Welfare Fund of the Ministry of Consumer Affairs and the remaining Rs.15,000/- was to be paid to the complainant within 30 days failing which it will carry interest @ 9% per month till its realisation.

vii) Citation:

Not reported in CPJ and CPR.

5. Kosamattom Finance (P) Ltd. Vs. Anil Ravindran

i) Case in Brief:

The Complainant/Respondent pledged gold ornaments with the petitioner company. Since the complainant did not pay the loan taken from the petitioner, the gold pledged by him was sold by the petitioner company by way of an auction. The case of the petitioner company is that the gold was sold for a sum of Rs.76,384/- whereas the amount due from the complainant was Rs.79,754/-. The petitioner filed a civil suit against the complainant before Munsif Court for recovery of the aforesaid amount. The civil court held that the petitioner was entitled to recover a sum of Rs.3,905/- from the complainant, with interest at the rate of 6% per annum, on the original sum of Rs.3,370/- with effect from 31-05-2006 and was also entitled to the cost of the suit. The complainant on the other hand filed a complaint before the concerned District Forum alleging deficiency in the services rendered by the petitioner company and seeking return of the gold on payment of the principal amount with interest after adjusting the excess amount awarded from him towards interest. The complainant also sought refund of the excess amount collected from him, besides cost of the proceedings and compensation amounting to Rs.10,000/-. The District Forum directed the petitioner company to pay a sum of Rs.5,000/- as compensation to the complainant. Being aggrieved from the order of the District Forum the complainant preferred an appeal before the concerned State Commission which directed the petitioner company to pay a sum of Rs.1,50,000/- to the complainant as compensation. The Petitioner has filed the present Revision Petition challenging the State Commission's order. Revision Petition allowed.

ii) Order appealed against:

From the order dated 21-03-2013 in FA No.636 of 2012 of the Kerala State Consumer Disputes Redressal Commission at Thiruvananthapuram.

iii) Parties:

Kosamattom Finance (P) Ltd.

- Petitioner

Vs.

Anil Ravindran

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3022 of 2014 & Date of Judgement: 19-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was noted that no evidence was led by the parties to prove the market rate of gold at the time the gold of the complainant was sold by the petitioner by way of auction. It was also noted that no evidence was led by either party to prove the carattage of the gold ornaments having standard 916 nor did the complainant lead any evidence to prove the market value of the gold of the standard 916 on the date the jewellery was sold by way of auction.
- b) Therefore, it was held that the matter should be remanded back to the District Forum to pass a fresh order after giving an opportunity to the parties to lead evidence to prove the market value of the jewellery of the complainant, on the date the said jewellery was sold by the petitioner company by way of an auction. Only then an appropriate quantum of the compensation, if any, to be awarded to the complainant can be worked depending upon the difference between the market value of the gold on the date of the auction and the value which the petitioner claims to have realized from the said sale.
- c) The impugned orders passed by the State Commission and the District Forum were set aside and the matter remanded back to the District Forum to pass a fresh order.

vii) Citation:

2015(1) CPR 77.

6. Poddar Yarn Agency Vs. Bajaj Alliance Life Insurance Co. Ltd.

i) Case in Brief:

The Respondent Company had sold a 'Key Man Policy' to the Complainant/Petitioner in R.P.No.623 of 2013 for the period starting 01.04.2005 assuring that the firm's partner Mr.Suresh Poddar's personal risk will also be covered in the policy and that the petitioner will be entitled to receive the benefit under Section 37(1) of the Income Tax

Act,1961. The first year premium of Rs.1,31,525/- was paid by the complainant/petitioner to the insurance company. However, the chartered accountant of the firm refused to accept the claim of getting the exemption of benefit under Section 37(1) of the IT act and told that penalty will be imposed by the department. Alleging deficiency in service, a complaint was filed before the District Forum against the respondent company which dismissed the complaint. Petitioner filed appeal before the State Commission which allowed the appeal partly and came to the conclusion that the complainant/petitioner firm was entitled to a sum of Rs.41,253/- only along with interest from the date of complaint because he could not get the benefit in Income Tax. Not satisfied with the order both the parties filed the present revision petitions before the National Commission. R.P.No.623 of 2013 filed by the complainant was dismissed while R.P.No.1807 of 2013 filed by the insurance company was allowed.

ii) Order appealed against:

Revision Petition No.623 of 2013

From the order dated 20.11.2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur in Appeal no. 109 of 2009.

Revision Petition No.1807 of 2013

From the order dated 20.11.2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur in Appeal no. 109 of 2009.

iii) Parties:

Revision Petition No.623 of 2013

Poddar Yarn Agency - Petitioner

Vs.

Bajaj Alliance Life Insurance Co. Ltd. - Respondent

Revision Petition No.1807 of 2013

Bajaj Alliance Life Insurance Co. Ltd. - Petitioner

Vs.

Poddar Yarn Agency - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.623 &1807 of 2013 & Date of Judgement: 21.11.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue that arose for consideration was whether the claim of the petitioner firm for deficiency in service on the part of the insurance company could be accepted merely on the basis of the advice/opinion given by the chartered accountant without the petitioner firm lodging a formal claim for rebate under Section 37(1) of IT Act, before the concerned Income Tax Authorities.
- b) Held that no cause of action could be said to have arisen until the claim for rebate is rejected by the competent Income Tax Authorities. The District Forum was right in coming to such a conclusion while the State Commission had committed a grave error in setting aside order and granting partial relief to the petitioner firm.
- c) The order of the State Commission was set aside and the revision petition filed by the petitioner in R.P. No.623 of 2013 was dismissed. The complaint filed by the petitioner/complainant was also dismissed.
- d) The Revision Petition filed by the insurance company in R.P.No1807 of 2013 was allowed.

vii) Citation:

II 2015 CPJ 120; 2015(1) CPR 37.

7. M/s. Magma Fincorp Ltd. Vs. Sh.A. Sakthivel & Others

i) Case in Brief:

The Complainant and his principal purchased a bus from the Respondent, Megma Shrachi Finance for a consideration of Rs.2,40,000/- and took delivery of the above said vehicle of 15.02.2007. He was informed by the company that the original invoice and other papers would be given to him on 16.02.2007. Since the said documents were not given, complainant approached the District Forum alleging deficiency in service by the OP which included the Petitioner. District

Forum directed the OPs 1 to 4 which included the Petitioner to pay a sum of Rs.2,40,000/- to the Complainant along with interest @ 9% p.a. The Forum also awarded a sum of Rs.15,000/- towards compensation and Rs.5,000/- towards costs. OP's No.2 to 4 filed an appeal before the State Commission which was dismissed. OP No.3, Megma Shrachi Finance has filed his revision petition challenging the State Commission's order. Revision Petition dismissed as devoid of merits.

ii) Order appealed against:

From the order dated 22.07.2014 in FA No.201 of 2011 of the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai.

iii) Parties:

M/s. Magma Fincorp Ltd.

- Petitioner

Vs.

Sh.A. Sakthivel & Others

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3846 of 2014 & Date of Judgement: 02-12-2014.

v) Acts and Sections referred:

Sections 2(1)(g) & (o),19 and 21(b) of The Consumer Protection Act,1986.

vi) Issues raised and decided:

- a) It was claimed by the Petitioner that the original documents of the vehicle continued to be in the possession of the first purchaser namely, M/s. Natarajan Educational Trust. Held that the petitioner company ought to have taken the documents of the vehicle before putting the said vehicle on sale. Alternatively, it could have sold the vehicle on "as is where is" basis making it clear to the purchaser that it would not be possible for it to deliver the documents to him.
- b) Had the Petitioner Company not made the promise to deliver the documents on 16.02.2007, the Complainant would not have purchased the vehicle. Petitioner Company was therefore clearly deficient in rendering services to the complainant.

vii) Citation:

I (2015) CPJ 60; 2015(1) CPR 397.

8. TCI Exim Private Limited Vs. Export Credit Guarantee Corporation of India Ltd. & others

i) Case in Brief:

TCI Exim Pvt. Ltd., the complainant, transacts the business of export of readymade garments and fabrics. He had obtained policy dated 17.11.1999 from Export Credit Guarantee Corporation of India Ltd. (ECGC), OP1, against any loss which the complainant may sustain by reason of any risk involved in the export of goods from India. By virtue of Letter of Credit dated 07.12.1999, received by the complainant from Tridev Garments Industries Pvt. Ltd., Nepal, OP4, the complainant supplied fabrics from Delhi to Kathmandu. As the above LC was going to expire, the same was amended by the issuing bank and subsequent shipments were made on that basis. The Complainant contended that Buyer failed to pay for shipments amounting to US\$ 49,964.50= Rs.21,60,172/- and the Opening Bank defaulted, and thus, OP1 is liable under the above said policy. It was also contended that the default on the part of the buyer or the opening Bank in making payment to the complainant in respect of the exported goods is a risk covered under the above policies issued by O.P.1 and is not subject to any term of the L/C. Therefore, complaint was filed alleging deficiency in service against OP1 in respect of Policy No.SCR 9954459 covering shipments of the complainant. Complaint dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

TCI Exim Private Limited - Complainant

Vs.

Export Credit Guarantee Corporation of India Ltd. & others - Opp. Parties

iv) Case No and Date of Judgement:

Original Petition No.374 of 2002 & Date of Judgement: 05-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o) & 21(a) (i) of the Consumer Protection Act, 1986.

vi) Issues raised and decided

- a) OPs 2 to 5 were deleted from the array of parties vide order of the Commission dated 22.10.2003.
- b) It was held that the liability of OP comes into play when the Buyer fails to pay the price for the goods delivered to him and accepted by the Buyer. This is not a case where the goods were delivered and accepted by the Buyer or the Buyer has refused to make the payment.
- c) The Shipments made by the insurer were against the irrevocable letters of credit and same do not come under the purview of Shipments Comprehensive Risks (SCR) Policy. The OP1 can take care of the interest of the Seller i.e., the Indian Exporter. By no stretch of imagination, the OP1 can be held liable for the financial position of the Buyer. It is for the seller to choose the Buyer who is financially sound. The Complainant did not pay any premium to cover Buyer Risks thereon.
- d) Payment under L/C is subject to the conditions of L/C. The Opening Bank, as per the conditions of L/C is not liable to make payment. The conditions in L/C and the conditions set out in the Policy are entirely different. The Complainant failed to show that the said loss is covered under Risk as contained in sub clauses (iv) to (x) of the Policy. Non-Payment under L/C is not a covered risk.
- e) The National Commission by dismissing the complaint held that no deficiency could be attributed on the part of OP 1.

vii) Citation:

Not reported in CPJ and CPR.

O) HEALTH INSURANCE:

1. Bajaj Allianz General Insurance Co. Ltd. Vs. Smt. Achala Rudraniwas Marde

i) Case in Brief:

Respondent/Complainant's husband (since deceased) was covered by a General Contingency Policy with the Comprehensive Health Cover. He met with an accident at 10.30 pm on 24.12.2009, while driving his

motorcycle and died on 25.12.2009. Complainant submitted claim for release of a sum of Rs.10 lakhs as covered under the policy. Petitioner/OP repudiated the claim on the ground that "Insured was under the influence of alcohol at the time of accident which have been proved by Blood Analysis Report". District Forum dismissed the complaint. State Commission on appeal directed OP to make a payment of 50% of sum insured i.e., Rs.5 lakhs with interest@ 9% p.a. from the date of repudiation and cost of Rs.25,000/- to the complainant. The Present Revision Petition filed by the OP against the State Commission's order dismissed.

ii) Order appealed against:

Against order dated 26.07.2013 in First Appeal No.A/11/939 of the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai.

iii) Parties:

Bajaj Allianz General Insurance Co. Ltd. - Petitioner

Vs.

Smt. Achala Rudraniwas Marde - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3934 of 2013 & Date of Judgement: 01-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act,1986; Sections 114 (A) of the Insurance Act,1938 read with Sections 14 and 26 of the Insurance Regulatory and Development Authority Act,1999.

vi) Issues raised and decided:

- a) It was noted that the terms and conditions relied upon by the insurance company were never supplied to the complainant and not brought to the notice of the insured. Non-disclosure of the terms and conditions is violation of utmost good faith which is the base of the insurance contract between the parties. The Judgements of the Hon'ble Supreme Court in *Royal Sundaram Alliance Insurance Co. Ltd Vs. Sangeeta Deepak Tolani* and *Modern Insulators Limited Insurance Company (2000) 2 SCC 734* are relevant.
- b) It was held that Post Mortem Report (PM) and Forensic Science Laboratory Report (FSL) were inconclusive. While the PM findings were not supported by histopathological evidence of Acute Alcohol

injury to the liver, the FSL report lacked details about alcohol concentration in liver or other organs.

- c) The Police investigation Report, Panchnama clearly said that the insured was hit in the accident by the rash and negligent driving on oncoming motorcyclist from opposite side.
- d) Held that repudiation was an arbitrary and technical one. Revision Petition dismissed.

vii) Citation:

I (2015) CPJ 146.

P) HIRE PURCHASE:

1. M/s. Sundaram Finance Ltd Vs. Sh.Atul Kumar

i) Case in Brief:

Respondent/Complainant took the loan of Rs.2,80,000/- from the Petitioner/OP Finance Company which was to repaid in 24 equal installments. The Complainant had paid twenty installments and could not deposit the remaining installments in time. It is alleged that despite his promise to deposit the amount within 1 – 2 months, OPs resorted to forcible possession of the vehicle on 29-10-2005 through its musclemen. Complainant reported to the police and requested the OP to return the vehicle. But OP did not oblige. The District Forum before whom a complaint was filed accepted the complaint and directed the OP to refund a sum of Rs.2,16,220/- along with interest at 9 % p.a from the date of repossession of vehicle till its realization. The Petitioner's appeal to the State Commission was dismissed against which the present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 6-8-2012 in F.Appeal No.1444/2010 of the Haryana State Consumer Disputes Redressal Commission, Panchkula

iii) Parties:

M/s. Sundaram Finance Ltd.	-	Petitioner
	Vs.	
Sh.Atul Kumar	-	Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4254 of 2012 & Date of Judgement: 05-11-2014

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The only question that arose for consideration in the revision petition was whether the vehicle in question was repossessed by the Petitioner illegally by force or after following due process of law. The District Forum, relying on the decisions in *Tata Motors Ltd v. Indrasen Choubey and others* 2009 (2) CPJ 368 and *ICICI Bank v. Shanti Devi Sharma and others* 2008(3) RCR (Criminal) page 463, had held that the re-possession without intimation to the complainant was illegal which finding was upheld by the State Commission. The National Commission agreed with the view taken by the State Commission and District Forum.
- b) It was held that there was no illegality, material irregularity or jurisdictional error in the order passed by the State Commission. The revision petition was therefore dismissed as devoid of merit.

vii) Citation:

2014(4) CPR 724.

**2. Director, Berar Finance Ltd. Vs. Satishkumar Prabhakar Rao
Broker**

i) Case in Brief:

One Mr. Shaikh Imam borrowed loan of Rs.30,000/- from OP/Petitioner, purchased a motor cycle and hypothecated it with opposite party. Later, he sold the vehicle to the complainant. There was an outstanding amount against the loan and since the balance amount of Rs.32,548/- was not paid by the complainant despite notice, OP seized the vehicle on 06.12.1999 and sold it on 23.12.1999. Complainant took the matter to the District Forum which allowed his complaint and directed the OP to refund Rs.52,416/- with 18% of interest p.a. or in the alternative allot new motor cycle and further granted compensation of Rs.10,000/

- and cost of Rs.2,000/-. Appeal filed by the OP was dismissed by the State Commission. Present Revision Petition against the State Commission's order was allowed and the orders of the State Commission and the District Forum were set aside. Complaint dismissed with no costs.

ii) Order appealed against:

Against the order dated 03-08-2012 in First Appeal No.A/00/2028 of the Maharashtra State Commission, Circuit Bench, Nagpur.

iii) Parties:

Director, Berar Finance Ltd. - Petitioner

Vs.

Satishkumar Prabhakar Rao Broker - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3856 of 2012 & Date of Judgement: 08-12-2014.

v) Acts and Sections referred:

Section 2(1) (g) & (o), 19 & 21(b) of The Consumer Protection Act,1986.

vi) Issues raised and decided:

- a. Records showed that the complainant had also made payment against the due instalments and in such circumstances it came to be inferred that the loan account of Shaikh Imam was shifted to the complainant and the complainant was under obligation to pay the balance dues and instalments.
- b. As the vehicle had been possessed on account of default in payment of instalments and had been sold after due notice, no deficiency on the part of the opposite party can be presumed in the light of judgement of Hon'ble Apex Court in *III(2012) CPJ 4(SC)* - *Suryapal Singh Vs. Siddha Vinayak Motors & Anr.*

vii) Citation:

I (2015) CPJ 228; 2015(1) CPR 367.

3. Axis Bank Ltd. Vs. Shri S. Venugopal Naidu

i) Case in Brief:

Complainant/Respondent purchased SKODA vehicle after availing loan of Rs.15 lakhs from O.P/Petitioner which had to be repaid in instalments of Rs.32,000/- per month. Since he did not pay the instalment in time in the year 2009, O.P forcibly seized the vehicle, issued a pre-sale notice and despite objections from the complainant sold the vehicle in an auction for Rs.12 lakhs O.P did not give time to the complainant to make bid. District Forum allowed complaint and directed O.P to pay Rs.5 lakhs with 9% interest. Appeal filed by O.P was dismissed by the State Commission. Revision Petition filed by petitioner is allowed on the ground that merely because O.P exercises its legal right at the earliest, no deficiency can be imputed.

ii) Order appealed against:

Against the order dated 12.08.2013 in Appeal No.1232/11 of Karnataka State Consumer Disputes Redressal Commission, Bangalore.

iii) Parties:

Axis Bank Ltd.

- Petitioner

Vs.

Shri S. Venugopal Naidu

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.742 of 2014 & Date of Judgement: 15-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) (o), 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) As per term of the loan cum hypothecated agreement, O.P in the event of any default on the part of the complainant was entitled to recover the entire dues of the loan and take possession of the vehicle. After taking possession of the vehicle on 13-6-2009, OP's sent a letter 17-06-2009 asking complainant to obtain a release of the vehicle after paying Rs.13, 76, 769 within 7 days after receiving the letter. Complainant did not make any payment within 7 days that is upto 26-06-2009.

- b) O.P after issuing an advertisement for sale of vehicle in the paper 'Bangalore Mirror' sold the vehicle for highest bidder for Rs.12 lakhs.
- c) District Forum's observation that there was no necessity for O.P to insist to pay the entire amount which was not overdue and it was sufficient if he was insisted to pay the overdue instalments only, was found to be contrary to the terms and conditions of loan cum hypothecated agreement. Held that both the District Forum and State Commission committed error in allowing compensation. Therefore, Revision Petition was allowed and the interim order of the State Commission set aside.

vii) Citation:

I (2015) CPJ 244; 2015(1) CPR 297.

Q) HOUSING:

1. Brig (Retd.) J.N. Deviah and another Vs. M/s. Shantiniketan Housing Foundation

i) Case in Brief:

Complainant/Petitioner filed complaint before District Forum with the prayer to direct OP to handover possession of apartment 104 of "Hiland Park" in accordance with law as per agreement after attending shortcomings and reimburse enhanced registration charges along with compensation. District Forum dismissed complaint against which appeal was filed before the State Commission which allowed appeal and set aside order of District Forum. Complainant filed execution petition before District Forum which directed OP to execute sale deed in accordance with Form No.5 of Karnataka Apartments Ownership Act, 1972. OP filed appeal before the State Commission which vide impugned order allowed the appeal and set aside the order of the District Forum. Aggrieved by the State Commission's order, the present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 26.10.2009 in Appeal No.1476 of 2009 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

iii) Parties:

Brig (Retd.) J.N. Deviah and another - Petitioners/Complainants

Vs.

M/s. Shantiniketan Housing Foundation - Respondent/Opp. Party

iv) Case No and Date of Judgement:

Revision Petition No.4388 of 2009 & Date of Judgement: 23-09-14.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 2 of the Karnataka Apartments Ownership Act, 1972.

vi) Issues raised and decided:

The National Commission pointed out that the Complainant had nowhere prayed that sale deed of flat was to be executed with Form No.5 of the Karnataka Apartment Ownership Act, 1972 and in such circumstances the directions given by District Forum were not in accordance with order of the State Commission dated 26-03-2007. It was further held that perusal of Section 2 of Karnataka Apartments Ownership Act, 1972 made it clear that the Act was applicable only if the owner or all owners of the property submit to the provisions of the Act by duly executing and registering a declaration as provided under the Act. No such declaration was placed on record by the Petitioner and in the absence of such declaration it was held that the Karnataka Apartments Ownership Act, 1972 was not applicable as rightly observed by the State Commission. The Revision Petition was therefore dismissed.

vii) Citation:

IV (2014) CPJ 585; 2014(4) CPR 202.

2. Delhi Development Authority Vs. Shri Vinod Kumar

i) Case in Brief:

Respondent/Complainant was allotted Plot.No.62 in Pocket 8, Sector 24 under Rohini LIG Scheme of the Petitioner on 29-10-1991. He deposited the amount of Rs.21,229/- in three installments, but possession was not given to him. On 24-03-2003, he sent photocopies of his specimen signature, ration card etc. The Petitioner there upon allotted another

plot of 34 sq.mt. at the rate of Rs.6,224/sq.mt. The Complainant was asked to pay a total sum of Rs.2,46,516/- including premium at the rate of Rs.18,546/sq.mt for two sq.mts, restoration charges, documentation charges etc. Complainant approached the District Forum which dismissed the complaint. His appeal to the State Commission was allowed with direction to Petitioner, DDA to allot a plot measuring 34 sq.mts. within a period of three months anywhere in Delhi. Compensation of Rs.3,00,000/- was also awarded for mental agony, harassment and cost of litigation etc. aggrieved by the said order, the present revision petition has been filed by the Petitioner. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 31-03-2014 in F. Appeal No.332 of 2010 of Delhi State Consumer Disputes Redressal Commission, New Delhi.

iii) Parties:

Delhi Development Authority

- Petitioner

Vs.

Shri Vinod Kumar

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No: 3286 of 2014 with I.A No.5634 of 2014, I.A No.5635 of 2014 and I.A No.5636 of 2014(For Stay, Condonation of Delay, Exemption to file typed copies) &

Date of Judgement: 29-09-2014.

v) Acts and Sections referred:

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Relying on the judgement of a Division Bench of the Delhi High Court in *Asha N.Madnani v. D.D.A* 1997 1 AD (Delhi) 385, the Commission held that the DDA was not justified in cancelling the allotment of Plot No.62 and it was not justified in asking for restoration charges at the rate of Rs.300/sq.mt. It was also held that the demand of premium at the rates prevailing in the year 2003 was an act of gross high handedness and patently unfair and unreasonable. In such circumstances, the Commission found no fault with the amount of compensation awarded

by the State Commission to the Complainant. The application seeking condonation of delay as well as the revision petition were accordingly dismissed.

vii) Citation:

Not reported in CPJ and CPR.

3. Sushil Kumar Gupta Vs. Meerut Development Authority

i) Case in Brief:

Petitioner/Complainant was allotted a plot by the Respondent Authority. It is the Petitioner's case that though he had paid a total sum of Rs.1,35,690/- in several installments, the development work had not been completed and the Respondent was demanding watch and ward charges. The District Forum before whom a complaint was filed, directed the Respondent to return the amount of Rs.1,35,690/- along with interest at 15% p.a besides awarding compensation of Rs 8,000/- and cost of Rs.5,000/. The State Commission, on appeal filed by the Respondent, modified the order of the District Forum and held that the petitioner, who had not paid the increased price which was based on the order of the Hon'ble Supreme Court, was entitled only to refund of the amount deposited by him after making deductions as per the rules of the Authority. Being aggrieved from the order of the State Commission, this revision petition had been filed by the complainant. Revision petition dismissed as withdrawn.

ii) Order appealed against:

From the order dated 21-03-2014 in F.A.No.2611 of 2013 of the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

Sushil Kumar Gupta

- Petitioner

Vs.

Meerut Development Authority

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3664 of 2014 with I.A. No.6707 of 2014, I.A. No.6708 of 2014 and I.A. No.6709 of 2014 (For Stay, condonation of delay and exemption from filing certified copy) & Date of Judgement: 07-10-2014.

v) Acts and Sections referred:

Sections 2(1)(g) & (o),19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The petitioner sought to withdraw the revision petition with liberty to approach the authority in terms of ground (j) in the appeal filed by the Authority before the State Commission. It was allowed and consequently the revision petition was dismissed as withdrawn.

vii) Citation:

Not reported in CPJ and CPR.

4. Rajasthan Housing Board and others Vs. Kamlesh Kumar Sharma

i) Case in Brief:

Complainant/Respondent was allotted house by the Petitioner under its Special Registration Scheme, 2010 for a consideration of Rs.3,25,878/-. Complainant took possession of the house on 25-05-2012. The Complainant's grievance is that when he inspected the house, he found that it was an old dilapidated house instead of a newly constructed house. He took photographs of the house and approached the District Forum for relief. District Forum directed the Petitioner Board to make necessary repairs in the house and to do white washing. It also directed the Board to pay Rs.15,000/- as cost of litigation to the complainant. The Petitioner Board preferred an appeal before the State Commission which was dismissed vide impugned order against which the present revision petition has been filed along with an application for condonation of delay of 152 days. Both the revision petitions and the application for condonation of delay were dismissed.

ii) Order appealed against:

From the order dated 22-01-2014 in Appeal No.899 of 2013 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

Rajasthan Housing Board and others - Petitioners

Vs.

Kamlesh Kumar Sharma - Respondent

iv) Case No and Date of Judgement:

Revision Petition No. 3639 of 2014 with IA/6629/2014 & IA/6630/2014 (For Stay, Condonation of Delay) & Date of Judgement: 08-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The question that arose for consideration was whether the house allotted to the complainant was defective or not. It was held that since the Complainant had seen the house, he was a competent witness to depose with respect to the deficiency he found in the house. It was also noted that the Petitioner Board had not filed any affidavit of any engineer to certify that there existed no defect in the house. Since the District Forum's order mandated the Petitioner Board to carry out only such repairs as are found in the house, it was held that no reasonable exception can be taken to the directions given by the Forum.
- b) On the contention of the Petitioner Board that the house in question was allotted at a reduced price, it was held that the Board ought to have stated in the allotment order that the house was in a dilapidated and non-livable condition. Had it done so, the Complainant would not have accepted the allotment even at the alleged reduced cost.
- c) Consequently, the revision petition was dismissed as devoid of merit. The application for condonation of delay was also dismissed without taking a view on the same.

vii) Citation:

Not reported in CPJ and CPR.

5. Dr. (Mrs.) Manisha Balakrishna Kulkarni & Ors. Vs. M/s. Lanco Hills Technology Part Pvt. Ltd.

i) Case in Brief:

There was a dispute between the Complainants and the Opposite Party over purchase of property bearing an apartment built on land with parking space. The developer (OP) had agreed to complete construction and hand over possession by 28-06-2011 (including grace time). The

Complainants' case was that the property was not handed over even when the sale deed was executed on 11-02-2013. A complaint was filed with the Commission on 21-04-2014 alleging deficiency in service. When the case was in progress, possession was handed over on 28-08-2014. The issue to be settled by the Commission was regarding the compensation to be paid for the delay in handing over the possession. Complaint was allowed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Dr. (Mrs.) Manisha Balakrishna Kulkarni & Ors. - Complainants

Vs.

M/s. Lanco Hills Technology Part Pvt. Ltd. - Opp. Party

iv) Case No and Date of Judgement:

Consumer Complaint No.112 of 2014 with IA/2576/2014 (For Ad-interim Ex-parte relief), IA/4050/2014 (For condonation of delay in filing written statement) & Date of Judgement: 09-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission noted that para (3) of the sale deed dated 11-02-2013, contained a provision for simultaneous handing over of physical possession of the property but only symbolic possession was given to the complainants on that day. Actual possession was given only on 28-08-2014, although according to the agreement between the parties, it should have been given by 18.06.2011. Granting a further benefit of six months, i.e till the end of December, 2011 the Commission directed that the OP shall pay an amount of Rs.18,440/- per month at Rs.5/- per sq.ft for the built up area of 3688 sq. ft for a period of six months from 1-1-2012 to 30-06-2012. For the rest of the period, from 01.07.2012 to 28-08-2014, OP was directed to pay interest at 18% p.a on the entire amount paid by the Complainants to them within a period of sixty days. The Commission relied on the decisions taken in (1) *Ghaziabad Development Authority v. Krishna Kumarji* in Revision Petition No.1006 of

2000 decided by the Commission on 03-12-2003 and (2) *K.A.Nagamani v. Karnataka Housing Board* in Civil Appeal Nos.6730-6731 of 2012 wherein the Hon'ble Supreme Court vide order dated 19-09-2012 had granted interest at 18% p.a as well as compensation.

vii) Citation:

Not reported in CPJ and CPR.

6. The Commissioner, Karnataka Housing Board and another Vs. D. Shantappa

i) Case in Brief:

All the complainants in the 21 revision petitions had registered for allotment of house sites in the layout proposed by the Petitioner in Shimoga District. The Petitioner had received the registration fee of Rs.1,050/- and initial deposit of Rs.15,000/- from each one of the complainants in 2005. Later, it asked for their consent for acceptance of allotment price at Rs.290/- per sq. feet. Complainants, after some resistance accepted it on 15-11-2007. Since no further communication was received from the petitioner, a legal notice was issued in January, 2011. Subsequently, a consumer complaint was filed in the District Forum which allowed the complaints and directed OP/KHP to allot sites in the layout by draw of lots if necessary and pay them Rs.2,000/- towards cost. The order was upheld by the State Commission against which the present revision petitions have been filed. Revision petitions dismissed with a direction that the petitioner should pay Rs.10,000/- towards litigation expenses to each Respondent/Complainant within two months.

ii) Order appealed against:

Against the order dated 24.08.2012 in Appeal No.3925-3953 of 2011 of the Karnataka State Consumer Redressal Commission, Bangalore.

iii) Parties:

Revision Petition No.4833 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

D. Shantappa

- Respondent

Revision Petition No.4834 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

Lokeshwarappa - Respondent

Revision Petition No.4835 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

G. Rudreshappa - Respondent

Revision Petition No.4836 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

M. Nagraj - Respondent

Revision Petition No.4837 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

G.T. Shivaraj - Respondent

Revision Petition No.4838 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

S. Bhagyalaxmi - Respondent

Revision Petition No.4839 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

S.J.Yogeshwarappa - Respondent

Revision Petition No.4840 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

Dr. N.M. Sudha - Respondent

Deficiency in Service - Housing

Revision Petition No.4841 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

M. Suresh - Respondent

Revision Petition No.4842 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

H. Basavanagodappa - Respondent

Revision Petition No.4843 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

B.B. Lalita - Respondent

Revision Petition No.4844 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

S.J. Murugarajendra - Respondent

Revision Petition No.4845 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

Ganesh K.G. - Respondent

Revision Petition No.4846 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

Kasturi - Respondent

Revision Petition No.4847 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

K.V. Ravindra - Respondent

Revision Petition No.4848 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

A.R.Nagraj - Respondent

Revision Petition No.4849 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

H. Pampappa - Respondent

Revision Petition No.4850 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

Sadashiva Bhat - Respondent

Revision Petition No.4851 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

H.P. Shobha - Respondent

Revision Petition No.4852 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

D.H. Sathish - Respondent

Revision Petition No.4853 of 2014

The Commissioner, Karnataka Housing Board & Anr. - Petitioner

Vs.

B.Padmavathi - Respondent

iv) Case No and Date of Judgement:

Revision Petition Nos.4833-4853 of 2012 &

Date of Judgement: 10-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was noted that though while staying the operation of the impugned order, the National Commission had directed the Petitioner/ KHP to pay a sum of Rs.8,000/- to each complainant towards litigation and allied expenses, the Petitioner had not done so. The Commission therefore enhanced the amounts payable to Rs.10,000/- to each complainant.
- b) The Commission did not accept the contention of the Petitioner that the exercise undertaken by it was only as a measure of demand survey and there was no commitment to allot the sites to the applicants. It was held that the Petitioner had gone beyond the process of demand survey.
- c) The Commission found no illegality, material irregularity or jurisdictional error in the order of the State Commission. Accordingly, the revision petitions were dismissed.

vii) Citation:

IV (2014) CPJ 655; 2014(4) CPR 431.

7. Mr.Manjit Singh Sabharwal Vs. M/s. BPTP Ltd

i) Case in Brief:

Complainant booked a residential flat in Gurgaon with OP on 04-10-2011 by making a part payment of Rs.7 Lakhs. One of the units was allotted to him on 15-11-2011. It is his case that when he visited the site on April, 2013, construction had not been made as per the agreement. The allotment made to him was subsequently cancelled by the OP in May, 2013. Aggrieved by the cancellation, this original complaint was filed before the National Commission but the complaint was withdrawn at the time of hearing. Complaint dismissed as withdrawn.

ii) Order appealed against:

Original Complaint

iii) Parties:

Mr.Manjit Singh Sabharwal - Complainant

Vs.

M/s.BPTP Ltd - Opp.Party

iv) Case No and Date of Judgement:

Consumer Complaint No.397 of 2014 with IA.No.7083 of 2014 (For Stay).
Date of Judgement: 17-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

During the hearing, it came to light that the Complainant delayed payment of first five installments on which interest was paid by him to the opposite party. He also defaulted in payment of three consecutive installments for a total sum of Rs.27 Lakhs. When this was pointed out, the Counsel for the Complainant on instructions sought to withdraw the complaint. Complaint was therefore dismissed as withdrawn.

vii) Citation:

Not reported in CPJ and CPR.

8. Emaar MGF Land Ltd. Vs. Neeraj Malik

i) Case in Brief:

The complainants booked with the appellant-company apartment and paid half of the amount. Later, the appellant-company informed the complainant that he had not paid the balance booking amount and requested him to pay. In the meanwhile, the complainant informed the appellant-company that the flat was anti vastu and his intention was to purchase a villa. The appellant-company was requested to cancel the flat and refund the money deposited by him along with bank interest. The appellant-company, however, purportedly in terms of Clause 7 of the terms and conditions agreed by the complainants deducted 10% of the sale price of the apartment from the amount which the complainant had deposited with it and was ready to refund the balance amount. The complainant approached the State Commission by way of a complaint. The State Commission permitted the appellant-company to deduct 10% of the amount deposited by the complainants and directed it to refund the balance amount along with interest on that amount at the rate of 6% per annum and Rs.5,000/- towards costs. Being aggrieved from the order of the State Commission, the appellant-company filed these appeals. Appeals were dismissed.

ii) Order appealed against:

First Appeal No.215 of 2010

From the order dated 31-05-2010 in CC No.18 of 2009 of the Andhra Pradesh State Consumer Disputes Redressal Commission at Hyderabad.

First Appeal No.216 of 2010

From the order dated 31-05-2010 in CC No.19 of 2009 of the Andhra Pradesh State Consumer Disputes Redressal Commission at Hyderabad.

iii) Parties:

First Appeal No.215 of 2010

Emaar MGF Land Ltd. - Appellant

Vs.

Neeraj Malik - Respondent

First Appeal No.216 of 2010

Emaar MGF Land Ltd. - Appellant

Vs.

Rajesh Malik - Respondent

iv) Case No and Date of Judgement:

a) First Appeal No.215 of 2010;

b) First Appeal No.216 of 2010 & Date of Judgement: 29-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

a) Held that there was no occasion for the appellant company to deduct 10% of the sale price without the appellant company first sending the standard templates of the construction agreement to the complainants along with a detailed sale price payment schedule. Consequently, clause 7 of the terms and conditions which provided for automatic cancellation of allotment and deduction of 10% of the sale price could not have been invoked by the appellant company.

- b) Further held that in the present case since there was no term agreed between the parties for the forfeiture of the whole or part of the earnest money, the act of the appellant was not justified. Therefore, the present appeal was dismissed.
- c) The Commission directed that the amount which the appellant had deposited with the commission be paid to the concerned complainant along with interest which has accrued on that account and that the balance amount if any shall be paid to the complainant within 8 weeks from the date of the order.

vii) Citation:

Not reported in CPJ and CPR.

9. Sharita K. Shah and another Vs. M/s. Chanchaldas and Sons Mahul and others

i) Case in Brief:

Appellants/Complainants jointly executed the agreement on 03/12/2010 for purchase of flat developed by the Respondents/Opponents known as 'Oceanic Towers' for a total agreed consideration of Rs.22,75,000/-. The possession was promised to be delivered on receiving of the agreed consideration as stipulated in the registered agreement to sale. Payment of Rs.22,75,000/- was paid through cheque on 22/08/2008 (by four different cheques). Though frantic efforts were made by the appellants to get possession of the flat, respondents did not respond favourably. Therefore, complaint was filed alleging deficiency in service against the respondents before the State Commission which partly allowed the complaint and directed the Respondents to refund an amount of Rs.22,75,000/- along with interest @ 9% p.a. thereon from the date of filing this complaint till realization. The Appellants' claim that they were entitled to refund of another Rs.5,00,000/- which was purportedly paid in cash, was disallowed. Being aggrieved, the appellants have filed these appeals. The appeals were dismissed.

ii) Order appealed against:

First Appeal No.308 of 2014

Against the order dated 19.4.2014 in Complaint No.13/103 of the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai.

First Appeal No.309 of 2014

Against the order dated 19.4.2014 in Complaint No.13/104 of the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai.

iii) Parties:

First Appeal No.308 of 2014

Sharita K. Shah and another - Appellants

Vs.

M/s. Chanchaldas and Sons Mahul and others - Respondents

First Appeal No.309 of 2014

Dr. Laherchand Lakhamshi Oswal and another - Appellants

Vs.

M/s. Chanchaldas and Sons Mahul and others - Respondents

iv) Case No and Date of Judgement:

a) First Appeal No.308 of 2014;

b) First Appeal No.309 of 2014; &

Date of Judgement: 29-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Based on the records produced, it was held that the appellants have failed to establish their claim that they had paid a sum of Rs.5,00,000/- in cash to the respondents, in addition to sum of Rs.22,75,000- which was paid by way of cheques. Therefore, there was no infirmity or illegality in the impugned order passed by the State Commission. Hence, the appeals were dismissed.

vii) Citation:

2014(4) CPR 550.

10. Deputy Commissioner, Rajasthan Housing Board and another Vs. Durga Ram

i) Case in Brief:

The complainant applied to the Petitioner Board for registration of a residential house under the Middle Income Group. Along with the application form he submitted an affidavit stating therein that his total income in the financial year 2008-09 was Rs.1,19,856/-. Thus, as per the income disclosed in the affidavit he was eligible for registration under Middle Income Group for which the upper limit was Rs.1,20,000/- p.a. However, instead of enclosing the salary certificate of the financial year 2008-09, the complainant enclosed the salary certificate of July 2009. In July 2009 his gross salary was Rs.10,815/-. In a draw of lots, house No.9/689 was allotted to the complainant on 15-10-2009. However, no allotment letter was issued to him. Complainant came to know that the allotment had been cancelled since his income was higher than the limit prescribed for allotment in Middle Income Group. He approached the District Forum by way of a complaint. The Forum directed the petitioner-board to refund a sum of Rs.1,50,000/- to the complainant along with interest on that amount at the rate of 9% per annum and to pay Rs.5,000/- as compensation and Rs.3,000/- as cost. Being aggrieved from the order of the District Forum the petitioner as well as the complainant preferred separate appeals before the State Commission. The State Commission allowed the appeal filed by the complainant and dismissed the appeal filed by the petitioner-board. The order whereby the allotment made to the complainant had been cancelled by the Petitioner Board was quashed and set aside by the State Commission. Being aggrieved from the dismissal of its appeal, the petitioner-board filed this revision petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 08-07-2014 in FA No.57 of 2012 and FA No.82 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission at Jodhpur.

iii) Parties:

Deputy Commissioner,
Rajasthan Housing Board & Anr.

- Petitioners

Vs.

Durga Ram

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3871-3872 of 2014 with I.A. No.7448 of 2014 (For stay) & Judgement on 30-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was pointed out by the National Commission that the income disclosed by the complainant in the affidavit was within the income range notified by the petitioner-board for registration under the middle income group and the salary certificate was required only to prove the said statement. Therefore, instead of penalizing the complainant, the petitioner-board ought to have acted upon the salary slip which the complainant later submitted to the board and ought to have recalled the order whereby the allotment was cancelled. Therefore, it was held that the revision petition is absolutely frivolous and devoid of any merit and the petition was dismissed with cost assessed at Rs.25,000/- to be deposited with the Consumer Legal Aid A/c - NCDRC within four weeks from the date of order.

vii) Citation:

Not reported in CPJ and CPR.

11. Col (Retd.) Sunil Kumar and others Vs. Thota Chandrasekhara Reddy

i) Case in Brief:

Complainant/Respondent applied for the Dwelling Unit of the Scheme launched by the OPs and the Dwelling Unit measuring 637 sq. ft. was allotted in favor of the complainant. He deposited an initial amount of Rs. 25,000/- on 27.02.2006. The appellant paid Rs.6,76,000/- on 03.11.2010 towards part payment of sale consideration. Rest of the amount was to be paid in instalments. The brochure revealed that construction work was to be completed within 30 months from the date of allotment i.e. 5th October 2006. Five years had elapsed but the construction was not completed. On 09.03.2011, Complainant requested the OPs to refund the amount. The OPs, however, refunded the amount

of Rs.6,07,310/- after deducting Rs. 30,690/- towards withdrawal charges from the first instalment. The complainant requested that the entire money should be refunded. However, his request did not evoke any response. A complaint was filed before the District Forum which dismissed the complaint. The complainant filed an appeal before the State Commission. The State Commission partly allowed the appeal and directed the OPs to pay Rs.20,000/- together with costs of Rs. 3,000/- . Still aggrieved by that order, both the parties filed the separate Revision Petitions. Revision petition filed by the OP was dismissed.

ii) Order appealed against:

Revision Petition No.1495 of 2014

From the order dated 31.10.2013 in First Appeal No. 468/2013 of the State Consumer Disputes Redressal Commission, Andhra Pradesh, Hyderabad.

Revision Petition No.4704 of 2013

From the order dated 31.10.2013 in First Appeal No. 468/2013 of the State Consumer Disputes Redressal Commission, Andhra Pradesh, Hyderabad.

iii) Parties:

Revision Petition No.1495 of 2014

Col (Retd.) Sunil Kumar and others - Petitioners

Vs.

Thota Chandrasekhara Reddy - Respondent

Revision Petition No.4704 of 2013

Thota Chandrasekhara Reddy - Petitioner

Vs.

Col (Retd.) Sunil Kumar and others - Respondents

iv) Case No and Date of Judgement:

- i. Revision Petition No.1495 of 2014
- ii. Revision Petition No.4704 of 2013 &
Date of Judgement: 03-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986

vi) Issues raised and decided:

- a) Held that OPs were liable to pay interest @ 6.5% but due to bizarre conduct of the OPs, it was increased to 7.5% which would come to Rs. 1,73,282/- till 20.01.2011 when the money was paid to the complainant. The OPs were further directed to refund Rs. 30,690/- from 21.10.2011 with interest @ 7.5% till its realization. The entire amount was directed to be paid to the complainant within 90 days from the date of receipt of the copy of the order otherwise after the expiry of the above said 90 days, the interest would be enhanced to 10% p.a. till its realization.
- b) The Revision Petition filed by the OPs was dismissed and the appeal filed by the complainant was accepted.

vii) Citation:

II (2015) CPJ 267; 2014(4) CPR 757.

12. Mr. Franciso M. Cortez & Others Vs. Mr. Peter Anthony D'Souza & Others

i) Case in Brief:

The Six Complainants Nos.1- 6/Respondents Nos. 1- 6 filed a complaint before the District Forum wherein they prayed to compel OPs 1 & 2, the Builders and OP 3, Original Owner / Petitioner represented by his legal heirs, of the property in dispute to form a co-operative society and / or execute the individual deed of sale of each complainant. District Forum directed the OPs jointly and severally to pay Rs.1,00,000 to each of the Complainants. The appeal filed by the OPs was dismissed by the State Commission with a minor modification. The present revision petition has been filed by the owners against the Complainants as well as the builders in question. Revision petition was dismissed with further costs of Rs.25,000 to be paid by the owners alone to each of the complainants.

ii) Order appealed against:

From the order dated 18.09.2013 in First Appeal No.26/2013 State Consumer Disputes Redressal Commission, Panaji, Goa.

iii) Parties:

Mr. Franciso M. Cortez & Others - Petitioners

Vs.

Mr. Peter Anthony D'Souza & Others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4643 of 2014 with IA/7659/2013 (For Stay) &
Date of Judgement: 10-11-2014.

v) Acts and Sections referred:

Sections 2(1)(g) & (o), 19 and 21(b) of the Consumer Protection Act,1986.

vi) Issues raised and decided:

Held that the present case is not a case of "Owner and Builder" simpliciter and that there is involvement of land owners as well. The Covenants of the agreement dated 30-12-1982 showed clearly that the owners/petitioners had a role in the execution of sale deeds and that they were delaying it for some reason or the other. Revision petition was therefore dismissed with further costs of Rs.25,000/- to be paid to each of the complainants by the Petitioners.

vii) Citation:

Not reported in CPJ and CPR.

13. Reema Saharan Vs. Haryana Urban Development Authority

i) Case in Brief:

Respondent/OP allotted a plot measuring 135 square meters for Rs.86,010/- in Gurgaon to Shri. Dharam Singh Punia, Original allottee vide allotment letter dated 05-06-1990. Om Prakash Saharan, General Power of Attorney (GPA) holder of Shri Punia took possession of the plot on 11.05.2006. Both the possession certificate and the sale deed executed on 09-08-2006 mentioned the area of plot as 209.25 square meters. Petitioner/Complainant purchased the said plot from original allottee through his GPA holder and in that sale deed also the area was mentioned as 209.25 square meters. The re-allotment letter issued by Estate Officer of the Respondent also showed the area as 209.25 sq.mt.

Deficiency in Service - Housing

On being informed by her architect that the plot was not available exactly as per the letter, Petitioner filed complaint before the District Forum alleging deficiency in service which was allowed. Appeal filed by the Petitioner was allowed by the State Commission against which this revision petition is filed. Revision petition was disposed of with observation that the Petitioner should seek remedy in a civil court of competent jurisdiction.

ii) Order appealed against:

From the order dated 19.10.2011 in First Appeal No.1513/2010 of the Haryana State Consumer Disputes Redressal Commission.

iii) Parties:

Reema Saharan - Petitioner

Vs.

Haryana Urban Development Authority - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.505 of 2012 & Date of Judgement: 10-11-2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) Records revealed that the GPA holder Shri. Om Prakash Saharan and the husband of the Petitioner Shri. Suraj Prakash Saharan are brothers. It was noted that while the conveyance deed dated 08.08.2006 from OP HUDA in favour of Dharam Singh Punia was for a consideration of Rs.1,98,386/-, the Sale deed from Dharam Singh Punia through his GPA to the Petitioner executed only three months later was for a consideration of Rs.6 lakhs. Shri. Suraj Prakash Saharan was an active participant in both the sale deeds. He should have been aware of the status of the plot in question including its area and size at the time of execution of both the sale deeds.
- b) It has not been explained anywhere how the area of the plot in question increased from 135 sq.mt to 209.25 sq.mt. The Respondent/OP was not forthcoming with any explanation.

- c) Held that to arrive at the depth of the matter, detailed evidence should be brought forward by the parties so that a definite conclusion could be drawn about the situation of the plot. It was held that the proper forum to deal with the question is a civil court of competent jurisdiction.

vii) Citation:

2014(4) CPR 660.

14. Ghaziabad Development Authority Vs. Harishankar Mahaur

i) Case in Brief:

Complainant/Respondent was allotted a house by the OP/Petitioner cost of which was mentioned as Rs.8,16,000/- to be paid in 10 instalments. After the allotment the complainant found that no development work had taken place in the site. He contacted the officers of the Authority but did not get any proper response. Meanwhile, complainant was directed to deposit the cost of Rs.8,55,742/- with interest of Rs.4,15,281/- i.e., a total sum of Rs.12,71,023/-. The Complainant's efforts to get the interest portion written off were of no avail. On 16.10.2003, OP issued order cancelling the allotment. On the complainant's request made in December 2005, the house was reinstated in the name of complainant. Subsequently, the complainant claimed that OP did not provide details regarding outstanding amount and interest. Alleging deficiency in service, he filed complaint before the District Forum. The Forum allowed the complaint and directed the OP to calculate the cost of house as mentioned in the allotment letter plus interest as per Section 4 of the Interest Act, 1978. OP was further directed to adjust Rs.4,15,281/- deposited by the complainant and to execute Registry in his favour. Appeal filed by the OP was dismissed by the State Commission vide impugned order against which this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 31.05.2012 in Appeal No.360/2010 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

Ghaziabad Development Authority - Petitioner/Opp. Party (OP)

Vs.

Harishankar Mahaur - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.3212 of 2012 & Date of Judgement: 12-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19, 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Perusal of records revealed that Conveyance Deed has already been executed by the petitioner in favour of the respondent and possession has been given to him.
- b) Perusal of records further revealed that the petitioner asked respondent by letter dated 14.06.2006 to submit photocopies of the deposits made by him but no intimation has been placed on record by the respondent to show that he submitted photocopies of the deposits.
- c) Perusal of revival letter made it clear that allotment was revived after cancellation subject to same rules and conditions mentioned in the allotment letter and as per allotment letter respondent was bound to pay penal interest of 21%. Therefore, it was held that the District Forum committed error in reducing the rate of interest and allowing appeal and State Commission committed further error in dismissing the appeal.
- d) Consequently, revision petition was allowed. The impugned order of the State Commission was set aside and the order of the District Forum was modified. Petitioner was allowed to recover due penal interest @ 21% p.a. as per allotment letter.

vii) Citation:

IV (2014) CPJ 774; 2014(4) CPR 621.

15. Punjab Urban Planning & Development Authority Vs. Vidya Chetal

i) Case in Brief:

The Petitioner allotted a plot to the Respondent/Complainant measuring 250 sq.yards vide transfer permission dated 08.10.1992. He could not give physical possession of the plot in time due to non-demarcation of the plot. When the respondent approached in 2006 for possession, petitioner discovered an excess area of 98.06 sq.yards which could not be left out. He demanded a sum of Rs.3,43,350/- towards the cost of excess area. Alleging that imposition of non-construction charges on the respondent without giving physical possession is illegal and arbitrary, respondent filed a complaint in the District Forum, which partly allowed the complaint. Not satisfied with the order, both the parties appealed before the State Commission. The State Commission dismissed both the appeals vide impugned order against which this revision petition was filed by the petitioner. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 06.11.2012 in First Appeal Nos.751 and 633 of 2008 of the State Consumer Disputes Redressal Commission, Punjab.

iii) Parties:

Punjab Urban Planning & Development Authority - Petitioner

Vs.

Vidya Chetal - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.889 of 2013 with I.A.No.1609 of 2013 (For Stay) & Date of Judgement: 17-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Held that demand of extension fee/non-construction fee for the period when the respondent was not in possession of the plot is per se illegal. In the present case, the plot was allotted by way of transfer to the respondent near 1992. But there was nothing

on record to show as to when physical possession of the plot was handed over to the respondent. Thus, deficiency in service on the part of the petitioner was writ large in this case.

- b) It was held that there was no infirmity or illegality in the order passed by the State Commission. Accordingly, revision petition was dismissed.

vii) Citation:

II (2015) CPJ 234; 2015(1) CPR 94.

16. M/s. Ajit Rawetkar & Company & Anr. Vs. Mr. Girish Meghraj Jain

i) Case in Brief:

Respondent/Complainant is in business of supplying of building material whereas Petitioner is a builder. Respondent agreed to purchase a flat admeasuring 680 Sq.fts on the third floor of a building for a consideration of Rs.1,90,400/- which was to be paid in the form of supply of cement of the same value. An Agreement to this effect was registered on 28.07.1988. Respondent paid 60% of the consideration amount to the petitioner but no action was taken by the latter to deliver possession of the flat. Respondent filed a complainant in the District Forum which was dismissed. But the appeal was allowed by the State Commission which remanded to the District Forum for fresh consideration. District Forum again dismissed the complaint. The State Commission on appeal partly allowed the same directing the respondent/ org. OP to refund Rs.1,11,226/- with the interest@ 9% p.a. to the appellant/org. Complainant. Respondent/org. OP was also directed to pay Rs.10 lakhs as compensation and another Rs.5000/- by way of costs. Aggrieved by the order of the State Commission, Petitioner filed this revision petition. RP dismissed with cost of Rs.10,000/- to be paid to the "Consumer Legal Aid Account" of the Commission.

ii) Order appealed against:

Against order dated 22.10.2007 in First Appeal No.374 of 2007 of the State Consumer Disputes Redressal Commission, Maharashtra State, Mumbai.

iii) Parties:

M/s. Ajit Rawetkar & Company & Anr. - Petitioners

Vs.

Mr. Girish Meghraj Jain - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.898 of 2008 & Date of Judgement: 17-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19, 21(b) of the Consumer Protection Act, 1986.
Section 2(d) of the Indian Contract Act, 1872.

vi) Issues raised and decided:

- a) The Consideration in kind, which is arrived at on the basis of the consensus of both of the parties is not bad in law. The Hon'ble Supreme Court in *Ku. Sonia Bhatia, Appellant Vs. State of U.P and others, Respondents, AIR 1981 SC 1274* has observed that "Consideration means a reasonable equivalent or other valuable benefit passed on by the promisor to the promisee or by the transferor to the transferee." The issue of consideration should have been decided in the light of Section 21(d) of the Consumer Protection Act by the District Forum.
- b) The District Forum had come to the wrong conclusion that the issue involved in the complaint is liable to be decided by the Civil Court only. The Consumer Fora are empowered to issue summons and enforce attendance of witnesses. The Fora are competent to examine the witness on oath. The Fora can direct discovery and production of documents as evidence. The Fora have power to received evidence on affidavits. The Fora are competent to ask for report from the laboratory or any other relevant source. The Fora are expected to use the tools for disposal of the Consumer Complaint promptly.
- c) As per the agreement between the two parties total price of the flat was Rs.1,19,400/-. It was not disputed that respondent had paid Rs.1,11,227/- in the year 1988. The Petitioner had been enjoying the aforesaid amount for more than a quarter century without offering a flat to the respondent. Therefore, it was held that deficiency on the part of the petitioner is writ large in this case.

d) It was observed that the order of the State Commission was well reasoned and did not suffer from any infirmity or erroneous exercise of jurisdiction. The revision petition was therefore dismissed with cost of Rs.10,000/- to be paid to the "Consumer Legal Aid Account" of the Commission.

vii) Citation:

IV (2014) CPJ 779; 2015 (1) CPR 89.

17. M/s. New Generation Real Estates Pvt. Ltd. Vs. Ramesh Chander Khurana and others

i) Case in Brief:

There are eight revision petitions which entailed similar facts and questions of law. Revision Petition No.1601 of 2014 was taken as the lead case.

The petitioner issued an advertisement dated 07.12.2003 in the Hindustan Times, Chandigarh, for construction of Phase-3 at Zirakpur by M/s. New Generation Real Estate Pvt. Ltd., the OP1. The advertisement mentioned that it was a Punjab Government approved project and brochures/prospectus of Phase-III Apartments were also issued. Enamored by various assurances, all the complainants purchased different apartments. The allottees paid the entire amount and took possession of the apartments but found that essential services and amenities were not granted. There were other defects as well. There was no cleanliness and the unhygienic conditions made the complainant and his family members sick. The Registered Sale Deed was not executed and the occupation certificate was not obtained. Therefore, complaint was filed before the District Forum which partly allowed the complaint and granted various reliefs. Aggrieved by that order, the appeal was preferred before the State Commission by the Opposite Party No.1. The State Commission modified orders passed by the District Forum and directed the petitioner to pay a sum of Rs.1.50 lakhs as compensation (as against Rs.2.5 lakhs ordered by the District Forum) and Rs.10,000/- towards cost of litigation. Directions were also given to obtain completion and occupation certificates, from the competent Authority, within two months and to execute sale deed/conveyance deed and get the same registered, in favour of the

complainant, within two months. Similar orders were passed in other cases. Aggrieved by the orders, the Petitioner filed these revision petitions. Revision Petitions dismissed.

ii) Order appealed against:

Revision Petition No.1601 of 2014

Against the order dated 10.12.2013 in FA No.353 of 2013 of the U.T. Chandigarh State Consumer Disputes Redressal Commission, Chandigarh.

Revision Petition No.1602 of 2014

Against the order dated 10.12.2013 in FA No.397 of 2013 of the U.T. Chandigarh State Consumer Disputes Redressal Commission, Chandigarh.

Revision Petition No.1603 of 2014

Against the order dated 10.12.2013 in FA No.398 of 2013 of the U.T. Chandigarh State Consumer Disputes Redressal Commission, Chandigarh.

Revision Petition No.1604 of 2014

Against the order dated 10.12.2013 in FA No.399 of 2013 of the U.T. Chandigarh State Consumer Disputes Redressal Commission, Chandigarh.

Revision Petition No.1605 of 2014

Against the order dated 10.12.2013 in FA No.463 of 2013 of the U.T. Chandigarh State Consumer Disputes Redressal Commission, Chandigarh.

In Revision Petition No.1621 of 2014

Against the order dated 10.12.2013 in FA No.462 of 2013 of the U.T. Chandigarh State Consumer Disputes Redressal Commission, Chandigarh.

Revision Petition No.1622 of 2014

Against the order dated 10.12.2013 in FA No.475 of 2013 of the U.T. Chandigarh State Consumer Disputes Redressal Commission, Chandigarh.

Deficiency in Service - Housing

Revision Petition No.1623 of 2014

Against the order dated 10.12.2013 in FA No.479 of 2013 of the U.T. Chandigarh State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Revision Petition No.1601 of 2014

M/s. New Generation Real Estates Pvt. Ltd. - Petitioner

Vs.

Ramesh Chander Khurana and others - Respondents

Revision Petition No.1602 of 2014

M/s. New Generation Real Estates Pvt. Ltd. & Anr. - Petitioners

Vs.

Smt. Prem Lata and others - Respondents

Revision Petition No.1603 of 2014

M/s. New Generation Real Estates Pvt. Ltd. & Anr. - Petitioners

Vs.

Veena Kapoor and another - Respondents

Revision Petition No.1604 of 2014

M/s. New Generation Real Estates Pvt. Ltd. & Anr. - Petitioners

Vs.

Kamal Arora and another - Respondents

Revision Petition No.1605 of 2014

M/s. New Generation Real Estates Pvt. Ltd. - Petitioner

Vs.

Ikbal Krishan Kapoor and others - Respondents

Revision Petition No.1621 of 2014

M/s. New Generation Real Estates Pvt. Ltd. - Petitioner

Vs.

Ramesh Chander Bawa and others - Respondents

Revision Petition No.1622 of 2014

M/s. New Generation Real Estates Pvt. Ltd. - Petitioner

Vs.

Bharat Bhushan Bawa and others - Respondents

Revision Petition No.1623 of 2014

M/s. New Generation Real Estates Pvt. Ltd. - Petitioner

Vs.

M.K. Jinsi and others - Respondents

iv) Case No and Date of Judgement:

- a) Revision Petition No.1601 of 2014 with IA/2120/2014 for stay;
- b) Revision Petition No.1602 of 2014 with IA/2121/2014 for stay;
- c) Revision Petition No.1603 of 2014 with IA/2122/2014 for stay;
- d) Revision Petition No.1604 of 2014 with IA/2123/2014 for stay;
- e) Revision Petition No.1605 of 2014 with IA/2124/2014 for stay;
- f) Revision Petition No.1621 of 2014 with IA/2162/2014 for stay;
- g) Revision Petition No.1622 of 2014 with IA/2163/2014 for stay;
- h) Revision Petition No.1623 of 2014 with IA/2164/2014 for stay
&

Date of Judgement: 20-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue was whether failure to provide the apartments in Phase-3 on the agreed terms amounted to deficiency in service or not. Held that the promises made in the advertisement did not match with the construction. Moreover the site plan was amended by the petitioner without the consent of the parties.
- b) Petitioner contended that that they are ready to execute the sale deeds. He explained that sale deeds to a few allottees have already been executed.

- c) The National Commission dismissed the revision petitions and directed the petitioner to pay an amount of Rs.1,00,000/- to each of the complainants, for further harassment, mental agony, disappointment, anger and wastage of time within 45 days of the receipt of the copy of the order, otherwise it will carry interest @ 9% p.a. till its realization. It was held that the allottees are entitled to all the facilities mentioned in the agreement. It was also observed that the complainants have got continuous cause of action till the sale deed is executed. By no stretch of imagination it can be said that the case is barred by time. Judgements of Hon'ble Supreme court in *Bhagyalaxmi Constn v. Monoranjan Basak & Ors & Raghava Estates Ltd v. Vishnupuram Colony Welfare Association* have been referred to in this connection.

vii) Citation:

I (2015) CPJ 567.

18. Randhir Singh and another Vs. Omaxe Chandigarh Extension Developers (P) Ltd.

i) Case in Brief:

The Respondent/Opposite Party advertised plots and assured the Appellants/Complainants, that all work of the project, including clear demarcation of plots, would be completed, before handing over of the allotment letter. Complainants also paid the necessary amount as an advance. But instead of carrying out any development, at the site, the Opposite Party asked for the balance amount and also threatened to levy penalty @18% to 24% per annum in case of delay in the said payment. The Opposite Parties sent demand letter whereby it threatened to cancel the allotment of the plot, on failure to deposit the requisite amount. Aggrieved by the act of the opposite parties, complaint was filed before the State Commission which directed the Opposite Party:

- i. to refund the amount of Rs.21,60,000/-, to the complainants, within one month, from the date of receipt of a certified copy of this order.

ii. to pay cost of litigation, to the tune of Rs.10,000/-, to the complainants.

iii. in case the payment of amount, mentioned in Clause (i), is not made, within the stipulated period, then the Opposite Party shall be liable to pay the said amount, with interest @9% per annum, from the respective dates of deposit, till realization besides payment of costs, to the tune of Rs.10,000/-.

Not satisfied with the relief granted by the State Commission, appellants have filed this appeal. Appeal dismissed.

ii) Order appealed against:

Against the order dated 27-11-2013 in Complaint No.62/2013 of the State Commission, UT Chandigarh

iii) Parties:

Randhir Singh and another - Appellants

Vs.

Omaxe Chandigarh Extension Developers (P) Ltd. - Respondent

iv) Case No and Date of Judgement:

First Appeal No.06 of 2014 & Date of Judgement: 27-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) (o), 19 & 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

a) Petitioner contended that the respondent misled the appellants which amounted to indulgence into unfair trade practices on its part. It was also contended that the sole intention of the Opposite Party was to grab money of the complainants, and development of the site was not at all on its agenda.

b) Respondents contended that the payment plan chosen by the complainants was Time Linked Payment Plan and that the timely payment of installments was the essence of contract. It was further stated that act of the complainants in not making payment of installments led to failure/delay of the project of the Opposite

Party. It was further stated that since the complainants themselves did not come forward to make the payment of installments, the question of delivery of plot did not arise.

- c) Held that both parties are at fault in this case. Admittedly the respondent had not developed the site and was not in a position to deliver the possession. The appellants also were defaulters. When the appellants themselves were the defaulters, they are not entitled for any interest. Orders of the State Commission were upheld and the present appeal dismissed.

vii) Citation:

I (2015) CPJ 514.

19. Smt. Anuradha Maganathi and another Vs. M/s. Adarsh Developers and others and others

i) Case in Brief:

The complainants in this case agreed to purchase a villa with built up area of 2230-3010 sq. ft., from the opposite party-Adarsh Developers, a partnership firm and paid a substantial amount on various dates. The balance amount was payable at the time of execution and registration of the conveyance deed. According to the complainants they were orally informed on behalf of the opposite parties that they were unable to build up the villa and were going to return the money received by them from the complainants, along with some interest on that amount. The complainants thereafter served a legal notice upon the opposite parties which was replied by them on 20-07-2007. Being aggrieved from the failure of the opposite parties to deliver the villa to them in terms of the agreement between the parties, the complainants have approached the National Commission seeking a direction to the opposite parties to execute and register a proper conveyance deed on receiving the balance consideration from them. The alternative prayer made by the complainants is to direct the opposite parties to pay the present market value of the villa to them. Complaint allowed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Consumer Complaint No.99 of 2007

Smt. Anuradha Maganthi and another - Complainants

Vs.

M/s. Adarsh Developers and others and others - Opposite Parties

Consumer Complaint No.100 of 2007

Sri Shivakumar Venkataraman - Complainant

Vs.

M/s. Adarsh Developers and others - Opposite Parties

Consumer Complaint No.101 of 2007

Sri Kanwar Jit Singh - Complainant

Vs.

M/s. Adarsh Developers and others - Opposite Parties

Consumer Complaint No.102 of 2007

Capt. Srikanth Badrinath - Complainant

Vs.

M/s. Adarsh Developers and others - Opposite Parties

Consumer Complaint No.103 of 2007

Pardha Pothana - Complainant

Vs.

M/s. Adarsh Developers and others - Opposite Parties

Consumer Complaint No.104 of 2007

Sarath Kumar - Complainant

Vs.

M/s. Adarsh Developers and others - Opposite Parties

Consumer Complaint No.8 of 2008

Sri Srinivas Mogalapalli - Complainant

Vs.

M/s. Adarsh Developers and others - Opposite Parties

Consumer Complaint No.35 of 2008

Sri Raghav M. Trivedi - Complainant

Vs.

M/s. Adarsh Developers and others - Opposite Parties

Consumer Complaint No.92 of 2008

Mr. Parag Prasad - Complainant

Vs.

M/s. Adarsh Developers and others - Opposite Parties

iv) Case No and Date of Judgement:

Consumer Complaint No.99 – 104 of 2007, Consumer Complaint No.8, 35, 92 of 2008 & Date of Judgement: 28-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986 and Section 56 of The Contract Act.

vi) Issues raised and decided:

- a) The Opposite parties contended that the contract between the parties was a contingent contract, performance of which had become impossible on the ground that under the Comprehensive Development Plan (RCDP-1995) substantial portion of the land on which villas in question were to be constructed was reserved for a road.
- b) The National Commission observed that despite having an opportunity to accommodate the complainants in the subsequent phase, by allotting villas to them at the original price agreed with them, the opposite parties deliberately chose not to do so and sought a higher price instead of trying to honour their contractual obligations. The National Commission also added that the opposite parties must have known at the time of allotting the villas in question to the complainants that a major portion of the land comprised in survey No.112/P and 89/P could not have been used for residential purpose, the same having been reserved for the proposed road. Therefore, they ought not to have agreed to sell villas, to be constructed on the land comprised in survey No.89 and 112.

- c) The Commission directed that:
- a. the opposite parties shall pay to the complainants within six weeks compensation calculated in terms of this order;
 - b. the opposite parties shall pay to the complainants simple interest at the rate of 12% per annum, on the principal amount paid by them to the opposite parties with effect from 19-07-2007 till the aforesaid amount is paid along with interest and
 - c. the opposite parties shall also pay interest to the complainants on the amount of compensation calculated in terms of this order, at the rate of 12% per annum with effect from today till the date of payment, in case the aforesaid compensation is not paid within six weeks.

vii) Citation:

Not reported in CPJ and CPR.

20. M/s. Krish City Vs. Laxmi Garg

i) Case in Brief:

The Respondent/Complainant booked a flat with the Petitioner/OP who promised to give possession within 18 months otherwise the OP was to pay Rs.3/- per sq. ft to the complainant. The Complainant deposited the entire amount along with service tax. Possession was to be given by 16.05.2012. Petitioner/OP sent a letter dated 28.05.2013 asking the complainant to deposit Rs.4/- per sq. ft. per month and interest thereon. Since possession had not been given as promised, complainant approached the District Forum. The Forum partly allowed the complaint restraining the OP from charging Rs.4/- per sq. ft. per month and directing them to pay Rs.49,335/- and Rs.5,000/- as costs. The Appeal filed by the Petitioner was dismissed by the State Commission. The Present Revision Petition against the State Commission's order was dismissed.

ii) Order appealed against:

From the order dated 04.04.2014 in First Appeal No.107 of 2014 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

M/s. Krish City - Petitioner

Vs.

Laxmi Garg - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2027 of 2014 with I.A.No.3488 of 2014(For Stay)
& Date of Judgement: 02-12-2014.

v) Acts and Sections referred:

Sections 2(1)(g) & (o),19 and 21(b) of The Consumer Protection Act,1986.

vi) Issues raised and decided:

- a) Petitioner filed a statement of account before the commission showing that Rs.25,000/- was still pending from the Respondent on 22.11.2012. The Petitioner's reply in para.5 to the complaint showed that this is not correct. Held that the Petitioner has tried to mislead the Commission and was therefore liable of perjury.
- b) Petitioner also filed a false affidavit that the possession of the flat has been handed over. The fact is although the Petitioner/OP had handed over the key of the premises to the complainant, yet, she was not allowed to enter the room.
- c) Petitioner/OP was warned and directed to put the complainant in possession and execute the sale deed within 30 days otherwise he will be liable to pay a penalty of Rs.500/- per day till the needful is done. OP also directed to pay delay charges in the sum Rs.49,335/- to the respondent. Commission imposed costs of Rs.25,000/- besides the cost imposed by the District Forum.

vii) Citation:

I (2015) CPJ 504; 2015(1) CPR 395.

21. Mr. Om Khemraj Gahlot Vs. Mr. Krishnat P. Bagade

i) Case in Brief:

Complainants/Respondents filed two Complaint Nos.232 & 290 of 2003 before District Forum alleging deficiency in service. In both the cases,

the Complainant booked flats. The possession of the flats had not been given and it was alleged that the area of the flats were also reduced contrary to the agreement. District Forum directed OP to pay interest on received amount @ 15% p.a. till actual delivery of possession and further directed to refund Rs.43,286/- in Complaint No.232 of 2003 and Rs.40,590/- in Complaint No.290 of 2003 and further allowed Rs.50,000/- for mental agony and Rs.5,000/- as cost of the litigation to both the complainants. Appeal was filed in the State Commission which partly quashed the orders of the District Forum and partly confirmed the orders of the District Forum. This revision Petition has been filed challenging the State Commission's order. Revision Petition allowed.

ii) Order appealed against:

Against the order dated 7.5.2008 in F. Appeal No.2044/06 of Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

iii) Parties:

Revision Petition No.3161 OF 2008

Mr. Om Khemraj Gahlot - Petitioner

Vs.

Mr. Krishnat P. Bagade - Respondent

Revision Petition No.2048 OF 2014

Mr. Om Khemraj Gahlot - Petitioner

Vs.

Mr. Gulab S. Dhanawade - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3161 of 2008

Revision Petition No.2048 of 2014 & Date of Judgement: 02-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue raised in this case was that OP reduced carpet area from the carpet area agreed to be given and also failed to give the possession of the flats on time as per agreement.

- b) It was noted that one of the complainants had received one square foot more than the area originally agreed. In such circumstances order directing grant of compensation and cost to the complainant was set aside.
- c) In the other complaint, it was held that some structural changes have been made and POP has also been applied. There is evidence to suggest that complainant had already taken possession of the flat from OP and is therefore not entitled to get interest on deposited amount from OP.
- d) In the garb of reduced area, the Complainants did not take possession of the flats legally which they ought to have taken in time. Therefore, there was no deficiency in service. Revision Petitions were allowed.

vii) Citation:

1 (2015) CPJ 174.

22. M/s. Adarsh Developers Vs. Dr. Geetha Bhat and another

i) Case in Brief:

The Respondent had booked two Flats with the Petitioner firm. Since the former had defaulted in making payments as per agreement, Petitioner terminated the sale agreement after giving notice. The Karnataka State Consumer Disputes Redressal Commission, Bangalore before whom complaint was filed allowed it with a direction to the Appellant to execute sale deeds, conveying the subject Flats to the Respondents/Complainants on their depositing the balance sale consideration with interest @ 12% p.a. on the defaulted amounts. This Revision Petition has been filed challenging the State Commission's order. Petition allowed.

ii) Order appealed against:

From the Order dated 31.10.2008 in Complaint No.55/2007 of Karnataka State Consumer Disputes Redressal Commission, Bangalore.

iii) Parties:

M/s. Adarsh Developers

- Petitioner

Vs.

Dr. Geetha Bhat and another

- Respondents

iv) Case No and Date of Judgement:

First Appeal No.69 of 2009 & Date of Judgement: 03-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 & 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue was that whether or not, the Respondents are estopped from raking up the issue of delivery of possession of the Flats in question after accepting the amount remitted to them towards refund of the amounts deposited by them.
- b) Held that if the Respondents were not interested in the refund of the amounts paid by them and were keen to have the possession of the flats booked, nothing prevented them from returning the cheque back to the Appellant. Having accepted the refund amount, right, if any, in favour of the Respondents to prefer claim with respect to any deficiency in service on the part of the Appellant in not delivering possession of the flats in question or consequential benefits arising therefrom, stood extinguished.
- c) The Commission directed that any deposit(s) made by the Respondents, in pursuance of the impugned order, towards balance sale consideration, may be accepted by the Appellant without prejudice to its rights and contentions. The Commission also directed that if any such amount has been withdrawn by the Appellant in terms of the said order, the same shall be refunded to the Respondents within six weeks from the date of this order, along with simple interest @ 12% p.a. from the date of the withdrawal till the date of actual refund. However, the Statutory deposit made by the Appellant at the time of filing the Appeal shall be transferred to the Consumer Welfare Fund.

vii) Citation:

Not reported in CPJ and CPR.

23. Urban Improvement Trust, Alwar & Others Vs. Subedeem Khan

i) Case in Brief:

Complainant purchased a plot in the auction organised by the OP on 20.04.2010. Since he did not pay $\frac{1}{4}$ of the amount as deposit within 4 days as per terms and conditions of the auction, the petitioner cancelled the allotment and forfeited the security deposit paid by the complainant. The District Forum before whom complaint was filed, allowed the complaint. The appeal filed by the petitioner before the State Commission was dismissed. This Revision Petition has been filed challenging the State Commission's order. Revision Petition dismissed with punitive costs.

ii) Order appealed against:

Against order dated 05.12.2013 in FA No.1781/2011 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

Urban Improvement Trust, Alwar & Others - Petitioners

Vs.

Subedeem Khan - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1283 of 2014 & Date of Judgement: 04-12-2014.

v) Acts and Sections referred:

Sections 2(1)(g) & (o),19 and 21(b) of The Consumer Protection Act,1986.

vi) Issues raised and decided:

- a) Record showed that the allotment letter sent by the petitioner by registered post was received by the complainant on 24.05.2010 and that on 27.05.2010 the complainant went to the office of the OP to deposit the $\frac{1}{4}$ amount. But the OPs did not accept the aforesaid amount and said that period of 4 days has expired on 12.05.2010. The OPs have thus committed severe deficiency in service.
- b) Judgement of Hon'ble Supreme Court in Civil Appeal no.9290 of 2014 @ SLP(c) 14172 of 2013 dated 26.09.2014 in the case of *Sh.Sanjay Kumar Joshi Vs. Municipal Board,Laxmangarh & Anr.* is relevant.

- c) Revision Petition dismissed with punitive costs of Rs.10,000/- to be paid to the complainant by the opposite party.

vii) Citation:

Not reported in CPJ and CPR.

24. Estate Officer Vs. Tripta Rani Puri

i) Case in Brief:

In this case, the District Forum had held that the Petitioner was not entitled to the claim Rs.1,40,025/- for the period from 2005 to 2009 from the complainant on account of non-construction charges and accordingly directed refund of the said amount to the Complainant. Appeal was filed against the order of the District Forum in the State Commission. It was held therein that there was deficiency in services on the part of the Petitioner in demanding excess amount towards non-construction charges from the Complainant/Respondent. Against the order of the State Commission, the present revision petition was filed. Petition allowed.

ii) Order appealed against:

From the order dated 13.02.2014 in First Appeal Nos.1801/2011 & 35/2012 of Punjab, the State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Estate Officer - Petitioner

Vs.

Tripta Rani Puri - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2174 of 2014 with I.A/3233/2014 (For Stay) & Date of Judgement: 08-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) and (o), 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The petitioner contended that since non-construction charges are levied on the basis of statutory rules such a demand cannot amount to deficiency in service.
- b) Hon'ble Supreme Court *HUDA Vs. Sunita* (2005) 2 SCC 479 had held that National Commission had no jurisdiction to go into the correctness of the demand of "composition fee" and "extension fee" made by HUDA from the Respondent/Complainant. The same ratio has been applied by the Apex Court in Civil Appeal No.8314-8315 of 2010, *PUDA (now GLADA) v. Narinder Singh Nanda* and connected appeal decided on 20.02.2014.
- c) On the same principle, impugned orders of the State Commission and the District Forum were set aside.
- d) Respondent given the liberty to resort to any other appropriate remedy, for questioning the demand in question, if the same was not in accordance with law.

vii) Citation:

Not reported in CPJ and CPR.

25. Ashok Kumar Chugh Vs. Haryana Urban Development Authority (HUDA) & Anr.

i) Case in brief:

Petitioner/Complainant was allotted plot by the Respondents vide order dated 26.02.1998. Petitioner paid 25% of the cost of the plot but could not pay the balance amount of Rs.3,60,510/- in six installments as stipulated, due to domestic problems. Plot was therefore resumed on 13.07.2005 and the respondents refunded the amount paid after deducting 10% of the price of the plot. Petitioner filed a complaint before the District Forum seeking a direction to the Respondents to accept the entire price of the plot and deliver possession along with compensation. District Forum accepted the complaint and directed the respondent to allot any plot within a period of 30 days. The State Commission to whom an appeal was filed by the respondents allowed the appeal and set aside the order of the District Forum. Present

Revision Petition against the State Commission's order dismissed with cost of RS.10,000/-.

ii) Order appealed against:

From order dated 19.10.2010 in First Appeal No.896 of 2006 of State Consumer Disputes Redressal Commission, Haryana.

iii) Parties:

Ashok Kumar Chugh

- Petitioner

Vs.

Haryana Urban Development Authority
(HUDA) & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.694 of 2011 & Date of Judgement: 10.12. 2014.

v) Acts and Sections referred:

Section 2(1)(g),(o), 19, 21(b) & 24A of The Consumer Protection Act,1986.

vi) Issues raised and decided:

- a. It was noted that the respondents had issued three show cause notices to the petitioner under Sections 17(1), (2), (3)& (4) of HUDA Act,1977 and only after the petitioner failed to respond adequately, they resumed the plot. The balance amount of Rs.1,70,753/- was also refunded to the complainant vide cheque dated 08.07.2002. Thus, the Complainant himself was deficient in depositing the due installments as per the terms and conditions of the allotment letter.
- b. The present complaint is not maintainable in view of Section 24A of the Consumer Protection Act,1986 because the Complainant had received the refund cheque dated 08.07.2002 and filed the complaint on 08.09.2005 i.e., beyond the period of 2years as provided in Section 24A of the Consumer Protection Act,1986.
- c. The Revision Petition having no merits is dismissed with cost of Rs.10,000/-.

vii) Citation:

I (2015) CPJ 225; 2015(1) CPR 342.

26. Vatika Ltd. Vs. Mr. K.L. Kaul

i) Case in Brief:

Petitioner launched a development scheme and invited application for allotment of plots in the proposed residential township. Respondent/ Complainant applied for 1024 sq. yds. Plot. His application was accepted vide allotment letter dated 8-2-2006. Respondent deposited a sum of Rs.52 lakhs to the petitioner. Since the Petitioner failed to launch the project, complaint asked for refund of deposit with interest. He refused the offer of the petitioner regarding allotment of flat/plot in another project. O.P refunded a sum of Rs.36,80,000/- vide cheque no. 011636 dated 02-07-2008 including 9 months interest. Complainant/Respondent approached the District Forum seeking interest from the date of payment. District Forum allowed the complaint. State Commission concurred with the finding of the District Forum. Revision Petition allowed setting aside the orders of the fora below on the ground that the Complainant having accepted the cheque in full and final settlement of his claim and realised the amount, cannot be permitted to reopen the matter.

ii) Order appealed against:

Against the order dated 18.10.2012 in Appeal No.807/2012 of the State Commission Haryana, Panchkula.

iii) Parties:

Vatika Ltd. - Petitioner

Vs.

Mr. K.L. Kaul - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4830 of 2012 & Date of Judgement: 15-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) (o), 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Complainant was unable to make payment of instalment within the stipulated time. He himself approached the O.P seeking cancellation of his allotment and refund of the amount paid by him. He accepted the cheque for Rs.36,80,000/- dated 2-7-2008

and had promised that he would exchange original documents regarding allotment on realisation of the amount of the cheque. Therefore, the cheque in question was accepted by the Respondent in full and final settlement.

- b) Complainant's claim that he accepted the post-dated cheque under protest cannot be accepted because of the contradictions in his statement.
- c) The fora below had overlooked the fact that the complainant had accepted the payment in full and final settlement of the claim and that he cannot be permitted to reopen the matter by filing the consumer complaint. Revision Petition allowed and orders of District Forum and State Commission set aside.

vii) Citation:

I (2015) CPJ 402; 2015(1) CPR 299.

27. Vijay Kapoor, Goa Vs. Damodar Thali & Anr.

i) Case in Brief:

Petitioner/Complainant filed a complaint before the District Forum alleging deficiency of service on the part of OPs/respondents in carrying out construction of a house on the plot owned by them. He had earlier terminated his agreement with the OPs without notice to them. He further demolished the structure and raised another building in the same place. District Forum allowed the complaint partly and ordered the OPs to return a sum of Rs.1.5 lakhs as 75% of the amount received by them from the complainant. Two appeals were filed against this order before the State Commission – one by the OPs requesting for dismissal of the complaint and the other by the Complainant/Petitioner for enhancement of the awarded amount. State Commission dismissed the appeal of petitioner/complainant but allowed the appeal of OPs setting aside the order of the District Forum. Present Revision Petition dismissed as having no merit.

ii) Order appealed against:

From the order dated 04.07.14 in First Appeal No.69 & 70/2013 of Goa State Consumer Disputes Redressal Commission, Panaji.

iii) Parties:

Vijay Kapoor, Goa

- Petitioner

Vs.

Damodar Thali & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3487-3488 of 2014 with I.A.No.6194 of 2014 (For Stay) & Date of Judgement: 17 - 12 - 2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 & 21(b) of The Consumer Protection Act 1986.

vi) Issues raised and decided:

- a) Petitioner alleged that as per the report made by his architect and engineer and the photographs on record, the construction made by the OPs was faulty and they didn't carry out necessary rectification. Petitioner should not have entered into an agreement with the OPs when he had many issues with them right from the beginning. When he had the services of his own architect and engineer, he should have personally satisfied himself before entering into the contract. It is clear from the record that there was a great deal of discussion between the two parties prior to the contract.
- b) Non-filing of affidavits by the architect and chartered engineer known to the complainant in support of their expert opinion is an incurable defect fatal to the case of the complainant. Their opinion cannot be relied upon in the absence of a sworn statement.
- c) The action of the complainant in terminating the contractual services of the OPs, unilaterally and without notice is unjustifiable.
- d) Construction of a new structure after demolition of the work done by the opposite party has disturbed the *status quo*. With the termination of the contract, all contractual obligations of OPs have come to an end and he cannot be held responsible and accountable for the subsequent events.

vii) Citation:

I (2015) CPJ 379; 2015(1) CPR 130.

28. Ashwani Anand Vs. M/s. Gee City Builders Pvt. Ltd.

i) Case in Brief:

Petitioner/Complainant filed three complaints against Respondents/ O.Ps before the District Forum. District Forum allowed the complaints directing the O.P to complete construction and deliver possession within 6 months and in default pay the amount of all three flats with interest at 9% p.a. Petitioner's appeal before the State Commission was rejected. Main contention in the Revision Petition was that the lower fora should have allowed the complaints for refund of the entire cost price of the flats together with interest instead of passing order regarding delivery of possession within 6 months. Held that the demand raised by the Petitioner through legal notice and consumer complaints filed by the petitioner were premature. Revision Petitions dismissed.

ii) Order appealed against:

Revision Petition No.4660 of 2010

Against the order dated 16.9.2010 in Appeal No.649/2009 of the State Commission, UT Chandigarh.

Revision Petition No.4661 of 2010

Against the order dated 16.9.2010 in Appeal No.651/2009 of the State Commission, UT Chandigarh.

Revision Petition No.4662 of 2010

Against the order dated 16.9.2010 in Appeal No.650/2009 of the State Commission, UT Chandigarh.

iii) Parties:

In all the three Revision Petitions

Ashwani Anand

- Petitioner

Vs.

M/s. Gee City Builders Pvt. Ltd.

- Respondent

iv) Case No and Date of Judgement:

- a) Revision Petition No.4660 of 2010
- b) Revision Petition No.4661 of 2010
- c) Revision Petition No.4662 of 2010 &

Date of Judgement: 18-12-14.

v) Acts and Sections referred:

Section 2(1) (d), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Perusal of agreement between the two parties showed that there was no clause regarding refund of the deposit. Terms and conditions incorporated had been nowhere challenged by the complainant. The contention of the complainant that non-inclusion of the term and condition regarding the refund of the amount made the agreement void and unenforceable had to be tested in a Civil Court.
- b) Question of cheating and playing fraud by OP raised by the Complainant should be tested in a Civil Court.
- c) Petitioner had not filed certified copy of the impugned order.
- d) Bare reading of the agreement showed that possession had to be delivered within 24 months from the date of commencement of construction or from the date of the agreement, whichever is later. Petitioner had issued the legal notice and filed the consumer complaint prematurely.

vii) Citation:

I (2015) CPJ 198; 2015(1) CPR 120.

R) IMMIGRATION:

1. Canadian 4 UR Immigration (P) Ltd. Vs. Ravinder Singh Dhaliwal

i) Case in Brief:

The Respondent/Complainant in R.P.No.3130 of 2009 had responded to an advertisement issued by the Petitioner/Opposite Party inviting application for immigration to Canada. He opted for the Technical trade i.e., carpenter and cabinet maker and produced certificates in original. After scrutinizing the documents, the petitioner entered into a service agreement with the respondent on 10.10.2006 and received an amount of Rs.60,000/- as first stage payment for processing the case for permanent residency in Canada. Subsequently, the respondent received

a letter from the associate of the petitioner in Canada that the case with the respondent was not processed as the immigration services at Chandigarh had not taken any action despite reminders for payment and information. Respondent filed a complaint in the District Forum alleging deficiency in services. The District Forum, allowing the complainant, directed the OP to return the amount of Rs.60,000/- with interest @ 12% p.a. and further directed the OP to pay a sum of Rs.2 lakhs as compensation to the complainant. In addition, the Forum held that the OP would be liable to imprisonment and/or fine under Section 27 of the Consumer Protection Act. The Petitioner filed an appeal in the State Commission which allowed it partly but set aside the compensation of Rs.2 lakhs granted to the respondent. The present revision petitions have been filed by both the parties challenging the State Commission's order. Both the RPs dismissed.

ii) Order appealed against:

Revision Petition No.3130 of 2009

From the order dated 26.05.2009 in First Appeal No.2276 of 2008 of the State Consumer Disputes Redressal Commission, Union Territory of Chandigarh.

Revision Petition No.3131 of 2009

From the order dated 26.05.2009 in First Appeal No.2276 of 2008 of the State Consumer Disputes Redressal Commission, Union Territory of Chandigarh.

iii) Parties:

Revision Petition No.3130 of 2009

Canadian 4 UR Immigration (P) Ltd., - Petitioner

Vs.

Ravinder Singh Dhaliwal - Respondent

Revision Petition No.3131 of 2009

Ravinder Singh Dhaliwal - Petitioner

Vs.

Canadian 4 UR Immigration (P) Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3130 & 3131 of 2009 & Date of Judgement: 21.11.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Petitioner had failed to convince the commission that they have successfully carried out the services to be provided by them in the service agreement and contract dated 18.10.2006. He also did not give any evidence of the respondent having received the letter asking him to submit additional documents and embassy fee draft.
- b) As per conditions required for migration under skilled worker category, it was a condition precedent for the complainant to be employed and have requisite experience. The District Forum had erred in totally ignoring the exhibits R1 and R1(A) which was the employment opinion confirmation as also holding that the complainant could not take any job here and therefore allowing compensation of Rs.2 lakhs. Held that the State Commission had rightly set aside this part of the order.
- c) Held that there was no jurisdictional or legal error in the State Commission's order to call for interference under Section 21(b) of the Act. Both the R.Ps were dismissed.

vii) Citation:

2015(1) CPR 43.

S) INSURANCE CLAIM:

1. Kanhaiyalal Aghi Vs. National Insurance Co. Ltd.

i) Case in Brief:

Complainant had taken out Hospitalisation and Domiciliary Benefit Policy and had intimated about the disease of heart problem to the OPs in the proposal filled up by him. The policy was first issued in 2004

subject to exclusion of heart and related diseases. It was later renewed in 2005 and 2006 on the same terms and conditions. Complainant received treatment for heart problem and sought disbursement of the amount. The claim of the Complainant under the policy was repudiated by the insurance company on the ground of his pre-existing illness which was excluded from claim as per Clause 4.1 of the revised policy. Alleging deficiency in service, he filed complaint before the District Forum which allowed the claim observing that the terms and conditions were revised and as counsel for the respondent could not clarify the date or year of commencement of the revised policy, their applicability to the case of the Complainant could not be ascertained. It was on this ground that the District Forum held that in case of any ambiguity or confusion in the rules, the benefit of doubt needs to be given to the consumer. Against the decision of the District Forum, appeal was filed before the State Commission which held the claim of the complainant fell under the exclusion Clause 4.1 and therefore, the OP could not be held liable to settle the claim. Against the decision of the State Commission, this revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the order dated 29.5.2012 in Appeal No.722 of 2011 of the State Commission, Haryana.

iii) Parties:

Kanhaiyalal Aghi - Petitioner

Vs.

National Insurance Co. Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4078 of 2012 & Date of Judgement: 19-09-2014.

v) Acts and Sections referred:

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Considering the averments in the revision petition, the National Commission held that several opportunities were provided to the revision petitioner/Complainant by the Commission to file the insurance cover note (policy) for the relevant period. Different counsels appearing on his

behalf were, on as many as seven occasions, allowed time to produce the relevant documents, but they failed to produce any. The main counsel who had filed the revision petition never appeared before the Commission. For the above said reasons, the revision petition was dismissed and the order of the State Commission was confirmed.

vii) Citation:

2014(4) CPR 10.

2. Morteza Yousefi Vs. ICICI Lombard General Insurance Co. Ltd. and another

i) Case in Brief:

Petitioner/Complainant had taken a policy to cover flood/rain damage to his residential house from OP/Respondents. The policy commenced on 13-08-2009. Complainant made a claim for flood/rain damage caused to the house in July, 2010. The assessor appointed by the Complainant estimated the loss at Rs.1,00,000/-. On the other hand, the surveyor appointed by the insurance company assessed at Rs.13,290/-. The Company sent a cheque for that amount. The Complainant claimed to have accepted it under protest. He filed a complaint before the District Forum which allowed the complaint. The insurance company which was ex-parte in the proceedings before the District Forum challenged the order in the State Commission which allowed the appeal. The Complainant who was ex-parte in the State Commission has challenged the order in the present revision petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 25-07-2013 in F. Appeal No.393 of 2013 of State Consumer Disputes Redressal Commission, Haryana.

iii) Parties:

Morteza Yousefi

- Petitioner

Vs.

ICICI Lombard General Insurance Co. Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No: 3858 of 2013 & Date of Judgement: 25-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The main ground faced in the revision petition was that the revision petitioner had no opportunity of being heard before the State Commission and that he was neither served the copy of the appeal/ notice of the appeal nor with the impugned order. But the National Commission, after giving several opportunities to the revision petitioner/ complainant to file copy of the order –sheet of the State Commission to show whether any notice was served him or not, came to the conclusion that the complainant failed to substantiate his allegation. His conduct was totally contrary to the alacrity shown by him in filing the revision petition in less than three months of the decision of the District Forum and in filing the revision petition in less than two months of closure of execution proceedings before the District Forum. Consequently, the revision petition was dismissed as devoid of merit.

vii) Citation:

IV (2014) CPJ 461; 2014(4) CPR 186.

3. Mr. I.C. Sharma Vs. The Oriental Insurance Co. Ltd.

i) Case in Brief:

Complainant purchased a householder insurance policy from the Opp. Party/Oriental Insurance Co. Ltd. On 22-12-2003, he submitted a list of articles which were covered under the said policy. A theft took place in his house during the currency of the policy between 27-01-2008 and 30-01-2008 in his absence. An FIR was lodged with the Police on 31-01-2008. The Insurance Company which was informed sent a surveyor to assess the loss. As against the complainant's claim of Rs.4,03,150/-, the company was prepared to allow Rs.29,929/-. The Complainant refused to accept the cheque for that amount and filed a complaint in the District Forum which awarded a sum of Rs.7,000/- on account of repairs and another sum of Rs.5,000/- for harassment and litigation in addition to Rs.29,929/- allowed by the company. The Complainant filed an appeal before the State Commission which directed the insurance company to pay a sum of Rs.4,03,150/- to the complainant but no interest or compensation was awarded. Aggrieved by the said order,

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both the complainant and the Opposite party have filed the present revision petitions before the National Commission. Revision Petitions disposed of by directing the insurance company to pay a total sum of Rs.49,929/- to the Complainant in addition to Rs.5,000/- towards compensation and cost. Interest on the aforesaid amount at the rate of 9% p.a w.e.f 01-01-2009 till date of payment was also awarded to the Complainant.

ii) Order appealed against:

Revision Petition No.2361 & 3281 of 2014

From the order dated 15-01-2004 in F. Appeal No.247 of 2012 of Delhi State Consumer Disputes Redressal Commission, New Delhi.

iii) Parties:

Revision Petition No.2361 of 2014

Mr. I.C. Sharma - Petitioner

Vs.

The Oriental Insurance Co. Ltd. - Respondent

Revision Petition No.3281 of 2014

The Oriental Insurance Co. Ltd. - Petitioner

Vs.

Mr. I.C. Sharma - Respondent

iv) Case No and Date of Judgement:

- i. Revision Petition No.2361 of 2014
- ii. Revision Petition No.3281 of 2014 &
Date of Judgement : 29-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The National Commission laid down the following principles while dealing with disputes relating to insurance of household articles:

- a) When a person submits a list of articles sought to be got insured, it is his bounden duty to inform the insurance company as and when there is a 'material change' of such articles.

- b) What is material is that if the insured has got the articles falling in a particular class such as clothes, crockery or toys insured, without identifying the individual articles in the said class, he cannot be required to intimate the insurance company if one or more articles falling in a class are replaced by another article(s) of the same class. However, as far as individually insured articles such as electronic gadgets, air conditioners, refrigerators, washing machines, cooking range, camera, watches etc are concerned, replacement of one by another should be reported to the insurance company.
- c) If the insured makes significant addition to the articles kept in the house, he is expected not only to inform the insurance company but also to pay additional premium upon the value of these articles.

Applying the above principles to the items insured in the present case, the National Commission ruled that the Complainant would be entitled to (i) a sum of Rs.21,000/- towards stolen gold articles, (ii) sum of Rs.5,929/- towards depreciated value of the Citizen Watch etc., (iii) Rs.7,000/- for repair of door and latches (iv) Rs.16,000/- towards the value of stolen clothes. The sum of Rs.5,000/- awarded by the District Forum towards compensation, litigation cost etc, was allowed to remain since it was not challenged before the State Commission. Interest at 9% p.a was also awarded.

vii) Citation:

Not reported in CPJ and CPR.

4. Indo Phytochem Pharmaceuticals Vs. National Insurance Co. Ltd.

i) Case in Brief:

Petitioner/Complainant got his factory building, stock, plant and machinery insured with the OP/Respondent for a sum of Rs.1.22 crores for a period from 24-01-2007 to 23-01-2008. In the night intervening 13/14-08-2007, there was a cloud burst which led to flooding of the drain adjacent to the factory premises and damaged the retaining wall. A Complaint was lodged with the insurance company whose surveyor assessed the loss at Rs.10,91,652/- against the claim of Rs.12.3 lakhs. The Petitioner filed complaint before the District Forum which directed payment of Rs.1,75,797/- to the Complainant along with interest at 9%

p.a. However, the State Commission on appeal by the OP took the view that the retaining wall had not been insured and allowed the appeal filed by the insurance company. Aggrieved by the said order, the present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 14.05.2014 in F. Appeal No.65 of 2014 of the H.P State Consumer Disputes Redressal Commission, Shimla.

iii) Parties:

Indo Phytochem Pharmaceuticals - Petitioner

Vs.

National Insurance Co. Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3480 of 2014 & Date of Judgement: 30-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

A perusal of the insurance policy showed that what was covered was only the building meaning thereby that any structure outside the building envelope was not insured under the said policy. Since the retaining wall was supporting the building from outside, it was held that it did not constitute the part of the building envelope. The National Commission therefore did not find anything wrong in the orders passed by the State Commission. Revision Petition was accordingly dismissed.

vii) Citation:

Not reported in CPJ and CPR.

**5. The Oriental Insurance Co. Ltd. (through its manager) and others
Vs. Radhey Govind Steel & Alloys Pvt. Ltd.**

i) Case in Brief:

Complainant Company obtained a standard fire and special perils policy valid upto 28-08-2006 in respect of the plant set up by it to manufacture MS Ingots. On 26-06-2006, a blast took place in the furnace of the plant set up by the Complainant which resulted in damaging the entire furnace. The incident was reported to the insurance company which

appointed a surveyor to conduct the survey of the plant. Vide letter dated 20-02-2007, the claim of the complainant was repudiated by the insurance company on the ground that the break down was the cause of the incident which was not covered under the fire insurance. The Complainant company filed complaint before the State Commission which vide impugned order directed the insurance company to pay a sum of Rs.21,71,298/- towards compensation along with Rs.10,000/- for mental agony and Rs.5000 as cost of litigation. Aggrieved by the said order, the present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 17-12-2009 in C.C.No.4 of 2007 of Chattisgarh State Consumer Disputes Redressal Commission, Raipur.

iii) Parties:

The Oriental Insurance Co. Ltd.
(through its manager) and others

- Appellants

Vs.

Radhey Govind Steel & Alloys Pvt. Ltd.

- Respondents

iv) Case No and Date of Judgement:

First Appeal No:57 of 2010 & Date of Judgement: 30-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The National Commission held that there was no dispute that explosion had taken place in the furnace though according to the surveyor, the cause of explosion was the failure of the refractory/lining of the furnace. From a perusal of the policy, the Commission held that it did not exclude explosion on account of any failure of the refractory or any other machinery. Consequently, it was held that there was no ground to interfere with the order of the State Commission. The appeal was accordingly dismissed.

vii) Citation:

Not reported in CPJ and CPR.

6. Laduram Balkishan Kirana Store Vs. State Bank of Bikaner & Jaipur and another

i) Case in Brief:

Complainant, owner of a kirana store, was sanctioned cash credit limit of Rs 5,00,000/- by the OP/Bank and as per the agreement between the parties, complainant firm took insurance cover of the stock under hypothecation. It is the complainant's case that the premium was paid by the bank every year and then debited to the complainant's account. On 17.11.2009 a fire broke out in the shop resulting in the loss of stock of Rs 5,00,000/-. Complainant's claim was repudiated by the Insurance Company on the ground that the policy had expired in March 2009 and was not renewed. The Complainant, alleging deficiency in service on the part of the bank, filed a complaint before the District Forum which allowed the complaint. However the State Commission on appeal by the Bank held that both the parties were equally responsible for non-renewal on the policy, modified the order of the District Forum and directed that the loss sustained by the borrower shall be shared equally by the bank and complainant. Not satisfied with the order both the parties filed the present Revision Petitions. Revision Petition No.2643 of 2014 filed by OP Bank was allowed and the Revision Petition No.2608 of 2014 filed by the complainant was dismissed.

ii) Order appealed against:

R.P.No.2608 of 2014 and R.P. No.2643 of 2014

Against the order dated 31-03-2014 in FA No.681/2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

Revision Petition No. 2608 of 2014

Laduram Balkishan Kirana Store - Petitioner

Vs.

State Bank of Bikaner & Jaipur and another - Respondents

Revision Petition No. 2643 of 2014

State Bank of Bikaner & Jaipur and another - Petitioners

Vs.

Laduram Balkishan Kirana Store - Respondent

iv) Case No and Date of Judgement:

(i) Revision Petition No.2608 of 2014 with I.A. No.4165 of 2014 (Stay)

(ii) Revision Petition No.2643 of 2014 with I.A. No.4252 of 2014 (Stay)

Date of Judgement: 07-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was held that as per the agreement between the parties, the bank did not have the responsibility to get the insurance renewed and as such it could not be held guilty of deficiency in service. It was further held that despite a letter dated 14.08.2009 from the OP to get insurance cover for the value of stock of goods kept at the godown/shop, complainant did not take steps to renew the policy. Consequently the orders of the fora below were set aside and the bank's R.P. No.2643 of 2014 was allowed.

vii) Citation:

Not reported in CPJ and CPR.

7. National Insurance Co. Ltd. Vs. I.A.S Officers Association and another

i) Case in Brief:

The Petitioner issued medi-claim policies to the members of the Complainants' Association in Maharashtra on the terms which *inter alia* covered all pre-existing illnesses, did not stipulate any waiting period for the medical cover and provided facility for the family members of the insured at 20% premium. Pre-acceptance check up was also dispensed with for the members of the association and a floating cover was provided to them whereby unutilized cover in respect of one family member would be used by other members of the family. After the expiry of the policy period of one year, the Complainant Association sought renewal of the policy on the same terms and conditions while the insurance company wanted them to take a new policy on the revised terms which dispensed with the concessions and benefits given earlier. Alleging deficiency in service, the Association approached the District

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Forum which allowed the complaint and directed the insurance company to renew the policy and extend the insurance cover with retrospective effect. The insurance company filed an appeal in the State Commission which dismissed the same vide impugned order against which this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 29-12-2007 in F. Appeal No.1192 of 2006 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

iii) Parties:

National Insurance Co. Ltd. - Petitioner

Vs.

I.A.S Officers Association and another - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.549 of 2008 & Date of Judgement: 08-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The question that arose for consideration was whether the insured was entitled to renewal of a mediclaim policy as a matter of right or not. The Hon'ble Supreme Court in *United India Insurance Co. Ltd. v. Manubhai Dharmasinhbhai Gajera & Ors.* (2008) 10 SCC 204, had held that the mediclaim policy can be renewed only with the mutual consent of the insurer and insured and cannot be claimed as a matter of right.
- b) A Comparison of the mediclaim policies issued to the members of the Association and those normally issued to others showed that the insurance company went out of its way and granted a number of concessions and benefits to the members of the association which it was not granting to the ordinary policy holders. No reasonable justification was given by the insurance company for giving the preferential and privileged treatment. Therefore, it was held that the decision of the company not to renew the policies on the terms and conditions tailor-made for the members of the association cannot be said to be unreasonable, unfair or arbitrary.

c) Consequently, the orders of the State Commission and District Forum were set aside and the complaint was dismissed.

vii) Citation:

I (2015) CPJ 56; 2014(4) CPR 125.

8. Amrita Devi and others Vs. Bajaj Allianz General Insurance Co.

i) Case in Brief:

Complainant/Petitioner's husband (Santosh Kumar) was owner of tempo trax jeep which was insured with Opposite Party/Respondent. Jeep had capacity to carry 9 passengers and a driver. On 15.10.2008, jeep met with an accident and driver of the vehicle and 9 other persons in the vehicle died. Complainant submitted claim to Opposite Party which was repudiated by Opposite Party on the ground that at the time of accident, 27 persons were sitting in the vehicle. Alleging deficiency on the part of Opposite Party, Complainant filed complaint before District Forum which dismissed complaint. Appeal filed by Complainant was dismissed by the State Commission against which this Revision Petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the order dated 6.7.2012 in F. Appeal No.14/2011 of H.P. State Commission, Shimla.

iii) Parties:

Amrita Devi and others

- Petitioners

Vs.

Bajaj Allianz General Insurance Co.

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4435 of 2012 & Date of Judgement: 09-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Perusal of record revealed that in FIR lodged by one of the passengers in the vehicle, it was clearly mentioned that 25-30 persons were travelling in the vehicle at the time of accident. Not only this, Complainant herself submitted claim form in which she admitted that

27 persons were in the vehicle at the time of accident. In such circumstances, it was held that driver of the vehicle could not have control over the vehicle and there was direct nexus between the overloading of vehicle and accident. It was held that District Forum and State Commission had not committed any error in dismissing complaint. Consequently, Revision Petition filed by the Petitioner was dismissed and the Petitioner was held not entitled to get compensation on even on non-standard basis.

vii) Citation:

IV (2014) CPJ 632; 2014(4) CPR 113.

9. K.C. Fibres Ltd. Vs. New India Assurance Co. Ltd.

i) Case in Brief:

Complainant Company obtained three insurance policies from the Respondent, one for Rs.1,50,00,000/- in respect of raw material, stock in progress, finished goods etc, the second for Rs.2,03,00,000/- in respect of building and third for Rs.7,35,00,000/- in respect of plant and machinery. There was a massive fire on 17-08-2002 causing heavy damage to the company. The OP who was informed, appointed a surveyor by name Ramesh Kumar Jain. The total loss estimated by him was Rs.4,10,00,000/-. Complainant after discussion with surveyor lodged the claim for Rs.3,19,70,814/-. The OP appointed one Col. Chandra Prakash (Rtd.) as an investigator and based on his report repudiated the entire claim vide letter 24-11-2004. Aggrieved from the repudiation of the claim, this complaint has been filed before the National Commission. Complaint dismissed in respect of damage to machines but allowed in respect of damage to building and in respect of loss on stocks.

ii) Order appealed against:

Original Complaint

iii) Parties:

K.C. Fibres Ltd.

- Complainant

Vs.

New India Assurance Co. Ltd.

- Opp. Party

iv) Case No and Date of Judgement:

Consumer Complaint No.215 of 2006 & Date of Judgement: 10-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o) and 21(a) (ii) of The Consumer Protection Act, 1986

vi) Issues raised and decided:

- a) It was held that the claim that eight machines were destroyed by fire was false since one of the machines imported by the Complainant in 1994 had got destroyed in the fire which broke out on 15-06-2000 and was sold as scrap and only 7 machines were left with the complainant company. As per condition No.8 of the Standard Fire and Special Peril Policy issued to the Complainant, if the claim was found to be fraudulent in any respect all the benefits under the policy were to be forfeited. The Insurance Company, it was held, was entitled to repudiate the entire claim.
- b) It was noted that the Complainant gave highly inflated value of the machines and had not disclosed to the OP that the same machines were got insured with Oriental Insurance company, Sonapat and United India Insurance Company, Sonapat for a lesser sum. It was therefore held that the complainant made a misrepresentation to the insurance company with respect to the reinstatement of the value of the machines.
- c) Consequently, it was held that the complainant was not entitled to any reimbursement from the OP for the loss of machines which were alleged to have been destroyed in the fire that broke out on 17-08-2002.
- d) However, since no fraud in respect of the other two policies i.e one for stocks and the other for the building, was alleged, the Complainant was held to be entitled to be paid Rs.9,30,021/- in respect of damage to building and Rs.6,09,438/- in respect of loss on stocks on reinstatement value basis. He was also entitled to Rs.50,000/- for removal of debris and Rs.25,000/- for firefighting expenses.

vii) Citation:

IV (2014) CPJ 496; 2014(4) CPR 417.

10. Goodrich Carbohydrates Ltd. Vs. New India Assurance Co. Ltd.

i) Case in Brief:

Complainant/Petitioner's truck HR 45A 4377 was insured by OP/respondent for a period of one year commencing from 24.6.2010 to 23.6.2011. Vehicle met with an accident on 9.9.2010 and was badly damaged. OP appointed surveyor who, according to the complainant, permitted M/s. Metro Motors to replace Assembly Cabin Shell, as the same was beyond repair. It was further alleged that surveyor demanded money from the insured to recommend the final bill prepared by M/s. Metro Motors, but as complainant did not oblige, surveyor allowed Assembly Cabin Shell to be repaired and assessed loss only at Rs.74,881/- against the bill of Rs.2,53,020/-. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which directed OP to pay Rs.1,78,139/- with interest @ 9% p.a. OP filed appeal and State Commission partly allowed appeal and allowed complaint to the extent of Rs.74,881/- only against which, this revision petition has been filed along with application for condonation of delay. Revision petition dismissed.

ii) Order appealed against:

Against the order dated 17.08.2012 in Appeal No.34 of 2012 of Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Goodrich Carbohydrates Ltd. - Petitioner/Complainant

Vs.

New India Assurance Co. Ltd. - Respondents/Opp. Parties

iv) Case No and Date of Judgement:

Revision Petition No.3226 of 2013 with IA/5659/2013 (For Condonation of delay) & Date of Judgement: 13-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Delay in filing revision petition was condoned as petitioner's counsel before the State Commission died suddenly and petitioner

was not aware of the fate of his appeal before the State Commission.

- b) In this case, the surveyor had filed an affidavit that he did not permit the replacement of Assembly Cabin Shell. Perusal of the photographs of the vehicle in question showed that damage was not to the extent that Assembly Cabin Shell needed replacement and photographs clearly indicated that Assembly Cabin Shell was repairable and on the basis of this observation State Commission reduced claim which was apparently proper. Hence, the present revision petition was dismissed.

vii) Citation:

IV (2014) CPJ 587; 2014(4) CPR 407.

11. Proprietor of Jaiswal Transport Vs. New India Insurance Co. Ltd.

i) Case in Brief:

The complainant had taken an insurance policy from the respondent-New India Insurance Co. in respect of his tanker No.GJ-1V-3859, for the period from 30.06.2005 to 29.06.2006. Another policy was taken in respect of the goods transported in the said tanker. The case of the petitioner is that the aforesaid tanker met with an accident on 01-06-2006 in the limits of Umralla Police Station. At that time, the tanker was allegedly carrying 8000 liters of petrol and 4000 liters of diesel, worth Rs.5,13,281/-. It is the case of the petitioner that, the information with respect to the accident was given to the concerned police station on 08-06-2006, though the FIR came to be recorded much later. Since the insurance company declined to pay the claim lodged by the Petitioner/Complainant, he approached the District Forum by way of a complaint. District Forum dismissed the complaint on the grounds that the FIR was lodged on 07-10-2006 i.e. more than four months after the accident and the claim was not lodged with the insurance company for more than two years. Being aggrieved from the order of the District Forum, the petitioner/complainant approached the State Commission by way of an appeal. The said appeal having been dismissed, the petitioner had filed this revision petition. Revision petition dismissed.

ii) Order appealed against:

From the order dated 26-12-2013 in FA No.893 of 2011 of the Gujarat State Consumer Disputes Redressal Commission at Ahmedabad.

iii) Parties:

Proprietor of Jaiswal Transport

- Petitioner

Vs.

New India Insurance Co. Ltd.

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3729 of 2014 with I.A.No.6895 of 2014 & I.A.No.6896 of 2014 (For condonation of delay, exemption from filing translated documents) & Date of Judgement: 14-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19, 21(b) and 24A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was observed by the National Commission that under the terms of the insurance policy, the claim ought to have been lodged with the insurance company immediately on the said loss taking place. This enables the insurance company to verify the alleged loss and also try to minimize the same. In this case, it is admitted that no information was given to the insurance company at any time prior to 10-10-2008. If the information regarding the alleged loss is given to the insurance company after expiry of more than two years from the date of the loss it will not be possible for the insurance company to verify as to whether the alleged loss had taken place or not. It was also held that the possibility of the aforesaid petrol and diesel or at least part of it having been sold by the complainant could not be ruled out, in the facts and circumstances of the case. Therefore, the orders of the fora below were confirmed and the present revision petition was dismissed.

vii) Citation:

Not reported in CPJ and CPR.

12. New India Assurance Co. Ltd. Vs. Pradeep Kumar and others

i) Case in Brief:

Complainant was a passenger on 02-05-2012 on Haryana Roadways Bus bearing registration No.HR-58/7327 proceeding to Yamuna Nagar. When the bus reached Jagadhri Bus stand, the driver of the bus without switching off the bus and/or asking the passengers to get down, asked the conductor to put some water in the radiator. When the conductor tried to do so, boiling water from the radiator fell on the body of the complainant causing him burn injuries needing hospitalization till 12-05-2012. The District Forum before whom complaint was filed directed the insurance company to pay a sum of Rs.25,653/- towards hospitalization with interest at 9% p.a, Rs.50,000/- as compensation for mental agony and pain and Rs.3,300/- towards the cost of the litigation. The appeal filed by the insurance company was dismissed by the State Commission by the impugned order against which this revision petition has been filed. Revision petition dismissed.

ii) Order appealed against:

From the order dated 22-04-2014 in F. Appeal No.875 of 2013 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

New India Assurance Co. Ltd.	-	Petitioner
Vs.		
Pradeep Kumar and others	-	Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2845 of 2014 & Date of Judgement: 14-10-2014.

v) Acts and Sections referred:

Sections 2(1) (d) (g) & (o) 19 and 21(b) of The Consumer Protection Act, 1986 & Section 175 of the Motor Vehicles Act.

vi) Issues raised and decided:

- a) The Petitioner's argument that the complainant was not the consumer of the insurance company was rejected by the commission on the ground that the insurance policy taken by the Haryana Roadways showed that the liability of the insurance company extended, *inter alia*, to the passengers travelling in the Haryana Roadways buses.

- b) The contention of the petitioner that the forum had no jurisdiction and that the jurisdiction to award compensation vests solely with the Motor Accident Claims Tribunal was also rejected on the ground that the Consumer Forum is not a civil court. Therefore Section 175 of the Motor Vehicles Act which prevents Civil Courts from entertaining any claims for compensation is inapplicable in the present case.
- c) It was held that both the driver and the conductor of the Haryana Roadways Corporation Bus were negligent in the performance of their duties as they did not take the minimum precaution before opening the lid of the radiator and the Roadways being the owner of the bus was vicariously liable to compensate the complainant.

vii) Citation:

IV (2014) CPJ 502; 2014(4) CPR 392.

13. United India Insurance Company Ltd. Vs. Ravindra Chunilal Kalal and another

i) Case in Brief:

Complainant/Respondent No.1 purchased an Indica GLX SP Entire Vehicle against tender floated by OP.1/Petitioner for disposal of salvage by paying consideration of Rs.351,125/-. However, while collecting the vehicle from the premises of M/s. Tata Motors Ltd, OP.2/Respondent No.2, it transpired that OP.2 had stopped issuing RTO Form No.22 i.e Vehicle Road-worthiness Certificate based on a letter issued by the Deputy Regional Transport Office that such form should not be issued in future. When the complainant approached RTO for registration, the registration was refused due to lack of certificate/Form No.22. The insurance company refused to return the money. The District Forum before whom complaint was filed dismissed the complaint. However, on appeal, the State Commission allowed the complaint and directed the OP.1/Petitioner to pay a sum of Rs.3,51,125/- to the complainant with 9% interest along with Rs.10,000 towards compensation and Rs.3000 towards cost. Complaint against Respondent No.2 was dismissed because of want of privity of contract. Aggrieved by the order, the present revision petition has been filed. Revision petition dismissed with further cost of Rs.25,000/-.

ii) Order appealed against:

From the order dated 14-11-2008 in F. Appeal No.491 of 2007 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

iii) Parties:

United India Insurance Company Ltd. - Petitioner

Vs.

Ravindra Chunilal Kalal and another - Respondents

iv) Case No and Date of Judgement:

Revision Petition No. 12 of 2009 & Date of Judgement: 15-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was held that Tata Motors Ltd should not have sold the scrap to the complainant through the OP in the light of directions given by the Deputy Regional Transport Office. However, the decision of the State Commission that M/s. Tata Motors Ltd does not come in the picture in this case was upheld. It was further held that the insurance company was not vigilant and had to pay the price. Revision petition was accordingly dismissed with further cost of Rs.25,000/- to be paid by OP.1 to the Complainant by means of Demand Draft within 45 days of receipt of the order. Complainant was directed to handover the scrap to OP.1/Insurance Company at their office with intimation to OP.1.

vii) Citation:

Not reported in CPJ and CPR.

14. The Ghoti Merchant's Co-op Bank Ltd. Vs. United India Insurance Co. Ltd.

i) Case in Brief:

The Complainant Co-operative Bank had taken an indemnity policy from the OP/Insurance Company covering the risk of theft, robbery, burglary etc including dishonest acts of employees of the insured whether committed singularly or in connivance with others. When the policy was

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in force, an incident of theft of cash and gold ornaments took place on 09-09-2002. The Strong room of the bank was closed at 6.15 P.M on 09-09-2002 and when opened on 11-09-2002, it was found that all the cash trays were empty. An FIR was got recorded with the police on the same day. The OP Insurance Company was informed the next day. The Surveyor sent by the OP visited the site on 18.09.2002. The Police were able to apprehend the culprits and recover cash amount of Rs.7,45,165/- and ornaments worth Rs.7,70,937/-. The Complainant's claim for getting Rs.37,86,939/- from the insurance company along with interest was repudiated by the OP on the ground that the insured did not act prudently. The complaint filed before the State Commission was dismissed against which the present appeal has been filed. Appeal dismissed.

ii) Order appealed against:

From the order dated 18-11-2010 in C.C.No.113 of 2009 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

iii) Parties:

The Ghoti Merchant's Co-op Bank Ltd. - Appellant

Vs.

United India Insurance Co. Ltd. - Respondent

iv) Case No and Date of Judgement:

First Appeal No.94 of 2011 & Date of Judgement: 15-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(a) (ii) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Records showed that the keys of the strong room of the bank were stolen in the year 1999 and that the bank obtained duplicate keys kept in the State Bank of India and started operations. No attempt was made by the bank to change the lock and get new keys. Had the bank done so, the incident of theft would not have occurred.
- b) It was held that the negligence or omission on the part of the employees of the insured bank was proved and hence the case was covered under exception Clause (b) according to which the

loss resulting wholly or partially from any negligent act or omission of the insured employee cannot be made good by the insurance company.

- c) Consequently, it was held that there was no deficiency in service on the part of the OP. The order of the State Commission was upheld and the appeal filed by the appellant bank was dismissed.

vii) Citation:

Not reported in CPJ and CPR.

15. United India Insurance Co. Ltd and another Vs. P. Raja Reddy

i) Case in Brief:

The complainant purchased a hydraulic excavator from L & T Komastu PC and got the same insured with the petitioner-company for the period from 09.02.2011 to 08.02.2012. According to the complainant, on 28-06-2011 when the excavator was engaged in loading granite stones in a tipper, the said tipper while reversing, hit against the excavator of the complainant. As a result, the excavator slipped/fell down from a height of about 25 ft. and got badly damaged. On the suggestion of the surveyor appointed by the insurance company, the excavator was shifted to L & T Earth Moving Machinery Service, Chennai for the purpose of getting the same repaired. The L & T Earth Moving Machinery Service gave an estimate of Rs.27,50,000/- which included replacement of some parts. The complainant made payment of Rs.17,99,999/- for repair of the excavator and then submitted the bill to the insurance company. However, no payment was made to him compelling him to approach the concerned District Forum for payment of Rs.18,89,999/- along with interest at the rate of 12% per annum, compensation amounting to Rs.50,000/- and cost of litigation amounting to Rs.5,000/-. The complaint was allowed by the District Forum. Being aggrieved from the order of the District Forum, the insurance company approached the State Commission by way of an appeal. The said appeal having been dismissed, the insurance company has filed this revision petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 17-02-2014 in FA No.716 of 2013 of the Andhra Pradesh State Consumer Disputes Redressal Commission at Hyderabad.

iii) Parties:

United India Insurance Co. Ltd and another - Petitioners

Vs.

P. Raja Reddy - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2215 of 2014 with IA/3290/2014 (For Stay) & Date of Judgement: 15-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was pointed out by the National Commission that there was no evidence produced by the petitioner-company to explain how the excavator had fallen down from a slope of about 25 ft. high. The first surveyor appointed by the insurance company also did not give any other cause for the excavator to fall down from a height of about 25 ft. Further, since the insurance company has failed to establish that the accident took place on account of overturning arising out of the operation as a tool of the machine, the case was not covered under the exclusion clause contained in the insurance policy. Therefore, it cannot be said that no material was available before the District Forum and the State Commission to prove the cause of the accident. It was held that the District Forum and the State Commission were absolutely justified in accepting the version of the accident given by the complainant in the claim submitted by him to the insurance company and the present revision petition was accordingly dismissed.

vii) Citation:

2014(4) CPR 590.

16. Sh. Bhagat Mohinder Pal Vs. M/s. National Insurance Co. Ltd and others

i) Case in Brief:

The petitioner who planned to visit U.K. obtained an overseas mediclaim policy from OP/National Insurance Company Limited under which risk

of illness upto the extent of Rs.5 lakhs was covered. While in England, the petitioner suffered an acute ischaemic stroke. He was admitted in Hospital and it raised a bill of British Pound 16,826/-. However, he had produced only one receipt for payment of British Pound 188/-. The complainant lodged a claim with the Insurance Company seeking payment of Rs.2,01,870/-, alleged to be the amount paid to the hospital. The claim was repudiated by the Insurance Company on the ground of pre-existing diseases. Being aggrieved from rejection of his claim, the complainant filed complaint before the District Forum which was dismissed. The petitioner approached the concerned State Commission by way of an appeal which was also dismissed. Hence, the complainant has filed this present revision petition which was allowed.

ii) Order appealed against:

From the order dated 06.05.2014 in Appeal No.2074 / 2010 of Punjab State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Sh. Bhagat Mohinder Pal - Petitioner

Vs.

M/s. National Insurance Co. Ltd and others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3209 of 2014 & Date of Judgement: 16-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue was whether the petitioner's claim was to be allowed as he had disclosed the existence of heart disease, blood pressure and diabetes at the time of applying for the policy but not disclosed the existence of stroke.
- b) It was held that there was no evidence to even indicate that the complainant was suffering from stroke or was taking any medication or before the date on which medi-claim policy was issued to him. Reliance was placed on the Hon'ble Supreme Court decisions of *Skandia Insurance Co. Ltd. V. Kokilaben Chandravadan & Ors.*, 1987 (2) SCC 654 : (AIR 1987 SC 1184) : AIR1996 SC 2054,

LC in *Glynn V. Margeston & Co.* 1893 AC 351 wherein it was held that 'the primacy given to the main purpose, notwithstanding that contracting parties agreed to certain exclusions, is founded on the principle of interpretation that if contracting parties seek to achieve a certain purpose by entering into an agreement, the existence of exclusion clauses should be strictly interpreted and if it tends to defeat the main purpose, should be read down by the Court; if that is not possible, the Court should altogether ignore it'.

- c) The Insurance Company was held liable to reimburse the complainant for the expenses incurred by him on treatment of stroke for which he remained hospitalised from 06.03.2008 to 18.04.2008 to the extent receipts of payment made to the Hospital were provided by him from his own funds. It was further held that the complainant was also entitled to interest @6% p.a. on the amount which the Insurance Company had to pay him in terms of the order. The revision petition was allowed on those lines.

vii) Citation:

Not reported in CPJ & CPR.

17. Branch Manager, United India Insurance Company Limited Vs. Mr. Jogendra Singh

i) Case in Brief:

Respondent/Complainant purchased a tractor which was comprehensively insured with the Petitioner for the period from 8.9.2004 to 7.9.2005. During the intervening night 31-05-2005/01-06-2005, when the tractor was parked inside the house, it was stolen by some unknown persons. It was claimed that information was given by the brother of the Respondent to the Police Station immediately. But FIR was lodged on 10-06-2005. After investigation, police submitted final report that the vehicle could not be traced which was accepted by the Court. Respondent's claim was repudiated by the Petitioner on the ground that Respondent did not take proper care of the vehicle. District Forum, allowing the complaint filed by the Respondent, directed the Petitioner to decide the claim within 30 days along with Rs.1,500/- being cost of

litigation. Petitioner's appeal was dismissed by the State Commission vide impugned order against which the present revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

Against the order dated 31.05.2011 in First Appeal No.117 of 2010 of State Consumer Disputes Redressal Commission, Uttrakhand, Dehradun.

iii) Parties:

Branch Manager,
United India Insurance Company Limited - Petitioner

Vs.

Mr. Jogendra Singh - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3047of 2011 & Date of Judgement: 16-10-2014

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was noted that FIR was registered only 10 days after the vehicle was stolen. Though Respondent claimed that intimation about the theft was given to the Petitioner, he had not mentioned the date of the said intimation whereas the petitioner in its written statement had claimed that intimation was received by it only on 13-06-2005 from the bank. Thus, there was a delay of 12 days in informing the Petitioner about the incident. The National Commission in *New India Assurance Co.Ltd v. Trilochan Jane*, IV (2012) CPJ 441 (NC) had held that delay in reporting to the insurer about the theft of the car for nine days would be a violation of the condition of the policy as it deprives the insurer of a valuable right to investigate as to the commission of the theft and to trace/help in tracing the vehicle. The Hon'ble Supreme Court in *United India Insurance Co Ltd v. M/s.Harchand Rai Chandan Lal*, JT 2004 (8) SC 8, had held that the terms of Policy have to be construed as it is and nothing can be added or subtracted from the same. In the present case, since there were violations of

basic terms and conditions of the insurance policy, it was held that both the fora below have erroneously and wrongly allowed the complaint.

- b) Consequently, the impugned order passed by the State Commission as well as the order of the District Forum were set aside. Revision Petition was allowed and the complaint filed by the Respondent before the District Forum stood dismissed.

vii) Citation:

IV (2014) CPJ 637; 2014(4) CPR 454.

18. ICICI Bank Ltd. Vs. Pushpa Chandran and others

i) Case in Brief:

Complainant's husband availed loan from OP.No.3/ Petitioner in July, 2008 which was to be paid in 60 monthly installments. The loan was covered under Insurance from OP.No.1&2/Petitioner. Complainant's husband expired on 27-11-2009 due to heart disease and complainant requested OPs to close loan account as per conditions of policy. OP repudiated the claim on the ground that the insured had suppressed information relating to his health condition. Alleging deficiency in service, Complainant approached the District Forum which allowed the complaint and directed the OPs to settle the claim and further directed that if any amount had been paid by the Complainant after her husband's death, it should be returned to the complainant. The Forum also awarded Rs.2000 as cost. Appeals filed by OPs were dismissed by the State Commission by the impugned orders against which the present revision petitions have been filed. Revisions Petitions allowed and Complaint dismissed.

ii) Order appealed against:

Revision Petition 3393 of 2012

From the order dated 08-06-2012 in Appeal No.584 of 2011 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

Revision Petition 4286 of 2012

From the order dated 08-06-2012 in Appeal No.769 of 2011 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

iii) Parties:

Revision Petition 3393 of 2012

ICICI Bank Ltd. - Petitioner/Opp.Party

Vs.

Pushpa Chandran and others - Respondents/Complainants

Revision Petition 4286 of 2012

ICICI Prudential Life Insurance Co Ltd. - Petitioner/Opp.Party

Vs.

Pushpa Chandran and another - Respondents/Complainants

iv) Case No and Date of Judgement:

a) Revision Petition 3393 of 2012;

b) Revision Petition 4286 of 2012;

Date of Judgement: 17-10-2014

v) Acts and Sections referred:

Sections 2(1)(g) &(o),19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Records showed that the complainant's husband was on treatment since July, 2005 for Liver Cirrhosis. But in the proposal for insurance policy submitted subsequently, the insured had denied having any ailments relating to the liver. Moreover, the Complainant's son had also admitted in evidence that his father was under treatment for liver cirrhosis. It was therefore held that the insured had obtained policy by suppressing his disease and by making false representation in the proposal form. In *P.C.Chacko and another v. Chairman, LIC of India*, (2008) 1 SCC 321, the Hon'ble Supreme Court had held that "the proposal can be repudiated if a fraudulent act is discovered." Accordingly, it was held that the OP had not committed any deficiency in repudiating claim. The orders of fora below were set aside and the complaint was dismissed.

vii) Citation:

I (2015) CPJ 62; 2014(4) CPR 444.

19. Gulam Vs. Oriental Insurance Co. Ltd.

i) Case in Brief:

The petitioner/complainant had purchased one insurance policy from the office of the respondent/insurance company, under which there was personal accident policy also. The petitioner was seriously injured in an accident on 3.1.2007 and was given treatment. After treatment from the doctor, it was claimed that 75% disability certificate was issued. The applicant under personal accident policy filed Case No.374 of 2008 for compensation in District Consumer Forum which was dismissed by the District Forum on 25.8.2009. In compliance with the order given by the District Forum, the petitioner submitted an application in the office of the insurance company which was dismissed by the opposite party. Therefore, a complaint was again filed before the District Forum which was again dismissed. Aggrieved by the order of the District Forum, petitioner filed an appeal before the State Commission which was also dismissed. Aggrieved by the State Commission's order, this revision petition was filed. Revision Petition dismissed.

ii) Order appealed against:

Against the order dated 28.03.2012 in First Appeal No.1296/2011 of the M.P. State Consumer Disputes Redressal Commission, Bhopal.

iii) Parties:

Gulam - Petitioner

Vs.

Oriental Insurance Co. Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2910 of 2013 & Date of Judgement: 29-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Perusal of the records revealed that there was disability certificate on record from District Medical Board, Indore which mentioned the name of the petitioner and his address. The rest of the columns in the form

were blank. The certificate didn't mention what the petitioner was suffering from and what was the percentage of his disability. It was held that the petitioner has somehow obtained a blank form of the District Medical Board and after affixing his photograph had filled in some details. The said medical certificate had also not been signed by any Member of the Board and as such no reliance can be placed on the certificate. The petitioner had failed to prove that he suffered any injury resulting a in disability which is covered by the conditions of the policy. Hence, the orders of the fora below were upheld and the present revision petition was dismissed.

vii) Citation:

I (2015) CPJ 126; 2014(4) CPR 553.

20. M/s Zuari Agro Chemicals Ltd Vs. M/s. Oriental Insurance Co. Ltd

i) Case in Brief:

On 23.03.2011, the steam turbine, which the complainant had got insured with the opposite party, was being tested for over speed trip during an ongoing annual turn around. The steam turbine gradually reached the speed of 8140 RPM when all of a sudden, there was a big noise coupled with violent vibrations and the turbine had to be manually tripped. It was later noticed that the steam turbine had been damaged and required immediate repairs. The matter was reported to the Insurance Company and the cost of repair was assessed at Rs.1,11,06,097/-. But, the claim lodged by the complainant company was repudiated by the Insurance Company on the ground that the damage had taken place during over speeding trip test after an annual shut down to the turbine which was being run at a higher speed than the operative speed and therefore the case was covered under General Exclusion B 3 (g) of the Policy. Being aggrieved from the rejection of its claim, the complainant company filed the complaint. Complaint was dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

M/s Zuari Agro Chemicals Ltd. - Complainant

Vs.

M/s. Oriental Insurance Co. Ltd. - Opp.Party

iv) Case No and Date of Judgement:

Consumer Complaint No.345 of 2014 & Date of Judgement: 31-10-2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) The issue raised was whether any damage to the insured machine at the time the said machine was in the process of being tested would be covered under the Insurance Policy.
- b) It was pointed out by the National Commission that as the damage during the testing of every kind is excluded from the purview of the Insurance Policy, the damage which was caused to the machine of the complainant company at the time it was being over speed trip tested would not be covered and the complainant company would not be entitled to reimbursement of the expenditure incurred in repairing the machine. Therefore, it was held that in view of the exclusion clause contained in the aforesaid policy, the Insurance Company was fully justified in repudiating the claim lodged by the complainant company. There was no merit in the complaint filed. So it was dismissed.

vii) Citation:

Not reported in CPJ and CPR.

21. M/s. Prem Processor Vs. The Oriental Insurance Co. Ltd.

i) Case in Brief:

The Petitioner/Complainant had taken an insurance policy in respect of machinery breakdown from the Respondent Insurance Company for a period of one year. It is the petitioner's case that during the validity of the policy, on 07.07.2003, accidentally, there was damage to the

machinery. The respondent who was informed deputed a surveyor and as per the latter's advice got the machine repaired at a cost of Rs.1,45,000/-. The Petitioner expected a supplementary bill of the same amount. But the claim was repudiated by the Respondent. Petitioner filed a complaint before the District Forum which dismissed the complaint. Their appeal to the State Commission was also dismissed. Present revision petition against the State Commission's order was also dismissed.

ii) Order appealed against:

From the order dated 07-12-2011 of the Gujarat State Consumer Redressal Commission, Ahmedabad in First Appeal No.189 of 2009.

iii) Parties:

M/s. Prem Processor	- Petitioner
Vs.	
The Oriental Insurance Co. Ltd.	- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2088 of 2012 & Date of Judgement: 31-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was held that the damage to the diesel engine was not due to any incident or accident which resulted in sudden breakdown of engine due to wear and tear of the parts but due to its excessive use over the years. It was noted that as per the survey report, the repairer had also confirmed that there was no other damage to the engine but only servicing was required to the engine and the fuel pump. It was held that servicing and calibration cannot by any stretch of imagination be taken as a break down due to an incident of unforeseen circumstances or accident. It was further held that there was no jurisdictional or legal error to warrant interference U/S 21(b) of the Act. Revision Petition was therefore dismissed.

vii) Citation:

2014(4) CPR 504.

22. Venus Jewel Vs. United India Insurance Co Ltd.

i) Case in Brief:

The Complainant is in diamond export business and had insured its firm and its sister concern with the opposite party. When the policy was in subsistence, Complainant had entrusted the goods in question (74 pieces of diamonds of 61.99 carats and 16 pieces of diamonds of 14.8 carats and cash worth Rs.8,88,413/- to an Angadia (type of courier), situated at Surat for transport and delivery and obtained the receipt for the same. While in transit to Mumbai, the bag containing the consignment was stolen. An FIR was lodged and OP was informed. Before, the Surveyor appointed by the OP gave his report, OP decided to appoint another surveyor by name Mr.N.K.Jain who reported that complainant is not entitled to any amount. Complainant therefore filed his original complaint before the National Commission. Complaint was dismissed.

ii) Order appealed against:

Original Petition

iii) Parties:

Venus Jewel - Complainant

Vs.

United India Insurance Co Ltd. - Opp. Party

iv) Case No and Date of Judgement:

Original Petition No.94 of 2003 & Date of Judgement: 03-11-2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

The Commission examined in detail the policy in question and found that loss due to theft when the goods were entrusted to an Angadia was not covered by the policy. Therefore, it was held that OP was not bound to accept the report of the first surveyor. It was also noted that though the incident took place on 15.12.1991 and FIR was lodged with the police on 16-12-1999 no report was lodged with the Railway Police immediately/instantaneously. Had the authorities been called, they might have caught the thief. Moreover, no name of co-traveler was

disclosed. FIR did not mention how many jewels were stolen and what were their prices. Therefore, the complaint was dismissed.

vii) Citation:

Not reported in CPJ and CPR.

23. Dinesh Kumar Shah Vs. National Insurance Co. Ltd

i) Case in Brief:

Complainant/Petitioner purchased a Tipper vehicle from one Mr.Paramjit Singh and got the same transferred in his name on 20.03.2010. The vehicle was got insured by the Complainant for the period from 20.07.11 to 19.07.12. However, the permit issued by the transport authority in the name of Paramjit Singh was not got transferred by the Complainant in his name. During currency of the policy, the Tipper met with an accident on 03.08.2011. The Surveyor deputed by the Respondent assessed the damages at Rs.2,17,825/-. However, the claim made by the Complainant was repudiated by the Respondent company on the ground that the permit had been issued in the name of Mr. Paramjit Singh and had not been got transferred in the name of the petitioner. Being aggrieved from the rejection of his claim, the Petitioner/Complainant approached the District Forum which directed the Insurance Company to pay an amount of Rs.2,17,825/- to the complainant/petitioner as expenditure incurred and cost of litigation amounting to Rs.15,000/-. Interest was also awarded in case the above referred amount was not paid within 45 days from the date of receiving the copy of the order. The Insurance Company approached the State Commission by way of an appeal. The State Commission agreed with the stand taken by the Insurance Company and allowed the appeal. Being aggrieved from the appeal being allowed and the complaint being dismissed, the complainant filed this revision petition. Revision Petition allowed.

ii) Order appealed against:

From the order dated 26.11.2013 in First Appeal No.18 of 2013 of the Odisha State Consumer Disputes Redressal Commission, Cuttack.

iii) Parties:

Dinesh Kumar Shah

- Petitioner

Vs.

National Insurance Co. Ltd.

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1224 of 2014 & Date of Judgement: 03-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Sections 66, 82, 86(1) of the Motor Vehicles Act, 1988.

vi) Issues raised and decided:

- a) Held that as a legal proposition, no one can dispute that the permit issued by the concerned transport authority to Mr. Paramjit Singh ought to have been got transferred by the complainant/petitioner in his name, but considering that the Insurance Company did not insist upon production of the permit duly transferred in the name of the petitioner/complainant at the time of issuing the Insurance Policy, the breach in question, in the facts of the case cannot be said to be fundamental in nature and had no bearing on the extent of the risk covered by the Insurance Company. Therefore, a claim of this nature should be settled by the Insurance Company on non-standard basis and the decision of the Hon'ble Supreme Court in *Amalendu Sahoo Vs. Oriental Insurance Co. Ltd.*, II (2010) CPJ 9 (SC) and *National Insurance Co. Ltd. Vs. Nitin Khandelwal*, IV (2008) CPJ 1 (SC) clearly supports this point.
- b) Further held that in the present case, the accident in which the vehicle got damaged had nothing to do with the ownership of the permit under which it was being plied. In a case of this nature, the Insurance Company should settle the claim on non-standard basis, instead of paying the entire claim assessed by the surveyor appointed by it.
- c) The revision petition was therefore allowed and the respondent company was directed to pay 75% of the assessed amount of Rs.2,17,825/- to the petitioner/complainant along with interest on that amount at the rate of 6% per annum w.e.f. 45 days after the order of the District Forum till the date of payment.

vii) Citation: 2014(4) CPR 759.

24. M/s. Sasken Communication Technologies Ltd Vs. The New India Assurance Co Ltd and others

i) Case in Brief:

The Complainant Company, engaged in the business of developing and licensing software companies obtained on 15-09-2003, a Techno – Industry Errors and Omissions Insurance Policy for the amount of Rs.23,00,00,000/- from OP for the period from 09-09-2003 to 08-09-2004. It was agreed that insurance coverage became applicable from a retroactive date viz. 09-09-2002. The Complainant Company had earlier on 16-02-2001 entered into a license agreement, which was amended on 12-02-2002, with an overseas client namely 3G.Com (UK) Ltd to deliver and license software to the said buyer. The overseas buyer asked the Complainant Company for a free upgrade which the Complainant Company declined. 3G.Com invoked the arbitration clause and London Court of International Arbitration appointed an arbitrator on 12-07-2004. OP was informed of the developments but the claim made by the Complainant Company was repudiated by the OP on 26-05-2005. On 23-12-2005, the arbitral tribunal rendered an award against the complainant comprising damages as well as legal and arbitration costs. Complainant has filed the present complaint seeking compensation of the amount awarded by the arbitral tribunal, defence costs against the claim of 3G.Com, interest on the amount paid to 3G.Com, compensation and litigation costs. Complaint dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

M/s.Sasken Communication Technologies Ltd - Complainant

Vs.

The New India Assurance Co Ltd and others - Opp.Parties

iv) Case No and Date of Judgement:

Consumer Complaint No.225 of 2006 & Date of Judgement: 05-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o) and 21(a)(i) of the Consumer Protection Act, 1986 & Section 19 of the Indian Contract Act, 1872.

vi) Issues raised and decided:

The Commission found no merit in the complaint for the following reasons:

1. The Complainant Company considering the market realities and the direction in which the world was moving chose to focus its efforts on producing Dual Mode Protocol Stacks and discontinued protection Single Mode Protocol Stack. Therefore, it was not in a position to provide the requisite updates and upgrades to 3G.Com. Since, the Complainant was in breach of Clause 3(a) of the amendment as expressly held by the Tribunal the liability arising out of the breach was clearly out of the purview of Clause 1.1 of the insurance policy.
2. The award rendered by the Tribunal which was not challenged by the Complainant Company before an appropriate forum showed that the liability under the said award arose on account of conscious breach of the Clause 3 of the amendment agreement and did not arise on account of any negligent act, error or omission on the part of the complainant.
3. Since the insurance policy was taken on 15-09-2003(though given retroactive effect commencing 09-09-2002) and the decision not to abide by the terms of the amendment agreement had been taken in April, 2003, the Complainant Company should have known in advance that 3G.Com would stake a claim against it. In terms of Clause 4.5 (b)(ii) of the terms of the insurance policy, such a claim would be excluded. Moreover, the insurance policy had been obtained by playing a fraud on the insurance company and in terms of the Section 19 of the Indian Contract Act, 1872, such a contract is voidable at the option of OP.
4. The Complainant Company failed to give notice of the claim to the insurance company soon after it had come to know of it from 3G.Com. There was thus a breach of the mandatory condition of the policy.
5. The Complainant Company had also violated Clause 5.15.1 of the policy by incurring defense cost without seeking or without waiting for written consent of the insurance company for a reasonable time.

The Commission dismissed the complaint in view of the above reasons.

vii) Citation: Not reported in CPJ & CPR.

25. Post Master, Main Post Office and others Vs. Savitri Devi and another

i) Case in Brief:

Husband of Respondent No.1 & Father of Respondent No.2 by name Amar Singh purchased an insurance policy on 09-03-2010 from Petitioner No.1. The premium amount due for the period from October, 2010 to April, 2011 along with surcharge was deposited with the Petitioners on 07-03-2011. Amar Singh died on 11-04-2011. The Respondent intimidated about the death of Amar Singh to the Petitioners and submitted the relevant documents for claiming the insurance amount. But the claim was repudiated by the Respondents on the ground that the policy had lapsed on 01-04-2011. District Forum before whom a complaint was filed allowed the complaint and also awarded compensation of Rs.20,000/-. The Petitioners' appeal before the State Commission was dismissed. Aggrieved by the order of the State Commission, the present revision petition has been filed by the Petitioners. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 23-12-2013 of the Haryana State Consumer Disputes Redressal Commission, Panchkula in First Appeal No.713 of 2013.

iii) Parties:

Post Master, Main Post Office and others	-	Petitioners
Vs.		
Savitri Devi and another	-	Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1482 of 2014 & Date of Judgement: 05-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986

vi) Issues raised and decided:

- a) Both the fora below had noted that the OPs have accepted the premium of Rs.7,570/- for the period from October, 2010 to April, 2011 along with surcharge to the tune of Rs.220/-. Once the surcharge was received the policy cannot be set to be void and it got automatically revived.

- b) It is an undisputed fact that the Respondent's husband had paid the premium for the period October, 2010 to April, 2011 along with surcharge on 07-04-2011 which was well within 6 months and as such it qualified for automatic reinstatement of the policy as per clause 7 of the terms of the contract.
- c) Held that the State Commission and District Forum were justified in granting the sum assured to the Respondents. The order of the State Commission did not suffer from any infirmity, material irregularity or erroneous exercise of jurisdiction. Hence, the revision petition was dismissed.

vii) Citation:

IV (2014) CPJ 702; 2014(4) CPR 704.

26. Jagjeet Singh Vs. United India Insurance Co. Ltd and another

i) Case in Brief:

Complainant's cattle shed was heavily damaged in a severe thunderstorm on 09/10-06-2011. The complainant reported his loss to the insurance company. He independently approached one architect who assessed the loss at Rs.5,62,000/-. The Surveyor appointed by the insurance company, assessed the damages to the shed at Rs.1,23,038/- The complainant signed a consent letter in favour of the insurance company agreeing to accept the assessment made by the surveyor. However not satisfied with the aforesaid amount, the complainant approached the District Forum by way of a complaint. The Forum allowing the complaint, directed the insurance company to pay a sum of Rs.3,77,062/- to the complainant along with interest on that amount at the rate of 9% per annum. It was also directed to pay Rs.15,000/- as compensation to him. The insurance company's appeal to the State Commission was allowed. Being aggrieved from dismissal of his complaint, the complainant filed this revision petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 21-07-2014 in FA No.1289 of 2012 of Punjab State Consumer Disputes Redressal Commission at Chandigarh.

iii) Parties:

Jagjeet Singh

- Petitioner

Vs.

United India Insurance Co. Ltd and another

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3971 of 2014 with I.A. No.7649 of 2014 (Exemption from filing certified copy) & Date of Judgement: 07-11-2014.

v) Acts and Sections referred:

Section 2 (1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that the Complainant consciously accepted the amount of Rs.1,23,038 which the insurance company offered to him on the basis of the Surveyor's report. It was noted that no notice or protest letter was written by the complainant, either to the insurance company or to the bank, even after coming to know that the said amount had been credited to his account. Had he not accepted the aforesaid amount of Rs.1,23,038/- in full and final settlement of his claim, he would certainly have written to the insurance company and/or the bank protesting the aforesaid credit in his account and stating that he was not ready to accept the aforesaid amount in full and final settlement of claim. Consequently, he was estopped from claiming a higher amount and the complaint filed by him was clearly not maintainable. Therefore, the revision petition was dismissed.

vii) Citation:

Not reported in CPJ and CPR.

27. National Insurance Co. Ltd Vs. M/s. Verka Indane Gas Service

i) Case in Brief:

In the night intervening 20/21-01-2009, some unidentified persons committed theft of 119 gas cylinders, 3 LPG hot plates, 10 lighters and 3 lighter refills from the premises of the complainant. The complainant lodged a claim for Rs.2,05,196 with the petitioner-insurance company and submitted the requisite documents. Since the amount was not

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paid, the complainant approached the District Forum which directed the petitioner-insurance company to pay a sum of Rs.1,25,035/-, as assessed by the Surveyor, to the complainant along with interest at the rate of 9% per annum from the date of the complaint till date of payment. Not satisfied with the order of the District Forum the complainant approached the State Commission by way of an appeal. The State Commission modified the order passed by the District Forum and directed the insurance company to pay a sum of Rs.2,05,196/- instead of Rs.1,25,035/- awarded by the District Forum. Being aggrieved from the decision of State Commission, the insurance company has filed this revision petition. Petition dismissed.

ii) Order appealed against:

From the order dated 10-02-2014 in FA No.1298 of 2012 of the Punjab State Consumer Disputes Redressal Commission at Chandigarh.

iii) Parties:

National Insurance Co. Ltd - Petitioner

Vs.

M/s. Verka Indane Gas Service - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2837 of 2014 & Date of Judgement: 07-11-2014.

v) Acts and Sections referred:

Section 2 (1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that at the time the theft took place the value of the stock kept in the premises of the complainant was Rs.11,48,767/-. Admittedly, the complainant had taken insurance policy only for the sum of Rs.7,00,000/- The surveyor, therefore, rightly applied the average clause contained in the insurance policy and computed the liability of the insurance company accordingly. Therefore, the impugned order passed by the State Commission was set aside and the order passed by the District Forum was restored.

vii) Citation:

Not reported in CPJ and CPR.

28. M/s. Indraprastha Gas Ltd Vs. New India Assurance Co. Ltd and others

i) Case in Brief:

The complainant Indraprastha Gas Ltd. obtained a Fire and Special Peril Policy (material damage) from the opposite party, New India Assurance Co. Ltd. to the extent of Rs.32,90,00,000/- in order to cover its goods at 45 different CNG stations in New Delhi for the period from 22.09.2000 to 21.09.2001. On 05.03.2001, a fire took place at the CNG filling station of the complainant at R.K.Puram involving the compressor and the generator installed at the said filling station. After carrying out their inspection and going through the documents submitted to them by the complainant, the surveyor was of the view that as far as the insured was concerned the incident of fire was accidental in nature and the said incident was covered under the terms and conditions of the policy taken by the complainant company. But the claim was repudiated by the insurance company stating that the loss in question has not been covered by the policy. Being aggrieved from the rejection of its claim, this Complaint was filed. Complaint was allowed.

ii) Order appealed against:

Original Complaint

iii) Parties:

M/s. Indraprastha Gas Ltd - Complainant

Vs.

New India Assurance Co. Ltd and others - Opposite Parties

iv) Case No and Date of Judgement:

Consumer Complaint No.7 of 2006 & Date of Judgement: 07-11-2014.

v) Acts and Sections referred:

Sections 2(1) (d) (g) & (o), 21(a) (i) and 24-A of the Consumer Protection Act, 1986 & Section 28 of the Indian Contract Act, 1872.

vi) Issues raised and decided:

- a) Held that since the insurance policy obtained by the complainant company did not exclude the liability of the company in case the fire took place due to poor maintenance, sub-standard quality of spares or manufacturing or inherent design defect in the

machine, the insurance company was not justified in repudiating the claim. The surveyor appointed by the Insurance Company had recommended the claim of the complainant to the extent of Rs. 78,25,005/-.

- b) The Commission also held that it is settled legal proposition that while interpreting the policy of insurance, which is nothing but a contract between the insurer and the insured, the courts have to give a natural meaning to the expressions used in the documents and it is not open to the Court to make any addition to or subtraction from the terms and conditions contained in the insurance policy and in case of ambiguity in a contract of insurance the ambiguity should be resolved in favour of the claimant and against the insurance company. In this regard, reliance was place on the judgements of *Harris vs. Poland* (1941) 69 LLR 35 (KB), *New India Assurance Co. Ltd. Vs. Zuari Industries Ltd. & Ors.* 2009 9 SCC 17, *General Assurance Society Ltd. Vs. Chandmull Jain*, AIR 1966 SC 1644.
- c) Regarding limitation, it was held that the claim came to be rejected by the Insurance Company on 23.02.2004 and the complaint has been filed on 24.01.2006. If the period of limitation is computed from the date of repudiation of the claim, the complaint is within limitation, prescribed in Section 24-A of Consumer Protection Act.
- d) The contention of the OP that the complainant is not a consumer within the meaning of Section 2(1)(d) of the Act was rejected by the Commission relying on the decision taken in *Harsolia Motors v. National Insurance Co Ltd*, (I) 2005 CPJ 27 (NC) wherein it was held that taking an insurance policy cannot be said to be a service availed for commercial purpose within the meaning of Section 2(1)(d) of the Act.
- e) In the circumstances, the complaint was allowed. National Commission directed the Opposite Party, i.e Insurance Company to pay the aforesaid amount of Rs. 78,25,005/- to the complainant within six weeks from the date of filing of the complaint along with interest at the rate of 9% per annum along with Rs. 25,000/- to the complainant towards the cost of litigation. On such payment to it, the complainant company was to execute the requisite Letter of Subrogation and other necessary documents,

in favour of the Insurance Company, and to also join the Insurance Company, if so requested, in the legal proceedings, which the Insurance Company may decide to initiate against the manufacturer and/or supplier of the machinery to the complainant.

vii) Citation:

I (2015) CPJ 279; 2014 (4) CPR 686.

29. Oriental Insurance Co. Ltd Vs. M/s. Harishree Aromatics & Chemicals Pvt. Ltd.

i) Case in Brief:

Complainant's factory was heavily damaged in an explosion on 14-06-2006. He lodged a claim with the OP who immediately deputed a surveyor. But OP repudiated the claim of the complainant after getting the surveyor's report. Alleging deficiency in service, complainant approached State Commission which allowed the complaint partly and directed OP to pay Rs.36,14,058 with 9% p.a interest from 12-11-2007 till realisation and further awarded cost of Rs.25,000/-. Both the parties have filed the present appeals before the National Commission challenging the State Commission's order. Appeal No.724 of 2013 filed by the Appellant/OP was allowed and the matter remanded back to the State Commission to decide the complaint afresh. Appeal No.55 of 2014 filed by Complainant for enhancement of compensation became infructuous.

ii) Order appealed against:

From the order dated 05.08.2013 in Consumer Complaint No. CC/09/22 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

iii) Parties:

First Appeal No.724 of 2013

Oriental Insurance Co. Ltd.

- Appellant/Opp.Party(OP)

Vs.

M/s. Harishree Aromatics &
Chemicals Pvt. Ltd.

- Respondent/Complainant

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First Appeal No.55 of 2014

M/s. Harishree Aromatics &
Chemicals Pvt. Ltd.

- Appellant/Complainant

Vs.

Oriental Insurance Co. Ltd.

- Respondent/Opp.Party(OP)

iv) Case No and Date of Judgement:

- i. First Appeal No.724 of 2013 with IA/6510/2013, IA/6511/2013 (Stay, C/Delay);
- ii. First Appeal No.55 of 2014 with IA/400/2014 (C/Delay) &
Date of Judgement: 07-11-2014

v) Acts and Sections referred:

Sections 2(1) (g), (o) & 21(a) (ii) of the Consumer Protection Act,1986.

vi) Issues raised and decided:

- a) It was noted that the State Commission did not consider affidavits filed by divisional manager and the Director of the surveyor company on the ground that only photocopies were filed. However, it was noted from the record that original affidavits of witnesses have been filed by the insurance company but were misplaced. Therefore, it was held that order of the State Commission is liable to be set aside. Matter was remanded back to the State Commission to decide the complaint afresh after considering original affidavits filed by the insurance company and giving opportunity of being heard to both the parties.
- b) Appeal No.724 of 2013 filed by Appellant / OP was allowed and the order of the State Commission dated 05-08-2013 in Complaint Case No.CC/09/22 was set aside.
- c) Appeal No.55 of 2014 filed by the Complainant was dismissed as infructuous.

vii) Citation:

2014(4) CPR 676.

30. M/s. Southfield Paints & Chemicals Pvt. Ltd Vs. The New India Assurance Co. Ltd. & Anr

i) Case in Brief:

Complainant had insured its entire raw material, stocks and finished goods with OP.1 in the sum of Rs.48,70,000/- with separate amounts shown against plant and machinery, stock and towards furnitures and fixtures. On 15-04-1998, when the policy was in force, there was a fire in the Industrial Unit causing heavy damage. OP, who was informed, deputed a Surveyor to assess the loss. While Complainant claimed an amount of Rs.53,32,535 restricting it as per the policy to Rs.43,10,000, OP took time to settle the matter and after a considerable delay sent on 06-08-1999 discharge voucher in the sum of Rs.14,84,250. Complainants signed the same and returned it to OP 1. OP sent a cheque for Rs.14,77,097 to the Complainant (after deducting premium of Rs.7,153). It was encashed on 15-09-1999. On the same day, he sent a telegram to the OP explaining the circumstances which compelled him to sign the discharge voucher. They also filed the present complaint claiming balance payment Rs.28,25,750 along with interest and compensation for mental agony, loss of business etc., Complaint partly accepted and OP directed to pay Rs.15,19,905 along with interest at 6% p.a from the date of filing complaint.

ii) Order appealed against:

Original Complaint

iii) Parties:

M/s. Southfield Paints & Chemicals Pvt. Ltd. - Complaint

Vs.

The New India Assurance Co. Ltd. & Anr - Opposite Parties

iv) Case No and Date of Judgement:

Original Petition No.286 of 2014 & Date of Judgement: 10-11-2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) Held that the discharge voucher was not accepted voluntarily by the Complainant for two reasons: (1) There was inordinate delay

in settling the matter which shows negligence, inaction and passivity on the part of OP; (2) The fact that the Surveyor's report was withheld from the Complainant showed the malafide intention on the part of OPs.

- b) In *United India Insurance Co.Ltd Vs. Ajmer Singh Cotton & General Mills*, (1999) 6 SCC 400, it was held, among other things, that “ a mere execution of discharge voucher would not always deprive the consumer from preferring claim with respect to deficiency in service or consequential benefit arising out of the amount paid in default of the service rendered.” Similar view was taken in *Arun Kumar Lal Gupta Vs. Unit Trust of India* (1997) CPJ 76 (NC), *Ambica Construction Vs. UOI* (2006) 13 SCC 475, *National Insurance Co Ltd v. Boghara Polyfab Pvt Ltd.*, (2009) 1 SCC 267 and R.P No.2626 of 2005 decided by the National Commission on 20-10-2009.
- c) The Surveyor's report is of crucial evidentiary value (*United India Insurance Co Ltd and Ors. Vs. Roshan Lal Oil Mills Ltd & Ors.* (2000) 10 SCC 19 & *D.N.Badoni Vs. Oriental Insurance Co.Ltd* 1 (2012) CPJ 272 (NC). No allegation was made against him by any of the parties. The independent surveyor who was deputed by OP 1 at a later stage had arrived at the loss at Rs.29.97 lakhs and there was no reason to reject the same.
- d) Partly accepting the complaint, the Commission directed OP 1 to pay the residual amount i.e Rs.15,19,905 (Rs.29.97 Lakhs minus Rs.14,77, 095) with interest at 6 % p.a from the date of filing complaint.

vii) Citation:

Not reported in CPJ and CPR.

31. Haribhau Laxman Shinde Vs. M/s. New India Assurance Co. Ltd.

i) Case in Brief:

The Petitioner/Complainant sustained injuries amounting to 25% permanent disability in an accident and he claimed that on account of the said injuries, he was unable to work in the brick kiln and had lost 100% of his earning capacity. On not paying the claim by the Insurance

Company, he filed complaint before the District Forum which directed the Insurance Company to pay Rs. 1 lakh as compensation to the complainant along with interest on that amount at the rate of 9% per annum along with Rs.3,000/- for mental torture and Rs.2,000/- as cost of litigation. Appeal was filed by the Respondent before the State Commission which set aside the order of the District Forum stating that the permanent disability of the complainant being only 25%, he was not entitled to any claim under the insurance policy taken by him. Aggrieved by the State Commission's order, this revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

Revision Petition No.3161 of 2014

From the order dated 06.01.2014 in First Appeal No.35 of 2009 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai, Circuit Bench at Aurangabad.

Revision Petition No.3162 of 2014

From the order dated 06.01.2014 in First Appeal No.36 of 2009 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai, Circuit Bench at Aurangabad.

iii) Parties:

Revision Petition No.3161 of 2014

Haribhau Laxman Shinde - Petitioner

Vs.

M/s. New India Assurance Co. Ltd. - Respondent

Revision Petition No.3162 of 2014

Haribhau Laxman Shinde - Petitioner

Vs.

M/s. New India Assurance Co. Ltd - Respondent

iv) Case No and Date of Judgement:

a) Revision Petition No.3161 of 2014

b) Revision Petition No.3162 of 2014 &

Date of Judgement: 11-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue was whether the case of the Complainant is covered within the scope of the insurance policy taken by him or not. If covered, whether the complainant suffered permanent total disablement or not.
- b) Held that it is not tenable that the Complainant has suffered permanent disablement on account of shortening of leg by ½ inch and stiffness in the leg, which the doctor found in his leg at the time of examining him in the hospital. It is not the case of the complainant that he had become totally unemployed after the aforesaid accident and was not earning anything at all. Therefore, the present revision petition was dismissed and orders of the fora below were upheld.

vii) Citation:

IV (2014) CPJ 772; 2014(4) CPR 659.

32. Arraycom (India) Ltd. Vs. United India Insurance Co. Ltd.

i) Case in Brief:

The Complainant insured its stock of finished goods, semi-finished goods, raw materials, electric components etc., against the risk of fire in the sum of Rs.8.5 Crores with OP for the period 23-10-2001 to 22-10-2002. During the subsistence of the policy, a devastating fire broke out on 14-03-2002 on the 1st Floor of the Complainant's premises. OP was informed immediately. The Superintendent of Central Excise visited the premises on 26-03-2002 and the Panchnama drawn 18-03-2002 was signed by the Panches on 26.03.2002. OP appointed M/s. Mehta & Padamsey Pvt. Ltd. as surveyors who after inspection and obtaining clarifications from the Excise authorities finalised the assessment of the loss at Rs.2.04 crores. Earlier the surveyors had recommended payment of an interim relief in the sum of Rs.1 crore. However, OP vide letter dated 01-09-2004 informed that the Head Office had appointed

M/s. Rank Associates as Surveyors since some discrepancies were noticed in the report of the previous surveyor. The Complainant filed the present complaint seeking a direction to the OP to pay a sum of Rs.2.38 crores or as assessed by the 1st Surveyor. OP offered to pay Rs.62.34 lakhs, the lower of the two figures arrived at by the 2nd Surveyor. Complaint was allowed and OP directed to pay Rs.2.04 crores with interest at 9% as also compensation of Rs.2 lakhs towards harassment and mental agony and costs.

ii) Order appealed against:

Original Complaint

iii) Parties:

Arraycom (India) Ltd. - Complainant

Vs.

United India Insurance Co. Ltd. - Opposite Party

iv) Case No and Date of Judgement:

Original Petition No.20 of 2005 & Date of Judgement: 12-11-2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) In *New India Assurance Co Ltd. v. Protection Manufacturers Pvt Ltd* (2010) 7 SCC 386, it was held that in view of Section 64 UM (3) of Insurance Act, 1938, power to appoint a 2nd Surveyor vests only with the Authority i.e IRDA and not the insurer. In *Sri Venkateswara Syndicate Vs. Oriental Insurance Co.Ltd and another* (2009) 8 SCC 507, it was held that “the Insurance Company cannot go on appointing Surveyors one after another so as to get a tailor-made report to the satisfaction of the concerned officer of the insurance company; if for any reason the report of the surveyor is not acceptable, the insurer has to give valid reasons for not accepting the report”.
- b) There was enormous delay in appointing the 2nd Surveyor. No reasons were given to the complainant for appointing the 2nd

Surveyor. The report of the 2nd Surveyor pales into insignificance because he visited the spot about two years after occurrence of the incident.

- c) The OP has tried to take advantage of the excise Panchnama. The Panchnama does not serve the purpose of assessing the loss by an insurance surveyor. It is concerned only with the loss of excise duty.
- d) Held that the 1st Surveyor's report was reliable and just and should be the basis of compensation to be awarded to the complainant. The complaint was accordingly allowed and OP was directed to pay a sum of Rs.2.04 crores with interest at 9% per annum from the date of filing of complaint. A sum of Rs.2 lakhs was also awarded towards harassment, mental torture and costs of the case, payable by OP.

vii) Citation:

II (2015) CPJ 274.

33. M/s. Pushpak International Vs. The New India Assurance Co. Ltd. & Anr.

i) Case in Brief:

Complainant, who is in the business of import and export of goods, purchased Marine Open Cover (Cargo) Policy from the Respondent/OP valid for one year from 16.12.2004. He proposed to export a consignment of 484 boxes containing stainless steel and aluminium utensils as well as plastic wares to Zambia by sea. M/s. Swift Shipping and Logistics Pvt. Ltd. who were called upon by the complainant to send 22 containers for transporting the above goods promised to send the containers by 10 a.m on 26.07.2005. In anticipation of arrival of containers complainant shifted the boxes containing export material from the godown on the first floor to the ground floor and kept them in the open space. However, the containers did not arrive on 26.07.2005 because of heavy rains. The complainant was able to shift only 48 boxes back to the first floor and the remaining 438 boxes were totally spoiled in the rains. The loss was intimated to the Opposite party who sent a Surveyor. The damage was assessed at Rs.11,92,415/-. The insurance company repudiated the claim. The complainant approached the District Forum which allowed

the complaint and directed the OP to pay the complainant a sum of Rs.11,92,415/- with interest @ 9%. Besides compensation of Rs.10,000/- for mental torture and Rs.1000/- towards cost of litigation were also awarded. The respondent's appeal was allowed by the State Commission. Present revision petition has been filed by the petitioner challenging the order of the State Commission. Revision petition dismissed.

ii) Order appealed against:

Against the order dated 11-01-2012 in First Appeal No.387/2010 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

iii) Parties:

M/s. Pushpak International - Petitioner

Vs.

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

iv) Case No and Date of Judgement:

Revision Petition No.2492 of 2012 & Date of Judgement: 12-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The first issue was whether shifting of the carton of the export goods from the godown on the first floor to the open space on the ground floor on 25.07.2005 meant that the goods were in transit. The National Commission agreed with the State Commission's observation that "before goods could have been taken for shipping, before they were put in the truck or container to be carried by truck, goods were damaged by floods and therefore this contingency is not covered under Marine Open Cover (Cargo) Policy".
- b) The second issue was whether or not the subject goods were covered under the insurance policy. Here again the National Commission agreed with the State Commission's finding that the subject goods were not covered under the insurance policy because of the fact that the petitioner company had failed to declare the goods to be exported and pay the advance premium deposit.

c) Held that there was no jurisdictional error or infirmity in the order of the State Commission. Revision petition was accordingly dismissed.

vii) Citation:

I (2015) CPJ 440; 2014(4) CPR 628.

34. Life Insurance Corporation of India & Anr. Vs. Shri Rakesh Kumar Gupta

i) Case in Brief:

Complainant/Respondent obtained Komal Jeevan Plan for benefit of his minor son on 03.02.2003 for a sum of Rs.1 lakh. Date of commencement of policy was 07.02.2003 whereas risk was to commence from 15.02.2003. Premium was being paid regularly by the complainant but his minor son died suddenly on 01.10.2005. Complainant submitted claim before OP/Petitioner which was repudiated. Complainant approached the District Forum which allowed the complaint. Both parties filed appeals before the State Commission which were dismissed by an impugned order against which this revision petition has been filed by the petitioner. Revision petition dismissed.

ii) Order appealed against:

From the order dated 06-02-2008 in First Appeal No.1098 of 2007 & 1288 of 2007 of the State Consumer Disputes Redressal Commission, Rajasthan.

iii) Parties:

Life Insurance Corporation of India & Anr. - Petitioners

Vs.

Shri Rakesh Kumar Gupta - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2799 of 2008 & Date of Judgement: 12-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The plea taken by the petitioner in the District Forum was that risk would commence after completion of 2 years duration from the policy or attaining age of 7 years by the minor whichever is later and as deceased died at the age of 5 years claim was repudiated. It was further claimed that the typographical mistake had been made in the policy that the risk commenced from 15.02.2003.
- b) It was noted that though the brochure indicates that the risk commenced either after 2 years from the commencement of the policy or from the policy anniversary immediately following completion of 7 years age of the child whichever is later, this condition was not shown in the policy issued to the complainant. In such circumstances that condition cannot be made applicable in the present case.
- c) On the other hand, OP clearly mentioned in the policy that the risk commenced from 15.02.2003 and in normal course every prudent person will take every entry mentioned in the policy as correct and as premium was paid on 03.02.2003, apparently commencement of risk shown as 15.02.2003 would be found correct by every person.
- d) Held that there was no illegality, irregularity or jurisdictional error in the order passed by the State Commission and the revision petition was accordingly dismissed.

vii) Citation:

II (2015) CPJ 253; 2014(4) CPR 626.

35. Anand Comforts Pvt. Ltd. Vs. The New India Assurance Co. Ltd. & Ors.

i) Case in Brief:

The Complainant Company obtained a Standard Fire & Special Perils Policy from the OP in respect of raw material, semi finished goods, and finished goods kept in its registered office as well as factory for a total sum of Rs.1 Crore for the period from 22.11.2002 to 21.11.2003. The company also obtained another policy in respect of building for Rs.84

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lakhs and in respect of plant & machinery and accessories for a sum of Rs.1,29,53,000/-. In the night intervening 16/17.08.2003, a fire broke out in the factory premises causing extensive damage. Police as well as the OPs were informed immediately. OP sent a Surveyor firm and then an investigator to assess the damage. The Surveyors assessed the entire loss at Rs.1,03,67,063/- whereas the complainant company submitted a claim of Rs.1.99 crores to the OP. OP repudiated the claim on several grounds. Aggrieved, the Complainant has approached the National Commission by filing the original complaint. Complaint allowed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Anand Comforts Pvt. Ltd. - Complainant

Vs.

The New India Assurance Co. Ltd. & Ors. - Opposite Parties

iv) Case No and Date of Judgement:

Consumer Complaint No.4 of 2006 & Date of Judgement: 13-11-2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) The contention of the OP that the complainant is not a Consumer within the meaning of the Consumer Protection Act, was not accepted by the Commission. The other grounds for repudiating the claim were also found to be unsustainable.
- b) It was held that the damages could be broadly divided into four heads and the commission decided that the OP should compensate the complainant on the following basis in respect of each head:
 - i. damage to the building of the factory:- since the complainant company had obtained quotations at the instance of the surveyor, the claim made by the complainant should be accepted after applying depreciation as per Income Tax Act & Rules.

- ii. damage to the plant and machinery and accessories installed in the factory:- Insurance Company shall work out the amount payable after segregating, wherever required, the cost of the component/part and the labour component of such replacement of the part or component of plant & machinery.
 - iii. damage to the Electrical Installations:- No depreciation should have been applied to labour component. Complainant should give breakup of the component and labour of each item to the insurance company who after requisite verification shall arrive at the amount payable in respect of repairs to electrical installations.
 - iv. loss of and/or damage to the finished, semi finished goods and raw material:- Complainant should approach the appropriate Civil court for establishing its claim in case it is not satisfied with the assessment made by the surveyor.
- c) In terms of interim orders issued on 21.11.2006 and 12.03.2007 the Commission had directed payment of Rs.1,03,57,063/- as assessed by the surveyor. The Commission decided that Rs.58,57,063 will be paid to Karnataka State Financial Corporation (OP5) and Rs.45 lakhs to Punjab National Bank (OP4).

vii) Citation:

Not reported in CPJ and CPR.

36. Divisional Forest Officer Vs. Manager, The Oriental Insurance Co. Ltd & Anr.

i) Case in Brief:

The complainant was engaged in felling, collecting, transporting and selling industrial and commercial bamboos from different bamboo coupes, in the area under his jurisdiction. A policy decision was taken by the Government of Madhya Pradesh to get the bamboo depots in the naxalites affected area insured and instructions dated 02.01.1998 were issued in this regard to the Chief Conservator Officer (Production), M.P. The complainant obtained insurance from the opposite party in respect of commercial bamboo worth Rs.5,30,75,000/- and industrial bamboo worth Rs.1,88,10,000/-. The said bamboo was lying in several coupes mentioned in the list enclosed to the insurance policy. The insurance

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was obtained for a period of one month from 15.04.1998 to 14.05.1998 and a premium of Rs.51,628/- was paid to the Insurance Company. In several incidents which took place between 19.04.1998 to 07.05.1998, the industrial and commercial bamboos collected in 8 coupes were burnt by fire by the naxalite elements. A claim for Rs.28,14,290/- was submitted by the complainant to the Insurance Company. The matter was also reported to the police and several FIRs in this regard were registered at the concerned police station. A surveyor was appointed by the Insurance Company to assess the loss. The surveyor appointed by the Insurance Company on 05.09.1998, assessed the loss to the complainant at Rs.8,51,052/-, as against the claim of Rs.28,14,290/- lodged by the complainant. Since no payment was made by the insurance company, the present complaint was filed. Complaint allowed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Divisional Forest Officer

- Complainant

Vs.

Manager, The Oriental Insurance Co. Ltd & Anr. - Opposite Parties

iv) Case No and Date of Judgment:

Consumer Complaint No.180 of 2006 & Date of Judgement: 14-11-2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) The issue was whether the claim for the bamboos destroyed by fire was maintainable or not?
- b) It was contended by the OP that the complainant had suffered similar loss just a few days earlier on 06.04.1998 and 07.04.1998, but the said loss was not disclosed to the Insurance company, while obtaining policy in question. Further, though the instructions by the Government for obtaining the insurance cover were issued on 02.01.1998, no immediate steps were taken by the complainant to obtain the insurance cover and the policy was obtained only after the incidents of 06.04.1998 and 07.04.1998, wherein several bamboo coupes were destroyed by the naxalites, by putting them on fire.

c) It was pointed out by the National Commission that since the incidents on 06.04.1998 and 07.04.1998 were on coupes other than the coupes got insured vide policy in question, the complainant was not required to disclose the incidents of 06.04.1998 and 07.04.1998 while responding to clause 8 of the proposal form. It was held that the Insurance Company had absolutely no justification to deny the claim to the extent the loss was assessed by the surveyor appointed by it. The Commission directed the opposite party, Oriental Insurance Company, to pay a sum of Rs.8,51,052/- to the complainant along with interest on that amount at the rate of 9% per annum with effect from six months from the date on which the claim was lodged, till the date of payment.

vii) Citation:

Not reported in CPJ and CPR.

37. The Oriental Insurance Company Ltd. Vs. T.Gopal S/o. T.Nagaiah

i) Case in Brief:

The Respondent/Complainant got the stock and furniture, etc., in his shop insured with the petitioner-company for a sum of Rs.22,00,000/-, for the period from 27-12-2010 to 26-12-2011. On 06-03-2011, a fire took place in his house and according to the complainant/respondent the entire stock kept in the shop was gutted in the fire. The insurance company was informed and a surveyor was appointed to assess the loss. According to the complainant, the surveyor assessed the loss of the complainant/respondent at Rs.22,86,289/-. Since the claim was not paid the complainant sent a legal notice to the petitioner-company. Thereafter, the petitioner-company made payment of Rs.11,94,798/- to the complainant. After the aforesaid payment the complainant filed a complaint before the concerned District Forum seeking payment of the balance amount of Rs.11,86,289/- along with interest @ 24% per annum, besides compensation of Rs.50,000/-. The District Forum dismissed the complaint. Being aggrieved, the respondent/complainant preferred an appeal before the State Commission which allowed the complaint and directed the insurance company to pay a sum of Rs.6,89,791/- to the complainant along with cost amounting to

Rs.5,000/-. This order was passed, taking the loss of the complainant covered by insurance policy in question at Rs.18,84,589/-. Being aggrieved from the order of the State Commission, the insurance company filed the present revision petition. Petition allowed.

ii) Order appealed against:

From the order dated 23-06-2014 in First Appeal No.445 of 2013 of the Andhra Pradesh State Consumer Disputes Redressal Commission at Hyderabad.

iii) Parties:

The Oriental Insurance Company Ltd - Petitioner

Vs.

T. Gopal S/o T. Nagaiah - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3637 of 2014 & Date of Judgement: 17-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- 1) The issue was whether the Complainant was entitled to enhanced amount of compensation as he claimed?
- 2) It was pointed out that having accepted the amount of Rs.11,94,798/- in full and final settlement of all his claims arising under the policy in question the complainant is estopped from making any further claim against the petitioner-company. In case he was not satisfied with the amount offered by the petitioner-company he ought not to have accepted the aforesaid payment or he could have at best accepted the said payment under protest and as part payment. Moreover, no notice/letter was sent by the complainant to the insurance company soon after receiving of the aforesaid payment of Rs.11,94,798/- on 22-03-2012, claiming that he had accepted the aforesaid amount only as a part payment and not in full and final settlement of his claim under the policy. It was held that the State Commission

clearly erred in law by directing further payment to the complainant. The order passed by the State Commission, therefore, was set aside.

vii) Citation:

2015(1) CPR 102.

38. State Bank of India Vs. Anil Kumar & Anr.

i) Case in Brief:

Complainant/Respondent No.1, who is carrying on Textile business, had taken a CC Limit of Rs.3,00,000/- from OP2/Petitioner. The stock lying in the shop was insured by OP2 on 25/08/2007 from OP1/Respondent No.2. Later on complainant shifted business to another district and OP2 was informed. On 30.05.2008, complainant's shop was destroyed by fire. Surveyor was appointed but claim was not settled. Alleging deficiency in service, complainant approached the District Forum which allowed the complaint against OP/petitioner and directed him to pay Rs.1,63,000/- and further allowed compensation of Rs.5000/- and Rs.3000/- as cost of litigation. Appeal filed by OP2 was dismissed by the State Commission against which the present revision petition has been filed. Revision petition allowed.

ii) Order appealed against:

From the order dated 27.08.2012 in First Appeal No.224 of 2011 of the H.P. State Consumer Disputes Redressal Commission, Shimla.

iii) Parties:

State Bank of India

- Petitioner

Vs.

Anil Kumar & Anr.

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4260 of 2012 & Date of Judgement: 17-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) As per terms and conditions of agreement of loan-cum-hypothecation insurance was to be taken by the complainant but bank had right to take insurance and claim amount from the complainant. Bank was under no obligation to get the stocks insured but it was the primary duty of the complainant to get the stocks insured. But in this case, the stock was insured by OP2.
- b) Perusal of letter dated 11.04.2008 written by the petitioner to the complainant reveals that the bank directed the complainant to get necessary endorsement of transfer of place of business but he failed to intimate to the insurance company. Held that in such circumstances petitioner cannot be held guilty of any deficiency.
- c) Consequently, revision petition was allowed and the orders of the District Forum and the State Commission were set aside. The complaint stood dismissed against the petitioner.

vii) Citation:

I (2015) CPJ 1; 2015 (1) CPR 87.

39. M/s. Jain Irrigation Systems (P) Ltd. Vs. United India Insurance Co. Ltd.

i) Case in Brief:

Complainant/Appellant is engaged in manufacturing, supplying and trading of agricultural inputs. Complainant had taken Marine Cargo Insurance Policy on estimated annual sales turnover from OP/ Respondent for a period of one year from 1.4.2009 to 31.3.2010. On 12.5.2009, complainant booked consignment of the dehydrated powder of onion for shipment and accordingly it was loaded from complainant's unit. Consignment was carried in containers and the trailer carrying consignment met with an accident on 19.5.2009 and fell 50-60 feet down in the valley. Intimation of accident was given to the police and as per driver, accident occurred due to failure of brake. OP was also intimated and surveyor was appointed. Surveyor visited complainant's unit on 11.6.2009 and collected necessary information and documents and submitted report on 30.9.2009 wherein he assessed loss of Rs.15,33,312.90, but expressed 7 kgs. overweight as cause of accident. Goods were brought to the factory premises of the complainant and

were tested in laboratory for analysis and it was reported that goods have become unfit for human consumption. OP repudiated claim on the basis of exclusion clauses. Alleging deficiency on the part of OP, complainant filed complaint before State Commission which observed that exclusion clauses were not attracted, but allowed partial claim and directed OP to pay Rs.15,33,000/- with 9% p.a. interest and further allowed cost of Rs.5,000/- against which, this appeal has been filed by the complainant. Appeal allowed.

ii) Order appealed against:

From the order dated 7.1.2013 in Complaint Case No.08/2010 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Aurangabad.

iii) Parties:

M/s. Jain Irrigation Systems (P) Ltd. - Appellant/Complainant
Vs.
United India Insurance Co. Ltd. - Respondent/Opp. Party

iv) Case No and Date of Judgement:

First Appeal No. 126 of 2013 & Date of Judgement: 19-11-2014.

v) Acts and Sections referred:

Section 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Complainant contended that exclusion clauses are not applicable to the claim and that respondent has committed deficiency in repudiating claim on that basis.
- b) Respondent contended that the surveyor did not recommend claim in view of exclusion clauses 4.1 to 4.5 in the insurance policy. It was further submitted that complainant did not submit laboratory analysis report in support of the contention that goods were unfit for human consumption. 414 bags were torn due to mishandling from the spot of accident to the unit.
- c) Held that no further independent evidence was required for proving damage to 386 cartons as surveyor himself observed that product in 386 damaged cartons was not suitable for use and could not have been reprocessed or reused. State Commission should have allowed claim as prayed for by the complainant.

Therefore, appeal filed by the appellant was allowed and the order passed by the State Commission was modified. OP/ Respondent was directed to pay complainant Rs.35,14,481/- instead of Rs.15,33,000/-. Rest of the order regarding grant of interest and cost of the complaint awarded by State Commission was upheld.

vii) Citation:

2015(1) CPR 71.

40. Amol Lokesheao Motghare Vs. Hindustan Unilever Ltd. & Others

i) Case in Brief:

Petitioner/Complainant purchased 'Gold Mohur Brand Poultry Feed' manufactured by Respondent No.1/OP1 through Respondents/OPs 2-5, the local dealers. Contrary to the claim made by the OP1 in its advertisement, several birds started losing weight and died after giving the said feed because of the presence of Aflatoxin-B1, in high percentage. A Complaint was filed before the District Forum claiming a total of Rs.97,527/- towards compensation, mental agony and costs. District Forum dismissed the complaint. On appeal, the State Commission partly allowed the appeal and directed OP1 to pay a sum of Rs.45,000/- with interest @ 9% p.a. along with Rs.10,000/- towards mental agony and Rs.5,000/- as costs. The Present Revision Petition filed by the complainant against the State Commission's order seeking enhanced compensation dismissed.

ii) Order appealed against:

Against the order dated 07.08.2013 in First Appeal No.A/99/1257 of the State Consumer Disputes Redressal Commission, Circuit Bench, Maharashtra, Nagpur.

iii) Parties:

Amol Lokesheao Motghare

- Petitioner

Vs.

Hindustan Unilever Ltd. & Others

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3304 of 2013 & Judgement dated 01-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Clause 4.6 of the Indian Standard Poultry Feeds Specification (IV revision) postulates that Aflatoxin-B limit in the poultry feed should not exceed 500mcg/kg/ppb. The Complainant has not produced evidence to prove that the birds died due to excess limit of Aflatoxin-B1 and also failed to prove that only Gold Mohur Feeds were given to the birds.
- b) If the feed was toxic, the entire lot of birds should have died but in the instant case only a few birds have died. The Complainant claimed Rs.46,487/- on account of dead birds which the State Commission considered and passed a reasoned order. Held that the complainant did not deserve enhanced compensation.

vii) Citation:

Not reported in CPJ and CPR.

41. The New India Assurance Co. Ltd. Vs. Sh.Yadram

i) Case in Brief:

The Respondent/Complainant got his truck insured with Petitioner/OP. The truck was stolen during the intervening night of 21st -22nd December 2010. There was delay of 4 days in filing FIR and 15 days in informing the insurance company. Both the District Forum and the State Commission decided in favour of the complainant. Revision petition filed by the petitioner against the State Commission's order was allowed. The orders of the fora below were set aside and the complaint was dismissed.

ii) Order appealed against:

From the order dated 19.03.2014 in First Appeal No.37 of 2014 of the State Consumer Disputes Redressal Commission, Haryana, Panchkula.

iii) Parties:

The New India Assurance Co. Ltd.	-	Petitioner
	Vs.	
Sh. Yadram	-	Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2519 of 2014 with IA/3992/2014 (For Stay) & Date of Judgement: 01-12-2014.

v) Acts and Sections referred:

Sections 2(1)(g), (o),19 and 21((b) of the Consumer Protection Act,1986.

vi) Issues raised and decided:

- a) It was the bounden duty of driver or the owner to inform the insurance company, immediately after the incident. The Petitioner failed to prove that the report could not be lodged due to unavoidable circumstances.
- b) Hon'ble Supreme Court in *Oriental Insurance Co. Ltd. Vs. Parvesh Chander Chadha Civil Appeal No.6739 of 2010 decided on 17.08.2010* observed as follows, "in terms of the policy issued by the appellant, the respondent was duty bound to inform the theft of the vehicle immediately after the incident. On account of delayed intimation, the appellant was deprived of its legitimate right to get an inquiry conducted into the alleged theft of the vehicle and make an endeavour to recover the same."

vii) Citation:

I (2015) CPJ 533.

42. Reena Kansal Vs. United India Insurance Co. & Anr.

i) Case in Brief:

Petitioner obtained a Mediclaim Policy from Respondent No.1, Insurance Company effective for the period 19.09.2006 to 18.09.2007. During the subsistence of the said policy, the petitioner underwent surgery for knee implant replacement. The cost of surgery implant was Rs.6,26,062/- . Petitioner filed an insurance claim which was repudiated by the Respondents on the ground that petitioner obtained the policy by concealment of material facts. The District Forum before whom a complaint was filed dismissed the complaint. The State Commission also dismissed the complaint in appeal. Present Revision Petition filed challenging the order of the State Commission was also dismissed.

ii) Order appealed against:

From the order dated 26.04.2012 in Appeal No.1194/2008 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Reena Kansal - Petitioner

Vs.

United India Insurance Co. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2957 of 2012 & Date of Judgement: 01-12-2014.

v) Acts and Sections referred:

Sections 2(1)(g) & (o),19 and 21(b) of The Consumer Protection Act,1986.

vi) Issues raised and decided:

- a) The question that arose was whether the concealment of information that the petitioner had undergone knee transplant surgery in the year 1990 vitiates contract act. Held that the petitioner had failed to establish that the respondent issued mediclaim policy having knowledge of her earlier knee transplant surgery.
- b) As per exclusion clause 4.1 of the policy, the insurance company was not liable to make any payment in respect of expenditure incurred for treatment of diseases or injuries which were pre-existing at the time of first mediclaim insurance cover taken by the insured.
- c) Purpose of medical insurance is to reimburse the insured for treatment of any disease or ailment during the period of insurance policy. In the present case, petitioner was seeking reimbursement in respect of replacement of artificial knee implant which was not covered under the medical insurance contract.

vii) Citation:

I (2015) CPJ 523; 2015(1) CPR 402.

43. National Insurance Co. Ltd. Vs. Rattan Chand and another

i) Case in Brief:

Complainant/Respondent got the truck insured with the petitioner/company through their agent Harminder Singh (OP No.2) for the period 28.04.2003 to 27.04.2004. According to the complainant, opposite party no.2 received a sum of Rs.7,995/- against the insurance premium and instead of giving the original cover note, he gave photocopy of the cover note. Thereafter, the complainant had been constantly requesting the opposite party No.2 for original cover note/insurance policy but the opposite party failed to deliver the same to the complainant. Claiming this to be deficiency in service, the Respondent/Complainant filed a consumer complaint before the District Consumer Forum which on consideration of the pleadings and the evidence dismissed the complaint holding that the cover note as also its carbon copies were cancelled because the complainant failed to pay the insurance premium. Being aggrieved of the order of the District Forum, the complainant preferred an appeal before the State Commission which reversed the order of the District Forum against which this revision petition filed. Petition allowed.

ii) Order appealed against:

From the order dated 4.4.2012 in Appeal No.4/2009 of the H.P. State Consumer Disputes Redressal Commission, Shimla.

iii) Parties:

National Insurance Co. Ltd. - Petitioner

Vs.

Rattan Chand and another - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2454 of 2012 with Interim Application No.4875 of 2013 (Placing Additional Documents) & Date of Judgement: 01-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue was whether the complainant had actually paid the insurance premium in lieu of which he was given photocopy of the insurance cover.

b) Held that the Complainant was not reliable and he had failed to establish that he paid the insurance premium to the agent of the insurance company. The complainant had not paid the insurance premium. There was no evidence of issue of cover note or insurance policy in his favour. It was held that the State Commission had committed error in appreciating the facts. Therefore, Revision petition against the order of the State Commission was allowed, impugned order was set aside and order of the District Forum was restored.

vii) Citation:

1 (2015) CPJ 586; 2015(1) CPR 399.

44. A Sanjeeva Narayan Vs. The Divisional Manager, M/s National Insurance Co. Ltd. and others

i) Case in Brief:

The petitioner had taken Medical Policy from the National Insurance Company, i.e., respondent No.1/ opposite party No.1 from 03.10.2005 to 31.03.2006. On 13.10.2005, the petitioner claimed that he fell down from a two wheeler, was admitted to Hospital and underwent surgery. Thereafter, the relevant claim form was submitted on 26.10.2005 to the National Insurance Company along with the hospital case sheet with a bill for Rs.54,043.85 through Heritage Health Services Pvt. Ltd., the third party administrators for National Insurance Company. After a lapse of ten months, the Heritage Health Services repudiated the claim, on the ground that the “claim not supported by valid documents, information, hence, claim not payable”. The petitioner submitted an appeal to the Regional Office, National Insurance Company, Hyderabad, i.e., respondent No.2/opposite party No.2. The management repudiated the appeal stating that “ailment has got pre-existing nature”. Petitioner thereafter submitted a grievance to the Insurance Ombudsman which was dismissed. He approached the District Forum which directed the respondent to pay a sum of Rs.54,000/- along with interest @ 9% per annum from the date of repudiation till the date of realization. Aggrieved by the order of the District Forum, an appeal was filed before the State Commission which was allowed and the order of the District Forum was set aside. This revision petition has been filed challenging the order of the State Commission. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 30.10.2012 in Appeal No.FA No.569 of 2011 of the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad.

iii) Parties:

A Sanjeeva Narayan

- Petitioner

Vs.

The Divisional Manager,

M/s National Insurance Co. Ltd. and others

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No. 4777 of 2012 & Date of Judgement: 01-12-2014.

v) Acts and Sections referred:

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The law is well settled that the contract of insurance is the contract of *Uberrima fide* (utmost good faith). Doctrine of *Uberrima fide* applies where the petitioner deliberately tries to mislead the court. It has been held that courts should decline to exercise its jurisdictions in favour of persons who have not approached with clean hands. The petitioner in this case had suppressed material facts regarding his employment in Oriental Insurance Co. Ltd. and the fact that he was under health insurance coverage for 19 years with that company.
- b) No FIR was lodged in this case and as such there was no evidence to support the claim that there was an accident and that the petitioner was injured due to a fall in the purported accident.
- c) As per exclusion Clause 4 of the “*Conditional Hospitalization and Domiciliary Hospitalization Benefit Policy*” the respondent was not liable to make any payment for any disease and injuries which were preexisting when the cover incepts for the first time and also any disease other than those stated in Clause 4.3 contracted by the insured person during the first 30 days from the commencement date of the policy.

d) Held that the order of the State Commission did not call for any interference as it did not suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity.

vii) Citation:

I (2015) CPJ 154.

45. Dr. Niranjana Nath Sharma Vs. Bangalore Mahanagara Palika and others

i) Case in Brief:

Bangalore Mahanagara Palika, OP1, leased out the corporation swimming pool to M/s. P.M Swimming Centre, OP-2, on contract basis for a period of 35 years in December, 2004. OP-2 has been running the swimming pool on commercial basis by providing swimming and coaching facilities for swimmers and learners. The said swimming pool was insured with Oriental Insurance Co. Ltd., OP-3. The Complainant's son, a 27 year old engineer, who was the sole breadwinner of the family drowned in the pool while learning swimming and died three days later. A criminal complaint was filed which is still pending. Alleging deficiency in service, the Complainant (since deceased) filed this complaint before the National Commission. Allowing the complaint, the Commission awarded a compensation of Rs.2 Crores to be paid by the three OPs to the legal heirs of the complainant as directed within a period of 90 days.

ii) Order appealed against:

Original Complaint

iii) Parties:

Dr. Niranjana Nath Sharma - Complainant

Vs.

Bangalore Mahanagara Palika and others - Opposite Parties

iv) Case No and Date of Judgement:

Consumer Complaint No.67 of 2009 & Date of Judgement: 02-12-14.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) None appeared for OP1 before the Commission despite service of notice. They did not provide evidence to show that they ever checked the omissions and commissions of OP2. They did not show that they ever verified about the compliance or otherwise of the terms and conditions of lease by OP2. They cannot get rid of vicarious liability.
- b) The evidence on record revealed that only one expert, Shri.V.Natarajan, the coach was present. OP2 did not provide adequate number of experts/coaches or life guards or a qualified doctor. OP2's failure to examine Sh.V.Natarajan or provide his affidavit shows that it was clearly negligent.
- c) OP3 being the insurance company is also liable to pay compensation as provided in the policy.
- d) The Commission directed OP3 to pay a sum of Rs.16 lakhs to the Complainant/LRs out of the total amount of Rs.2 crores. OP1 will pay Rs.15 lakhs as their liability is limited up to that extent only. Rest of the amount in the sum of Rs.1.34 crores will be paid to the complainant/LRs by OP2. The amount of Rs.2 crores is to be divided between the LRs of the deceased victim in equal proportions.

vii) Citation:

Not reported in CPJ and CPR.

46. M/s. Lightwalas Vs. Bank of India & Anr.

i) Case in Brief:

The Complainant transacts business of fancy lights. Its proprietor took a hypothecation limit for his stock from Bank of India, OP1. The insurance company, OP2 issued the policy. The goods were stolen on 29.10.2009 during night time. FIR was lodged on 01.11.2009. Complainant made a claim of Rs.3.5 lakhs. The insurance company estimated the loss @ Rs.46,000/-. District Forum partly allowed the complaint and ordered the insurance company to pay Rs.46,242/- with 10% interest from 10.06.2010 and with costs. The Appeal filed by the complainant before the State Commission was dismissed. Present

Revision Petition against the State Commission's order was also dismissed.

ii) Order appealed against:

From order dated 07.03.3014 in First Appeal No.1463 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench, Jaipur.

iii) Parties:

M/s. Lightwalas - Petitioner

Vs.

Bank of India & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3057 of 2014 & Date of Judgement: 02-12-2014.

v) Acts and Sections referred:

Sections 2(1)(g) & (o),19 and 21(b) of The Consumer Protection Act,1986.

vi) Issues raised and decided:

- a) The Surveyor report had pointed out several discrepancies in the maintenance of accounts. The report also mentioned that the claim of Rs.3.56 lakhs is based on fictitious and fraudulent documents and assessed the loss @ Rs.46,342/- only.
- b) It is a well settled principle that the report of the surveyor has to be given due weightage as held by the Hon'ble Supreme Court in *United India Insurance Co. Ltd. & others Vs. Roshan Lal Oil Mills Ltd. & Ors (2000) 10 Supreme Court Cases 19.*

vii) Citation:

I (2015) CPJ 255.

47. Branch Manager, LIC of India and another Vs. Smt. Saraswati Devi

i) Case in Brief:

Complainant/Respondent's husband had taken 'New Jeevan Shree' policy for a sum of Rs.5 Lakhs from O.P/Petitioner by filing a proposal form and depositing premium amount of Rs.32,977/- on 15.06.2002. He was murdered and died on 07-07-2002. Complainant lodged claim with

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OP which was repudiated on the ground of non-acceptance of proposal form. Alleging deficiency on the part of OP, Complainant approached District Forum which dismissed the complaint with direction to OP to return back the amount of premium with 9% p.a. interest. OP by way of appeal approached the State Commission which directed the OP to pay the assured amount as per the terms of the contract with interest @ 9% p.a. This Revision Petition has been filed challenging the State Commission's order. Petition allowed.

ii) Order appealed against:

Against the order dated 28.01.2013 in F. Appeal No.493/05 of Bihar State Consumer Disputes Redressal Commission, Patna.

iii) Parties:

Branch Manager, LIC of India & Anr. - Petitioner(s) /OPs

Vs.

Smt. Saraswati Devi - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.2140 of 2013 & Date of Judgement: 02-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue raised in this case was whether the Complainant was entitled to get the sum assured since there was no acceptance of the proposal by the OP.
- b) Held that OP rightly repudiated claim as there was no concluded contract between the deceased and OP at the time of death of Complainant's husband and State Commission committed error in reversing finding of District forum and allowing complaint and in such circumstances, revision petition had to be allowed.

vii) Citation:

I (2015) CPJ 246.

48. Kashmir Singh Vs. Punjab National Bank and another

i) Case in Brief:

The Petitioner/Complainant's tractor was hypothecated with the Respondent Bank to secure repayment of the loan amount and was insured by the Bank w.e.f. 24.7.1995 to 24.7.1999 regularly with Respondent No.2. It was assumed that the vehicle was again insured w.e.f. 29.1.2000 to 28.1.2001. The tractor met with an accident on 28.1.2000 while being driven by one Ram Pal, causing death of one person and injuries to another. The MACT held the complainant as well as driver Ram Pal of the tractor liable to pay compensation to the claimants as the tractor in question was not insured at the time of accident. The District Forum came to the conclusion that the Bank was bound to get the vehicle in question insured as the premium was being received by debiting the same in the account of the complainant. The District Forum also held that the Punjab National Bank should pay a sum of Rs.2,78,000/- as awarded by the MACT, Jagadhri vide order dated 7.10.2003 to the complainant as per terms of the award of MACT with interest @ 9% per annum from the date of institution of the Motor Accident Claims Tribunal petition till realization and to pay a sum of Rs.50,000/- as compensation for deficiency in service and harassment. However, the State Commission placed reliance on clause (10) of the insurance policy and accepted the appeal. This Revision Petition is filed challenging the State Commission's order. Petition allowed.

ii) Order appealed against:

From order dated 01.12.2011 in First Appeal No.105 of 2006 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Kashmir Singh

- Petitioner

Vs.

Punjab National Bank and another

- Respondent(s)

iv) Case No and Date of Judgement:

Revision Petition No.1552 of 2012 & Date of Judgement: 03-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The respondent contended that since the matter has been decided by MACT, this parallel proceeding is not maintainable. This argument was not accepted since the High Court which heard the appeal against MACT's order, had given liberty to the petitioner to claim compensation from the bank by any means open to him. Moreover, the cause of action had arisen when the order was passed against the complainant.
- b) The Respondent also contended that according to Clause 10 of the Insurance Policy, the bank is not liable to pay the amount. Held that the petitioner is an illiterate person. He resides in small village. If the Bank was in no mood to furnish the insurance amount, it should have notified to the complainant about the same. The bank is terribly remiss in discharge of their duties. Moreover, the premium was to be debited from complainant's account only. He was not required to pay the premium.
- c) The Commission set aside the order passed by the State Commission and restored the order passed by the District Forum.

vii) Citation:

1(2015) CPJ 240; 2015 (1) CPR 392.

49. Bihar State Hydroelectric Power Co. Ltd. Vs. National Insurance Co. Ltd. Patna

i) Case in Brief:

The Complainant Company had taken insurance policy from the OP covering risk to the extent of Rs.13.95 Crores in respect of plant and machinery and stores against fire including terrorism, burglary and house breaking for a period of one year from 20.02.2006 in respect of North Koyal Hydro Electric Project. Complainant alleged that on 22.12.2006 terrorists had successfully removed valuable articles from the site. The Complaint made to the police on 24.12.2006 estimated the loss at Rs.7 Crores. It was also claimed that the complainant informed the opposite party about the loss by letter dated 26.12.2006. Since no Surveyor was appointed, Complainant filed this complaint before the National Commission seeking Rs.706.66 lakhs along with interest and costs. Complaint dismissed with costs.

ii) Order appealed against:

Original Complaint

iii) Parties:

Bihar State Hydroelectric Power Co. Ltd. - Complainant

Vs.

National Insurance Co. Ltd. Patna - Opposite Party

iv) Case No and Date of Judgement:

Consumer Complaint No.57 of 2007 & Date of Judgement: 04-12-2014.

v) Acts and Sections referred:

Sections 2(1)(g) & (o) & 21(a)(i) of The Consumer Protection Act,1986.

vi) Issues raised and decided:

- a. As per Clause 4 & 5 of the terms and conditions of the insurance policy in the event of any loss or damage complainant was required to forthwith give notice not only to the police but also to the insurance company disclosing the circumstances in which the loss took place. Complainant was also required to submit claim within 7days of the loss.
- b. The Complaint made to the police on 24.12.2006 speaks of an unsuccessful attempt to break open the store. No theft was reported.
- c. But in the letter dated 26.12.2006 sent by the Superintending Engineer cum Nodal Officer of the project to the insurance company loss worth crores of rupees has been mentioned. No report has been filed by the complainant that they had received any report about the alleged loss from any other source between 24.12.2006 and 25.12.2006.
- d. The Complainant had not furnished proof of having given intimation of loss to the insurance company immediately after the incident on 22.12.2006. The Complainant Company did not lodge any claim with insurance company within 7days of the alleged loss.

e. The Complaint was dismissed for the foregoing reasons in accordance with the ratio laid by the Hon'ble Supreme Court in *New India Assurance Co. Ltd. Vs. Trilochan Jane, IV (2012) CPJ 441(NC)*.

vii) Citation:

Not reported in CPJ and CPR.

50. National Insurance Co. Ltd., Panaji, Goa Vs. Shri Babu A. Sirsat

i) Case in Brief:

Complainant/Respondent, a garment store owner, had taken overdraft facility from the bank and in pursuance thereof, had insured his shop and stock by two policies from OP/Petitioner. On 24.11.2008, four shops including his shop caught fire. Complainant informed all concerned and filed claim with the opposite party, who repudiated it after getting reports of the Surveyor and an Investigating Agency. Complainant alleging deficiency in service filed complaint before District Forum which dismissed it. The State Commission before whom appeal was filed, allowed the appeal with costs. The Present Revision Petition has been filed against the State Commission's order. Revision Petition allowed.

ii) Order appealed against:

Against the order dated 30.08.2013 in F. Appeal No.51/13 of State Commission, Panaji, Goa.

iii) Parties:

National Insurance Co. Ltd., Panaji, Goa - Petitioner

Vs.

Shri Babu A. Sirsat - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.777 of 2014 & Date of Judgement: 04-12-2014.

v) Acts and Sections referred:

Sections 2(1)(g)&(o),19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) As per Clause 6(i) of the Insurance policy, the insured is bound to intimate the insurance company about happening of any loss or damage forthwith. By not doing so Complainant had violated terms and conditions of the policy and the Surveyor could not find any damage to goods due to fire. In such circumstances, there was no deficiency in service by the OP.
- b) Though complainant had tried to prove damage to the goods due to fire, the evidence produced by him does not inspire confidence in the light of reports of Surveyor, Investigator and the Manager of the bank from whom complainant had taken overdraft facility.
- c) Revision Petition was allowed and the order of the State Commission was set aside. Order of District Forum affirmed but order directing complainant to pay cost of Rs.10,000/- to OP was set aside.

vii) Citation:

I (2015) CPJ 268; 2015 (1) CPR 388.

51. United India Insurance Co. Ltd. & Others Vs. East Indian Produce Limited & Others

i) Case in Brief:

There was suspension of work in the tea estates owned by the complainants/respondents due to labour problem and at the time of reopening they apprehended theft and damages. On 28.03.2006, FIR was lodged informing the loss and damage due to theft of plant and machinery including the loss of 11,012 kgs of "made tea". A claim was made with the insurance company on 30.03.2006. The Surveyor assessed the loss at Rs.94,250/- towards loss of plant and machinery and Rs.57,290/- towards loss of residential buildings but no loss was assessed for 11,012 kgs of "made tea". The State Commission before whom complaint was filed, by a majority decision, allowed the complaint partly and directed the OPs to pay an amount of Rs.22,00,400/- within a period of 60 days against which the present appeal has been filed. Held that there was pilferage and theft of substantial quantities of green leaves, tea and made tea before the temporary closure of the factory. There was suppression of material facts in the form sent to the

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Insurance Company. FA allowed and the majority order of the State Commission set aside. Complaint partly allowed.

ii) Order appealed against:

From order dated 12.04.2010 in S.C. Case No.CC/2008/02 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata with IA/1/2010 (For stay) & IA/2/2010 (For Condonation of delay).

iii) Parties:

United India Insurance Co. Ltd. & Others - Appellants

Vs.

East Indian Produce Limited & Others - Respondents

iv) Case No and Date of Judgement:

First Appeal No.240 of 2010 & Date of Judgement: 09-12-2014.

v) Acts and Sections referred:

Sections 2(1)(g) & (o), 19 & 21(a)(ii) of The Consumer Protection Act,1986.

vi) Issues raised and decided:

- a. The fact that there was pilferage and theft of substantial quantities of green leaves tea and made tea before the temporary closure of the factory had been pointed out even in the majority judgement of the State Commission.
- b. As the single member judgement pointed out there was continuous theft of green leaves and 'made tea' for a prolonged period as per the closure notice given by the management but the books of accounts did not reflect any such loss.
- c. The fact of theft of tea lodged with Bazaz Allianze in the year 2003-2004 prior to taking this policy in 2005 was not disclosed in the proposal and there was deliberate suppression of material facts.
- d. The report given by the surveyor carried enough value and was a vital piece of evidence. There was no reason to discard this report. Hon'ble Supreme Court in *United India Insurance Co. Ltd Vs. Roshanlal Oil Mills & Ors.*, (2000) 10 SCC 19 has held that surveyor report has significant evidentiary value, unless it is proved otherwise.

vii) Citation:

I (2015) CPJ 409; 2015(1) CPR 357.

52. M/s. Pioneer Ventures Vs. The Central Ware Housing Corporation & Anr.

i) Case in Brief:

The Complainant, an exporter of readymade garments, had stored his goods at OP1's godown who had got it insured with United India Insurance Co. Ltd., (OP2). The said goods were destroyed in a fire accident on 07.06.2002. A claim was lodged by the complainant with OP1 who sent it to OP2 for processing and payment. The Surveyor assessed the loss at Rs.60,90,402/-. Since the claim was not paid by either of the opposite parties this complaint was filed before the National Commission. During pendency of the complaint, a cheque for Rs.60,79,786/- was sent by OP2 to OP1 towards the claim of the complainant. Following the Commission's interim order, the amount was paid to the complainant. The question of payment of interest was contested by the opposite parties. Held that both of them were liable to pay interest to the complainant.

ii) Order appealed against:

Original Complaint.

iii) Parties:

M/s. Pioneer Ventures - Complainant

Vs.

The Central Ware Housing Corporation & Anr. - Opposite parties

iv) Case No and Date of Judgement:

Consumer Complaint No.15 of 2007 & Date of Judgement: 15-12-2014.

v) Acts and Sections referred:

Section 2(1)(d), (g), (o) & 21(a)(i) of The Consumer Protection Act,1986.

vi) Issues raised and decided:

- a. Insurance Company (OP2) took a preliminary objection that the complainant is not a consumer of the insurance company within Section 2(1)(d) of The Consumer Protection Act. Held that, the complainant was a consumer of the insurance company and that the decision of the Commission in *M/s. Harsolia Motors Vs. M/s. National Insurance Co. Ltd.*, FA No.159 of 2004, decided on 03-12-2004 is relevant.

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- b. The Complainant's contention that he is entitled to incidental expenses and 10% duty drawback in addition to the cost of goods as disclosed in the shipping bills is found to be untenable.
- c. The Insurance Company cannot be saddled with any liability to pay interest till the time the shipping bills were submitted by the complainant to the Surveyor and a reasonable time thereafter for processing the claim. The insurance company was therefore directed to pay interest at 10% p.a. to the complainant with effect from 6 months from the date of receipt of the shipping bills by the Surveyor till the date the cheque of Rs.60,90,402/- was issued by it to CWC.
- d. OP1 shall pay interest on the said amount to the complainant with effect from 1 week from the date of receipt of cheque from OP2 till the date the amount was paid to the complainant.

vii) Citation:

Not reported in CPJ and CPR.

53. Vipran Mehra Vs. United India Insurance Co. Ltd. Amritsar

i) Case in Brief:

The Complainant/Appellant who is the Proprietor of M/s. V.M.Jewellers took an insurance policy from the opposite party for a sum of Rs.8 lakhs for the period from 15.05.2001 to 14.05.2002. On 12.01.2002, he brought gold jewellery weighing 1905 grams from his business premises to his house, with intent to send the same to a jeweller in Jalandhar on 14.01.2002. However, the aforesaid jewellery was stolen from his house in the morning of 14.01.2002. The Complainant lodged a claim with the respondent. Despite the report of the Surveyor, the claim was repudiated by the respondent on the ground it was out of the purview of the policy. Held that the theft of the jewellery from the house of the complainant was beyond the scope of the insurance policy. Appeal dismissed.

ii) Order appealed against:

Order dated 19.07.2010 in Consumer Complaint No.90 of 2002 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Vipan Mehra

- Appellant

Vs.

United India Insurance Co. Ltd. Amritsar

- Respondent

iv) Case No and Date of Judgement:

First Appeal No.282/2010 & Date of Judgement: 15-12-2014.

v) Acts and Sections referred:

Section 2(1) (g) (o), 19 & 21(a) (ii) of The Consumer Protection Act,1986.

vi) Issues raised and decided:

The cover under the policy taken by the complainant would have begun only once the jewellery was taken out of his house for being sold/ delivered to the jeweller at Jalandhar. Since admittedly the jewellery was never taken out for the aforesaid business tour, it was held that the alleged theft in the morning of 14.01.2002 was not covered within the scope of the insurance policy.

vii) Citation:

I (2015) CPJ 400; 2015(1) CPR 305.

54. Max New York Life Insurance Co. Ltd. Vs. Har Bai

i) Case in Brief:

Late Shri Mani Ram, husband of the complainant obtained an insurance policy in the sum of Rs.1,00,000/- from the petitioner-company on 26-11-2010. He expired on 25-12-2010 and a claim was submitted to the petitioner by the complainant who is his widow. The claim was rejected on the ground that in the proposal submitted by him, the deceased had concealed material information with respect to his health i.e., the deceased was suffering from cancer at the time the insurance policy was taken by him. Being aggrieved, she approached District Forum which led to an ex parte order being passed against the Petitioner-Company. The District Forum directed the petitioner to pay the policy amount of Rs.1,00,000/- to the complainant along with interest on that amount at the rate of 9% per annum. A sum of Rs.5,000/- was also

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awarded to the complainant towards compensation. Appeal was filed by Petitioner against the order of District Forum which was dismissed by the State Commission. Revision Petition filed before the National Commission disposed of remitting the matter back to District Forum.

ii) Order appealed against:

From the order dated 03-02-2014 in F.A. No.1217 of 2013 of the Rajasthan State Consumer Disputes Redressal Commission at Jaipur.

iii) Parties:

Max New York Life Insurance Co. Ltd. - Petitioner

Vs.

Har Bai - Respondent

iv) Case No and Date of Judgement:

M.A. No.505 of 2014 & I.A.No.6084 of 2014 (For restoration, condonation of delay) in Revision Petition No.2398 of 2014 &

Date of Judgement: 16-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) and (o), 19 & 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Documents filed by the petitioner, prima facie, indicated that the insured was suffering from cancer/tumour/growth at the time the policy was taken by him. Since these documents were filed only before the State Commission and the complainant had no opportunity to respond to these documents, it was held that the matter needed to be remitted back to the District Forum.
- b) The orders of the District Forum and the State Commission were accordingly set aside and the matter remitted back to the concerned District Forum for deciding the complaint afresh.

vii) Citation:

Not reported in CPJ and CPR.

55. Garg Acrylics Ltd. Vs. United India Insurance Co. Ltd.

i) Case in Brief:

Complainant took an insurance policy from opposite party for its Unit No. II. Fire broke out in the said unit on the night of 15th December 2009 when the policy was in force. Police report was lodged and Fire Brigade also gave its report. Complainant reported a loss of Rs.5 crores whereas the Surveyor of OP assessed the loss at Rs.2,67,77,752/- for payment towards claim. On 14.12.2010, a cheque for Rs.2,70,05,371/- was handed over to the complainant. Complainant wrote a letter on 14.12.2010 accepting the amount towards “part payment” of the claim. On 20.01.2011, complainant wrote a letter to the opposite party demanding the balance amount and filed a complaint before the Punjab State Consumer Commission. The Commission rejected the complaint since it exceeded the pecuniary jurisdiction of the State Commission. Present complaint filed before the National Commission dismissed as devoid of merits.

ii) Order appealed against:

Original Complaint

iii) Parties:

Garg Acrylics Ltd.

- Complainant

Vs.

United India Insurance Co. Ltd.

- Opposite Party

iv) Case No and Date of Judgement:

Consumer complaint No.36/2014 & Date of Judgement: 16-12- 2014.

v) Acts and Sections referred:

Section 2(1) (g) (o) & 21(a) (i) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a. Settlement Intimation Voucher indicated that the amount paid was in full and final discharge of the claim. The fact that the complainant encashed the cheque even before filing the complaint smacked of malafide intention on his part.
- b. Argument of the complainant that it had accepted the amount under duress and that execution of the discharge voucher as a precondition to release the amount amounts to economic duress

and coercion and arm twisting tactics has not been substantiated. There was no immediate protest, whisper, word or syllable for a period of 7 days. The complainant should have protested immediately by sending a telegram or any similar means.

- c. The full and final settlement discharge voucher is in consonance with the Surveyor's report, rather it is more than that. It is settled law that the Surveyor's report has to be given much more weightage than any other piece of evidence.
- d. The judgements of the Hon'ble Supreme Court in *United India Insurance Co. Ltd. & Others Vs. Roshan Lal Oil Mills Ltd. & Ors* (2000) 10 Supreme Court Cases 19 as also in *United India Insurance Co. Ltd. Vs. Ajmer Singh Cotton & General Mills & Ors.*(1999)6 SCC 400 are relevant.

vii) Citation:

I (2015) CPJ 185; 2015(1) CPR 273.

56. Iliyas Kirana Stores Vs. The New India Assurance Co. Ltd.

i) Case in Brief:

The complainant/petitioner, a Kirana Store owner obtained an insurance policy in respect of the grocery stock kept by him in his godown for a sum of Rs.10,00,000/-. On 06-08-2006 water entered his godown and damaged the stock which had been kept there. The complainant lodged a claim with the insurance company and a surveyor was appointed to assess the loss which came to Rs.6,12,535/-. However, the Surveyor was of the view that the loss suffered by the complainant was not covered under the scope of the policy which covered only inundation. Consequently, the insurance company repudiated the claim. The complainant/petitioner approached the District Forum which directed the insurance company to pay Rs.5,09,850/- to the complainant along with interest on that amount at the rate of 9% per annum with effect from 06-03-2007. Both the parties filed appeal before the State Commission. The State Commission dismissed the appeal filed by the complainant/petitioner and partly allowed the appeal filed by the insurance company by reducing the claim amount to Rs.4,84,859/- along with interest at the rate of 6% per annum from the date of

repudiation of the claim. Revision petition filed by the insurance company before the National Commission dismissed.

ii) Order appealed against:

From the order dated 11-12-2013 in FA No.144 of 2008 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Aurangabad.

iii) Parties:

Revision Petition No.3759 of 2014

Ilyas Kirana Stores - Petitioner

Vs.

The New India Assurance Co. Ltd. - Respondent

Revision Petition No.3760 of 2014

The New India Assurance Co. Ltd. - Petitioner

Vs.

Ilyas Kirana Stores - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3759-3760 of 2014 &

Date of Judgement: 17-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) (o), 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

a) According to the surveyor, the value of the stock found in the godown of the complainant was Rs.12,01,390/-. The complainant has not been able to show that the aforesaid valuation was incorrect. No evidence was led by him to prove that the value of the stock kept in his godown at the relevant time was less than Rs.12,01,390/-. Therefore, the proportionate loss to the complainant was rightly assessed at Rs.5,09,850/-.

b) Held that there was no ground for interference with the order of the State Commission.

vii) Citation:

Not Reported in CPJ and CPR.

57. Bajaj Alliance General Insurance Co. Ltd. Vs. M/s. Police Patil

i) Case in brief:

Complainant had taken a standard fire and special peril policy providing insurance cover for his Hot Mixture Plant. The said Plant was damaged when a tipper which was unloading the material slipped and hit against the well causing damage to the building and the plant. The loss was assessed at Rs.2,42,250/- by the Surveyor. District Forum allowed the complaint with costs. State Commission concurred with the finding of District Forum. Revision Petition was filed by the OP before National Commission. Revision Petition allowed and orders of District Forum and State Commission were set aside.

ii) Order appealed against:

Order dated on 29-08-12 in Appeal No.1885/2011 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

iii) Case No and Date of Judgement:

Revision Petition No.4469 of 2012 & Date of Judgement: 19-12-14.

iv) Acts and Sections:

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

v) Parties:

Bajaj Alliance General Insurance Co. Ltd. - Petitioner

Vs.

M/s. Police Patil - Respondent

vi) Issues raised and decided:

- a) Impact damage clause of the Insurance Policy showed that the insurance company was liable to pay the claim for the loss of or visible physical damage or destruction to the property insured due to impact by any rail/road vehicle or animal by direct contact not belonging to or owned by the insured or any occupier of the premises or their employees.
- b) Complainant has not proved that the tipper belonged to a third party.
- c) Orders of the fora below suffered from material irregularity.

vii) Citation:

2015(1) CPR 108.

T) INSURANCE CLAIM (DISABILITY):

1. SBI Life Insurance Co. Ltd. Vs. Shri Kiritchandra B Modi and another

i) Case in Brief:

The Complainant/Respondent No.1 before taking a loan from Respondent No.2 submitted a membership form under GE Country Wide Dual Shield Insurance Scheme and was insured by the Petitioner/Insurance Company. As per the terms and conditions of the policy, the insured was entitled to the claim in the event of suffering injury in an accident resulting in 'total permanent disability'. The Complainant met with the road accident on 10-06-2005, sustained severe physical injuries and went into coma at the place of accident itself. It is his case that he regained his consciousness only after two months. The expert doctor after examination opined that it would take about 18-24 months for him to recover and thereafter also he could do only light work and the disability would be permanent in nature. The Complainant's claim for insurance was repudiated by the Petitioner. The District Forum allowing the complaint filed by the Complainant partly directed the Petitioner to pay a sum of Rs.1,00,000/- to the Complainant, Rs.1,500/- for causing mental agony and Rs.2,000/- as cost. Petitioner's appeal was rejected by the State Commission against which this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 09-08-2012 of the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad in Appeal No.07 of 2011.

iii) Parties:

SBI Life Insurance Co. Ltd. - Petitioner

Vs.

Shri Kiritchandra B Modi and another - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3805 of 2012 &

Date of Judgement: 07-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission noted that both the District Forum and the State Commission had held that the Respondent No.1 had suffered only 55% disability. The Commission held that 55% of disability of left leg is not covered by Clause 7.1.3 which spelt out the meaning of total permanent disability.
- b) The Commission observed that the life assured would have been eligible for insurance had he been in coma continuously for sixty days as per Clause 7.2.2. In this case, no evidence was produced that the patient was in coma for more than sixty days.
- c) Clause 7.2.2.1 of the policy stated that “no such disability shall be considered as total and permanent unless the life assured is unable, despite all optimal medical care, treatment and rehabilitation efforts to pursue the employment profession or vocation which he was pursuing before the happening of the accident”. It was noted that nowhere in the complaint had the complainant mentioned that he was unable to work due to injuries. He had only taken 8 months leave and his organization ONGC had not terminated his service due to the disability.
- d) In *LIC of India v. Shri. Girraj Mehta*, R.P.No.3123 of 2008, *Ajay Kumar v. LIC of India* and *LIC of India v. Ramesh Chandra II* (1997) CPJ 45 (NC): 1997 (2) CPR 8 (NC), the Commission had examined in detail the concept of permanent disability. The Commission came to the conclusion that the present case is fully covered under the case laws cited above and accordingly allowed the revision petition. The orders of the fora below were set aside and the complaint was dismissed.

vii) Citation:

I (2015) CPJ 35; 2014(4) CPR 135.

U) LIFE INSURANCE:

1. Life Insurance Corporation of India Vs. Smt. Nirmala Babu Shirset

i) Case in Brief:

Complainant/Respondent's husband, since deceased, obtained insurance policy for a sum assured of Rs.50,000/- from the Petitioner in December, 1997. He expired on 13-05-1998. The claim made by the Complainant was disallowed by the Petitioner on the ground that the insured had suppressed pre-existing ailment. The District Forum before whom a complaint was filed had allowed the complaint which was upheld by the State Commission vide impugned order against which the present revision petition has been filed. Revision Petition allowed and the orders of the fora below were set aside.

ii) Order appealed against:

From the order dated 13-07-2009 in F. Appeal No.145 of 2001 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Aurangabad.

iii) Parties:

Life Insurance Corporation of India - Petitioner

Vs.

Smt. Nirmala Babu Shirset - Respondent

iv) Case No and Date of Judgement:

Revision Petition No:4488 of 2009 & Date of Judgement: 26.09.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) A Certificate issued by the Medical Officer, Cottage Hospital, Shirpura District, Dhula showed that on 11-07-1995, the insured was suffering from Bilateral Pulmonary Tuberculosis. He was advised rest for three months and his X-ray was also taken. It was held that the insured did not tell the truth and therefore, his legal heirs cannot ask for any compensation. It was further held that had the insured informed that he was suffering from

T.B, the LIC would have rejected the proposal or would have enhanced the premium. The Judgements of the Hon'ble Apex Court in *Satwant Kaur Sandhu v. New India Assurance Co. Ltd*, (2009) 8 SCC 316 and *P.C. Chacko & Anr. v. Chairman, LIC of India & Ors.* (2008) 1 SCC 321 were relied upon while coming to this conclusion.

- b) The revision petition was therefore allowed and the orders of the fora below were set aside.

vii) Citation:

Not reported in CPJ and CPR.

2. Branch Manager, National Insurance Co. Ltd. and another Vs. M.R. Suma

i) Case in Brief:

Grand Father of the Respondent took the Janatha Personal Accident Insurance Policy for a sum of Rs.10,00,000/-. The policy was valid from the period 18.11.1998 to midnight of 17.11.2005. The Respondent was named as the nominee. On 24-02-2004, the insured had a fall from a 6 feet high platform and sustained fracture. He was admitted to a nursing home from where he was shifted to a hospital on 26-02-2004 for surgery. He was discharged on 21.03.2004 after surgery, readmitted in the same hospital on 20-04-2004 for repeat wiring and was discharged on 29-05-2004. He expired on 15-06-2004. The Respondent being the nominee of the policy preferred claim on 01.12.2004. After seeking clarifications and conducting inquiry, the claim was repudiated. Respondent filed complaint before the District Forum which allowed the complaint holding that there was direct nexus between death and the injuries sustained by the insured. Having failed in their appeal before the State Commission, the insurance company filed the present revision petition. Revision Petition was partly allowed to the extent that it was held to be not a case for award of interest. However, the Commission held that the directions given by the fora below to indemnify the nominee of the insured were unassailable.

ii) Order appealed against:

From the order dated 17.10.2008 in Appeal No.851/2008 of State Consumer Disputes Redressal Commission, Karnataka.

iii) Parties:

Branch Manager,
National Insurance Co. Ltd. and another - Petitioners

Vs.

M.R. Suma - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.37 of 2009 & Date of Judgement: 30.09.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The National Commission considered the opinion given by different doctors and came to the conclusion that the injury suffered by the insured from a 6 feet high platform had a direct nexus to the cause of death and that the liability of the insurance company arose only because of the death of the insured as a result of the said injury on account of 'accident'. It was also held that the insurance company had assigned a very narrow meaning to the word 'accident' used in the liability clause of the policy. Such a narrow construction of the liability clause, it was held, would be repugnant to the manifest purpose of such insurance policies. Consequently, the impugned order of the State Commission was upheld. However, it was held that since the opinion of two doctors supported the stand of the insurance company, it was not a case for award of interest. The Petition was allowed only to that extent and all the other directions were maintained.

vii) Citation:

IV (2014) CPJ 614; 2014(4) CPR 154.

3. Post Master General, Rajasthan and another Vs. Sh.Satyanarayan

i) Case in Brief:

The wife of the Complainant/Respondent took insurance policy of Rs.1,00,000/- under Rural Postal Life Insurance Scheme from OP/ Petitioner. The premium of Rs.465 was deposited on 11-08-2006 and policy was issued on 22-09-2006. Meanwhile, on 18-08-2006, wife of Complainant died. The claim made by the Complainant was repudiated

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by the Petitioners. The District Forum before whom a complaint was filed allowed the complaint and directed OP to pay Rs.1,00,000/- to the complainant. Appeal filed by the OP was partly allowed by the State Commission which vide impugned order directed OP to pay Rs.25,000/- to the Complainant. Aggrieved by the order of the State Commission, the present revision petition has been filed. Revision Petition partly allowed. The order of the State Commission was partly modified. Petitioner was directed to refund only premium of Rs.465/- along with interest at 12 % p.a from the date of deposit till the date of refund.

ii) Order appealed against:

From the order dated 01-11-2011 in Appeal No.106/2010 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

Post Master General, Rajasthan & Anr. - Petitioners/OP

Vs.

Sh. Satyanarayan - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No:2650 of 2012 & Date of Judgement: 30.09.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was held that terms and conditions of policy would be effective only from the date of acceptance of the proposal. Since the proposal was accepted on 22.09.2006, and insured had already died on 18-08-2006, there was no concluding contract between the parties at the time of death and the Complainant was not entitled to get any benefit under the policy. It was further held that the State Commission committed error in allowing payment of Rs.25,000/- on human consideration. It was also held that the complainant was entitled to get only refund of Rs.465/- which was deposited as premium because no policy came into force in pursuance to the premium. Consequently revision petition was partly allowed.

vii) Citation:

IV (2014) CPJ 597; 2014(4) CPR 151.

4. Life Insurance Corporation of India Vs. Smt. Neelam Sharma

i) Case in Brief:

The Respondent is the widow of late Krishnavatar Sharma who on 28.05.1998 and 30.03.1999 had taken two life insurance policy from the Petitioner, each in the sum of Rs.50,000/-. During the validity period of the said policies, on 31.12.1999, the insured died because of a heart-attack. The Respondent being the nominee of the insured, preferred a claim with the insurance company which was repudiated by them on the ground that the insured had suppressed material information regarding his health while taking the policies in question. Respondent's complaint before the District Forum was allowed with the direction to the Insurance Company to pay the Respondent the assured amount of Rs.1 Lakh with 12% interest besides Rs.2,000/- as compensation for mental agony and Rs.1,000/- as cost of litigation. The State Commission on appeal by the Petitioner held that the insurance company was not justified in repudiating the claim but reduced the rate of interest from 12% to 9%. Aggrieved by the order of the State Commission, the present revision petition has been filed. Revision petition allowed.

ii) Order appealed against:

From the order dated 31.10.2007 in Appeal No.727/2001 of the Rajasthan Bengal State Consumer Disputes Redressal Commission.

iii) Parties:

Life Insurance Corporation of India
through Assistant Secretary - Petitioner

Vs.

Smt. Neelam Sharma - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.967 of 2008 & Date of Judgement: 30.09.2014.

v) Acts and Sections referred:

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The National Commission noted that the following questions had been answered in the negative by the insured:
 - i. whether during the last five years the insured had been treated for more than a week in connection with any disease

- ii. whether the insured had been admitted in any hospital for indoor treatment
 - iii. whether during the last five years the insured had taken any medical leave and remained absent from office.
- b) The Commission, from the material on record, noted that the answers given by the insured were untrue to his knowledge and therefore there was clear suppression of material facts with regard to the health of the insured. It was therefore held that the insurance company was justified in repudiating the claim of the insured. While coming to this conclusion, the Commission relied upon the order of the Hon'ble Supreme Court in *Satwant Kaur Sandhu v. New India Assurance Co. Ltd.* (2009) 8 SCC 316, & *United India Assurance Co. Ltd. v. M.K.J. Corporation*, (1996) 6 SCC 428.
- c) Consequently, the Revision petition was allowed and the orders of the fora below were set aside.

vii) Citation:

IV (2014) CPJ 658; 2014(4) CPR 148.

5. Smt. Renu Gangwar Vs. Aviva Life Insurance Co. India Ltd.

i) Case in Brief:

On 23-04-2011, husband of the Complainant slipped and fell down at Bareilly Railway Station and got injured. He was treated in the District Hospital till 02.05.2011 and he was issued fitness certificate on that day. On 03-05-2011, the husband of the Complainant got himself examined at another hospital and was advised to take further medicines. He arrived in Delhi on 06-05-2011 and got himself examined at Dean Dayal Hospital in emergency department. He had taken an insurance policy as per which his life was insured for a sum of Rs.50 lakhs along with an additional accidental death benefit of an amount of Rs.50 lakhs. On 07-05-2011, husband of the Complainant expired during the subsistence of the insurance policy issued by the OP. Complainant's claim before OP was however repudiated. The Complainant has therefore filed this complaint seeking the insured amount of Rs.1 Crore along with compensation for alleged mental harassment as well as litigation cost. Complaint dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Smt. Renu Gangwar - Complainant

Vs.

Aviva Life Insurance Co. India Ltd. - Opp. Party

iv) Case No and Date of Judgement:

Consumer Complaint No.125 of 2013 & Date of Judgement:10.10.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), and 21(a) (i) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission upheld the repudiation of the Complainant's claim on the following grounds:
 - i. After the visit of the insured to Dean Dayal Upadhyay Hospital on 06.05.2011, whereas per records he was only an outpatient, no further history of the deceased insured has seen the light of the day. It is not clear as to how the insured died and under what circumstances and where
 - ii. It is not clear why his body was cremated at Kacchla Badaun when he was resident of Delhi. The post-mortem examination of the deceased was not conducted.
 - iii. The three affidavits produced by the Complainant also do not show any light on how the insured expired, why he died and why he was not cremated at Delhi.
 - iv. The Complainant's husband had previous life insurance policies with ICICI Prudential and LIC of India amounting to Rs.34 lakhs which were not disclosed to the OP in the proposal form.
- b) Consequently, the Commission dismissed the complaint.

vii) Citation:

I (2015) CPJ 165.

6. LIC of India Vs. Smt. Chhaya Hanmayya Ghante

i) Case in Brief:

Complainant/Respondent's husband, Dr. H.C. Ghante obtained the life insurance policy from LIC for an assured sum of Rs.1 Lakh on 29-03-1999. He died on 23-09-2001 i.e after the expiry of two years from taking the said policy. Complainant's claim was repudiated by the Petitioner on the ground that the insured had suppressed material facts about his health at the time of taking the policy. Complainant's complaint was allowed by the District Forum and the appeal filed by the Petitioners was dismissed by the State Commission. Aggrieved by the order of the State Commission, this revision petition has been filed. Revision petition allowed.

ii) Order appealed against:

From the order dated 04-12-2008 in F. Appeal No.695 of 2004 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Aurangabad.

iii) Parties:

LIC of India

- Petitioner

Vs.

Smt. Chhaya Hanmayya Ghante

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No. 991 of 2014 & Date of Judgement: 15.10.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of The Consumer Protection Act, 1986 & Section 45 of the Insurance Act.

vi) Issues raised and decided:

- a) It is an established legal principle that taking an insurance policy is an act of utmost good faith between the insurer and the insured (principle of uberrima fides) and hence it is expected from a person taking an insurance to disclose all the facts regarding the state of his health while filling up the proposal form.

- b) It was pointed out by the Petitioner that in the proposal signed by the insured at the time of taking the policy (in 1999), he had mentioned that he was not suffering from any disease, that he had never been admitted in any hospital for treatment and that he had not remained absent from his place of work on ground of health during the previous five years. However, it was revealed that as per medical certificate dated 17-02-1998 issued by the General Hospital Parbhani he was under treatment for pulmonary infection and was advised rest for 76 days from 04-02-1997 to 17-02-1998. Another certificate was issued for treatment from 18.02.1998 to 20.02.1998 and he was declared fit to resume duty from 27-02-1998.
- c) It was argued by the Respondent that since the insured died after the expiry of two years from the date of obtaining policy, Section 45 of the Insurance Act would apply and policy cannot be questioned on the ground of inaccurate or false declaration made in the proposal form. However, the Commission rejected this argument based on the decision of the Hon'ble Supreme Court in *Mithoolal Nayak v. LIC*, AIR 1962 SC 814 & *LIC of India and Ors. Vs. Asha Goel (Smt.) and Anr*, (2001) 2 SCC 160 in which it was held that any failure on the part of the insured to disclose all material facts at the time of taking the policy with intention to defraud would vitiate the policy.
- d) In Revision Petition No.1987 of 2006, *Kokilaben Narendrabhai Patel v. LIC of India* dated 05-04-2010, the National Commission had examined the scope of Section 45 of the Insurance Act and came to the conclusion that if there was clear suppression of material facts with regard to the health of the insured, the LIC would be justified in repudiating the contract of insurance.
- e) In the present case, it was held that the insured had not made a true declaration about the state of his health and his past treatment for the ailment and therefore, the LIC was justified in repudiating the claim. Consequently, the orders passed by the fora below were set aside and the revision petition was allowed. The Consumer complaint was dismissed.

vii) Citation:

Not reported in CPJ and CPR.

7. Branch Manager, LIC Vs. Smt. Venu w/o. Yadavrao Yelne

i) Case in Brief:

Husband of the Complainant/Respondent, Shri. Yadavrao Yelne had taken a life insurance policy dated 16-08-2005 from the Petitioner for a sum of Rs.1,00,000/-. The premium was to be paid on six monthly basis by 16th February and 16th August each year. While the insured had paid the premium in August, 2005 and February, 2006, the premium due in August, 2006 was not paid even within the grace period of 30 days. The Complainant's case is that her husband went to Bhandara on 19-09-2006 and handed over the premium amount of Rs.926/- to the LIC agent at 3 P.M. However, while returning to the village, he met with an accident and died at 8.30 P.M on the same day. The amount of the premium along with the late fee of Rs.6.20 making a total of Rs.932.20 was paid by the agent to the LIC on 20-09-2006 and the renewal premium receipt was also issued by the branch office. However, the complainant's claim was repudiated by the corporation on the ground that the policy stood lapsed at the time of the death of the insured. The District Forum allowed the consumer complaint which was also upheld by the State Commission on appeal by the Petitioner Corporation. Aggrieved by the order of the State Commission, the present revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 01-09-2008 in A.No.698 of 2007 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Nagpur.

iii) Parties:

Branch Manager, LIC - Petitioner

Vs.

Smt. Venu w/o. Yadavrao Yelne - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.44 of 2009 & Date of Judgement: 15.10.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

In *Harshad J.Shah & Anr. Vs. LIC of India & Ors*, (1997) 5 SCC 64, the Hon'ble Supreme Court had stated that in accordance with LIC (Agents) Rules, 1981 and the LIC (Agents) Regulations, 1972, the agent was not competent to accept the premium on behalf of the LIC, unless he was duly authorized by the LIC to do so. Similar view has been taken by the National Commission, in *Asha Garg & Ors. Vs. LIC of India*, V (2009) CPJ 92 (NC), *LIC of India and Ors. Vs. Miss. Anu Mohanot & Ors. II* (1997) CPJ 129 NC. In the present case, it was held that by the time the premium was deposited with the LIC on 20-09-2006 by the agent, the insured had already died and therefore the policy could not have been revived. Accordingly, the revision petition was accepted and the orders of the fora below were set aside, being not in accordance with law. The Consumer Complaint stood dismissed.

vii) Citation:

Not reported in CPJ and CPR.

8. Mrs. Shakuntla Devi Vs. National Insurance Co. Ltd. and others

i) Case in Brief:

As per one of the schemes of Haryana Government, if persons in the age group of 18-65 years died unnatural death were breadwinners of the family and their names appeared in the voter list/ration card, their dependants were eligible for compensation to the tune of Rs.1 Lakh. Petitioner's case was that her husband who was a labourer, sustained fatal injuries caused by a stray bull and died on 19-02-2004. Her claim for compensation under the scheme was rejected by the Respondents. The District Forum before whom a complaint was filed allowed the complaint and directed Respondent No.1 to pay Rs.1 Lakh as compensation along with 12% interest and also to pay a sum of Rs.10,000/- as compensation for causing mental agony, harassment and litigation expenses. The State Commission first dismissed the appeal and later when the matter was remanded back to the State Commission, accepted the appeal vide impugned order and dismissed the complaint. The present revision petition has been filed challenging the State Commission's order. Revision Petition dismissed.

ii) Order appealed against:

Against the order dated 30-08-2011 in First Appeal No.731 of 2006 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Mrs. Shakuntla Devi - Petitioner

Vs.

National Insurance Co Ltd and others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3975 of 2011 & Date of Judgement: 27.10.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was noted that Petitioner has not placed on record any document to show that her husband died from any bull injury. Details of treatment, if any, given were not furnished. The death certificate or document related to death to show the cause of death was also not furnished. Since the petitioner failed to establish that her husband died due to bull injuries, she was not entitled to any compensation under the government scheme. The Commission dismissed the revision petition on the ground that there was no infirmity or illegality in the State Commission's order.

vii) Citation:

I (2015) CPJ 95; 2014(4) CPR 570.

9. M/s. ICICI Prudential Life Insurance Company Ltd Vs. Mrs.Veena Sharma and another

i) Case in Brief:

Complainant/Respondent filed three separate complaints against the petitioner in the District Consumer Redressal Forum, Panipat in relation to three insurance policies taken by her late husband. The Complaints

were allowed and the Petitioner's appeals were dismissed by the State Commission. The present revision petitions challenging the State Commission's Order were also dismissed.

ii) Order appealed against:

Revision Petition No.1304 of 2014

Against the order dated 03-02- 2014 in First Appeal No.634 of 2013 of the State Commission, Haryana.

Revision Petition No.1305 of 2014

Against the order dated 03-02- 2014 in First Appeal No.635 of 2013 of the State Commission, Haryana.

Revision Petition No.1306 of 2014

Against the order dated 03-02- 2014 in First Appeal No.634 of 2013 of the State Commission, Haryana.

iii) Parties:

Revision Petition No.1304 – 1306 of 2014

M/s. ICICI Prudential Life Insurance Company Ltd - Petitioner

Vs.

Mrs.Veena Sharma and another - Respondents

iv) Case No and Date of Judgement:

- i. Revision Petition No.1304 of 2014 with IA No. 1490 of 2014, IA No.3531 of 2014 (Stay, Release of Amount)
- ii. Revision Petition No.1305 of 2014 with IA No.3532 of 2014 (Release of Amount)
- iii. Revision Petition No.1306 of 2014 with IA No.3533 of 2014 (Release of Amount) &

Date of Judgement: 05-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Petitioner had repudiated the claims of the Respondent on the ground that the insured had suppressed facts about his illness while taking the policies. While doing so, the petitioner had relied on the Discharge Card issued by the Hospital where he was undergoing treatment. Held that mere production of Discharge Card was not enough and that OP/Insurance Company was also required to prove with credible evidence that the Complainant's husband was suffering from pre-existing disease and had failed to disclose the same. The evidence of treating doctor was not led by the insurance company.
- b) The law on the subject had been clearly enunciated by the Hon'ble Supreme Court in *Balwinder Gaur v. LIC of India*, Civil Appeal No.7969 of 2010 decided on 13-09-2010, the facts of which were very similar to the facts in the present case.
- c) The revision petitions were held to be devoid of any merit and were therefore dismissed.

vii) Citation:

IV (2014) CPJ 580; 2014(4) CPR 711.

10. Smt. Kaleshwati Bai Vs. LIC of India & Others

i) Case in Brief:

Husband of the Petitioner/Complainant obtained four policies from the Respondent LIC. He died on 04-12-2008. Complainant/Petitioner lodged claims with LIC in terms of the insurance policies. But Respondent repudiated the claim on the ground that the last two policies had lapsed while the first policy had been obtained by suppressing material fact with respect to the state of health of the insured. Petitioner approached the District Forum which allowed the complaint and directed LIC to make payment in terms of the policy. Respondent filed appeal before the State Commission and also filed additional evidence viz. discharge summary of the deceased issued by Apollo Hospital. Appeal was allowed by State Commission against which the present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 03-11-2012 in First Appeal No.629 of 2012 of the Chhattisgarh State Consumer Disputes Redressal Commission at Raipur.

iii) Parties:

Smt. Kaleshwati Bai - Petitioner

Vs.

LIC of India & Others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1313 of 2014 & Date of Judgement: 12.11.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) One of the issues that came up was whether additional evidence can be allowed at the appellate stage and even if the State Commission had taken such evidence on record, it ought to have remanded the matter back to the District Forum, instead of deciding it on merits. In this case, it was held that the additional evidence was only the discharge summary issued by the Hospital, the authenticity of which was not questioned by the other party. Remitting the matter back to the District Forum would have only delayed the disposal of the complaint defeating the objectives behind the enactment of the Act.
- b) In this case, the deceased had suppressed material information with respect to the removal one kidney between 19.07.2005 and 05.08.2005. He had been suffering from renal disease even prior to obtaining the insurance policies which fact was not disclosed by him. Therefore, the Respondent was justified in repudiating the claim.
- c) The National Commission found no merit in the revision petition and accordingly dismissed the same.

vii) Citation:

Not reported in CPJ and CPR.

11. M/s. Bajaj Allianz General Insurance Co. Ltd. Vs. Shri R. Venkatesh

i) Case in Brief:

Respondent/Complainant took comprehensive health coverage policy from the OP/Petitioner with coverage of Rs.12,50,000/- for himself, his wife and son on 24.09.2008. His one year old son fell ill on 02.10.2008, was admitted to hospital but expired on 04.10.2008. The claim made by the complainant with the OP was repudiated by the latter. Complainant approached the District Forum which allowed the complaint and directed the OP to pay Rs.2,50,000/- with interest and further allowed Rs.1,000/- as litigation cost. Appeal filed by the OP was dismissed by the State Commission vide impugned order against which this revision petition is filed. Revision Petition allowed and orders of the State Commission and the District Forum were set aside.

ii) Order appealed against:

From the order dated 02.12.2010 in Appeal No.4228/2009 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

iii) Parties:

M/s. Bajaj Allianz General Insurance
Co. Ltd.

- Petitioner/OP

Vs.

Shri R. Venkatesh

- Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.1213 of 2011 & Date of Judgement: 20-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Perusal of policy revealed that coverage has been granted for expenses incurred towards hospitalization but at the same time in case of the complainant or his wife in accident, coverage was Rs.10 lakhs. As far as coverage of child is concerned, no coverage has been given for death in ordinary course. Therefore, the complainant was not entitled to get any claim on account of death of his son within 10 days from obtaining policy.

- b) As per exclusion clause No.4, Medical expenses incurred within 30 days of commencement of policy except those incurred as result of accidental bodily injury were also not payable. Since the complainant's son was admitted on 02.10.2008 and expired on 04.10.2008, expenses were incurred within 30 days without any accidental bodily injury. Therefore, complainant was not entitled to reimbursement of medical expenses incurred from 02.10.2008 to 04.10.2008.
- c) Revision Petition was allowed and the orders of the State Commission and the District Forum were set aside. Complaint stood dismissed.

vii) Citation:

I (2015) CPJ 512; 2015(1) CPR 56.

12. Mrs. Lakhbir Kaur and others Vs. Life Insurance Corporation of India and another

i) Case in Brief:

Husband of Petitioner No.1 got insurance from the Respondent/O.P.1 against annual premium of Rs.30,192/-. During the insurance period, husband of Petitioner No.1 went to Oman for service where he died due to cardio respiratory failure. Petitioner No.1 lodged insurance claim of Rs.5 lakhs which was repudiated by the respondent on the ground of withholding of material information regarding the age of the deceased at the time of taking the policy. District Forum allowed the complaint of the Petitioner No.1. Respondent filed appeal before the State Commission which set aside the order of District Forum and dismissed the complaint. Revision petition filed against the order of State Commission dated 14-01-2004. Held, there is no jurisdictional or legal error in the order of State Commission to call for interference in the exercise of powers U/S 21(b) of the Act. Revision petition dismissed.

ii) Order appealed against:

Against the order dated 14.01.2014 in First Appeal No.1696/2009 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Mrs. Lakhbir Kaur and others - Petitioner(s)

Vs.

Life Insurance Corporation of India and another - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1840 of 2014 & Date of Judgement: 16-12-2014.

v) Acts and Sections referred:

Section 2(1) (g), (o), 19 & 21(b) of Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The deceased has grossly understated his age of by more than 14 years at the time proposing for the assurance.
- b) At the time of proposal, Voter ID was submitted by the insured which showed his date of birth as 1-1-75 whereas his passport showed 11.07.1960. The policy was taken on 31-10-06. Applicant's husband was aware of the discrepancy in the two dates.
- c) Voter ID is prepared on the information supplied by voter himself. It is clear that the husband of the Petitioner No.1 had either produced forged voter id for scrutiny of the agent at the time of taking insurance cover or he deliberately gave wrong age to the election authorities while obtaining the voter I.D. If the date of birth and age of the insured was wrongly mentioned in the insurance policy, he was expected to get the error rectified by bringing this fact with the knowledge of the insurance company.
- d) It is settled law that contract of insurance is based on good faith. It is for the insured to give correct information. The ground of incorrect information and false statement regarding the age of the insured and income makes the contract of insurance null and void.

vii) Citation:

I (2015) CPJ 259; 2015(1) CPR 280.

13. Mahendra Jatav Vs. Branch Manager, LIC of India

i) Case in Brief:

Father of the petitioner/complainant took a life insurance policy from the respondent-LIC of India on 28-01-2005, for a sum of Rs.3,00,000/-. Since he expired on 23-04-2005 a claim was lodged by the complainant for payment of the insurance amount to him. The Respondent repudiated the claim on the ground that the deceased/insured had died on 23-04-2004, much before the insurance policy was taken. The Complainant approached the District Forum which dismissed the complaint. Appeal filed was allowed by the State Commission directing the LIC to settle the claim within four months. LIC paid the sum assured to the complainant on 17-1-2009 but without any interest or bonus on the sum insured. The complainant again approached the District Forum seeking payment of interest and bonus. The District Forum dismissed the complaint noticing that the insured had died within three months of the date of acceptance of the policy. Order of the District Forum was upheld by the State Commission. Present Revision Petition filed against the order of the State Commission allowed.

ii) Order appealed against:

From the order dated 21-02-2014 in FA No.1043 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission at Jaipur.

iii) Parties:

Mahendra Jatav	-	Petitioner
Vs.		
Branch Manager, LIC of India	-	Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2321 of 2014 & Date of Judgement :17.12.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 & 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The complaint was resisted by LIC on the ground that the principal amount had already been paid to the complainant but no bonus or interest was payable to him as per the rules. Neither the LIC nor the fora below referred to any rule framed by LIC or any term of the policy exempting the corporation from its liability to pay

interest in case of delay in settling the claim. In this case, the claim was paid more than 3 years after the death of the insured.

- b) The action of the respondent amounted to unjust enrichment which could not be justified in a case where the repudiation of the claim is found to be absolutely unjustified and untenable.
- c) The revision petition was disposed of with a direction to the respondent LIC to pay interest to the complainant at the rate of 9% per annum with effect from three months from the date on which the claim was lodged by the complainant with it till 17-01-2009 when the principal claim was actually paid.
- d) As far as bonus is concerned, there was no evidence of any bonus having been declared by the LIC during the brief period of three months for which the deceased survived after taking the policy. Therefore, the claim for bonus was not found tenable.

vii) Citation:

Not reported in CPJ and CPR.

V) MANUFACTURING DEFECT:

1. M/s. Viraj Polyplast Technology Pvt. Ltd. and another Vs. Ankur Gupta

i) Case in Brief:

The case of the complainant was that the polymer moulds supplied to him by the petitioner-company were not as per samples and when production started using these moulds it was found that broken tiles were being produced. The District Forum before whom a complaint was filed allowed the same and directed the petitioner to pay a sum of Rs.2,28,457/ to the complainant towards refund of the price paid by him, Rs 8,941/ towards truck fare, interest at 9% p.a. and compensation amounting to Rs.5,000/-. The appeal filed by the petitioner before the State Commission having been dismissed, this revision petition has been filed. Revision petition dismissed.

ii) Order appealed against:

From the order dated 29-01-2014 in FA No.1223 of 2013 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

M/s. Viraj Polyplast Technology Pvt. Ltd. & Anr. - Petitioners

Vs.

Ankur Gupta - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3338 of 2014 with I.A.No.5762 of 2014, I.A.No.5763 of 2014 and I.A.No.6691 of 2014 (For Condonation of delay, Stay, placing additional documents) & Date of Judgement: 07-10-2014.

v) Acts and Sections referred:

Sections 2(1)(d), (g) & (o),19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission rejected the contention of the petitioner that the defect in the tiles was because the mixture used was not alkaline resistant. There was no material to show that the petitioner had informed the complainant about this aspect. It was further held that the fora below had rightly observed that the question whether the complainant was a consumer within the meaning of Sec 2(1)(d) of the Act would not apply in this case because the goods in question were covered under a warranty clause. The revision petition was accordingly dismissed.

vii) Citation:

Not reported in CPJ and CPR.

2. Chaitanya Education Society Chaitanya Public School Vs. The Manager, Eicher Motors Ltd. & Others

i) Case in Brief:

Petitioner/Complainant purchased a school bus from the Respondent No.2/OP2 manufactured by Respondent No.1/OP1 on 07.07.2007 with 3 years warranty. After delivery, complainant found some defects which were attended by OP3/Respondent No.3. After the vehicle covered 2000 kms, some more defects were found which were attended by OP2. Since the vehicle was giving trouble frequently complainant left the vehicle

Deficiency in Service - Manufacturing Defect

in OP3's workshop on 28.05.2009 but up to 19.06.2009 there was no response. Alleging deficiency, petitioner filed a complainant in the District Forum which allowed the complaint and directed OPs jointly and severally to refund repair charges of Rs.61,405 and awarded a compensation of Rs.20,000/- for mental agony and Rs.2000/- as costs. Appeal filed by the OP was partly allowed by the State Commission which directed the OPs to check the bus and pay an amount of Rs.5,000/- . The present revision petition had been filed challenging the order of the State Commission. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 01.07.2013 in Appeal No.204/2012 of the A.P. State Consumer Disputes Redressal Commission, Hyderabad.

iii) Parties:

Chaitanya Education Society
Chaitanya Public School - Petitioner/Complainant

Vs.

The Manager,
Eicher Motors Ltd. & Others - Respondents/Opp. Parties

iv) Case No and Date of Judgement:

Revision Petition No.3890 of 2013 with IA/6933/2013 (C/Delay) &
Date of Judgement: 12-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19, 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Perusal of records revealed that complainant had not adduced any extra evidence to show that vehicle suffered from any manufacturing defect.
- b) The vehicle had already run 1,12,336 kms as on 10.05.2011 from the date of purchase i.e. 07.07.2007 and in another 3_{1/2} years it must have run almost the same distance.
- c) Perusal of records further revealed that the vehicle was taken for service every time after running more than requisite kilometres and thus complainant himself violated conditions of warranty.

- d) Petitioner could not prove that any amount of repair has been charged against the warranty conditions and therefore the State Commission was right in modifying the order of the District Forum.
- e) Held that there was no illegality, irregularity or jurisdictional error in the impugned order. Therefore, the revision petition was dismissed.

vii) Citation:

I (2015) CPJ 6.

3. M/s. S.A.S. Motors Ltd. Vs. H.S.Balakrishna & Others

i) Case in Brief:

Respondent No.1/Complainant, an agriculturist, had purchased a tractor from Petitioner/OP1 through its dealer, Respondent No.2/OP2. The trailer attached to the tractor was manufactured by Respondent No.3/OP3. Complainant alleged that the said tractor was unfit for cultivation and transportation. He filed a complaint before the District Forum, which going by the report of the Court Commissioner appointed by it, ordered replacement of the tractor by a new one together with compensation of Rs.5,000/- and cost of Rs.500/-. OP1 filed an appeal before the State Commission which was dismissed. Present Revision Petition has been filed challenging the order of the State Commission. Held that the fora below had come to their finding based on correct appreciation of the evidence on record. RP dismissed for want of merit. Petitioner directed to refund the cost of the tractor with 9% interest p.a. from the date of the complaint, in lieu of its replacement.

ii) Order appealed against:

From the Order dated 07.01.2008 in Appeal No.1908 of 2007 of the State Commission, Karnataka.

iii) Parties:

M/s. S.A.S. Motors Ltd.	-	Petitioner
Vs.		
H.S. Balakrishna & Others	-	Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1943 of 2008 & Date of Judgement: 09-12-2014.

V)Acts and Sections referred

Sections 2(1)(g) & (o), 19 & 21(b) of The Consumer Protection Act,1986.

vi) Issues raised and decided:

- a. The contention of the Revision Petitioner that the first report of the Court Commissioner showed that the tractor was working satisfactorily and that the fora below had ignored this aspect was not accepted because the same Motor Vehicle Inspector had given another report after conducting the haulage test and these two documents were not to be read as two separate reports but as two parts of the same report.
- b. Held that the finding of fact of the fora below was based on correct appreciation of evidence on record and that the impugned order did not suffer from any illegality, material irregularity or jurisdictional error to justify intervention under Section 21(b) of the Consumer Protection Act, 1986.

vii) Citation:

I (2015) CPJ 500; 2015(1) CPR 355.

4. M/s. Vindhya Pipes & Plastics Ltd. Vs. Angrej Singh & others

i) Case in Brief:

Respondents/Complainants who are agriculturists had purchased PVC pipes and equipments from the O.Ps and also spent about Rs.30,000/- for the purchase of Bajri, labour and transportation expenses for the boring purposes which failed. The grievance of the complainants before the District Forum was that the O.Ps had supplied defective pipes to them because on two occasions, when the process of boring was going on, the pipes got burst. The District Forum decided in favour of the complainants. The O.Ps filed appeal before the State Commission which was dismissed. The O.Ps filed Revision petition before the National Commission which was also dismissed.

ii) Order appealed against:

From the order dated 01.08.2012 in F.A. No.118/2010 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

M/s. Vindhya Pipes & Plastics Ltd - Petitioner

Vs.

Angrej Singh & others - Respondent(s)

iv) Case No and Date of Judgement:

Revision Petition No.4534 of 2012 & Date of Judgement: 17-12-14.

v) Acts and Sections referred:

Sections 2(1) (f), (g), (j), (o), 13(1)(c), 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) O.Ps resisted the claim of the complainants with the averment that the pipes supplied to the complainants were of good quality. It was submitted by Opposite Party Nos.1 & 2 that they were only traders of the pipes manufactured by O.P No.3/Petitioner and hence the cause of action of manufacturing defect would lie against the manufacturer of the articles and not against the traders. This argument was rejected because the defects were visible to the naked eye.
- b) It was also pleaded that the complaint was hit by section 13 (1) (c) of the Consumer Protection Act, 1986 as no manufacturing defect could be alleged until and unless the article in question was analyzed from a competent laboratory. National Commission held that the testing of the sample of the goods in question is not required to be done in each and every case and is required to be done only in cases “where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods”.
- c) The orders of the fora below do not suffer from material irregularity or lack of jurisdiction.

vii) Citation:

I (2015) CPJ 389; 2015(1) CPR 140.

5. Mrs. Urmila Vs. Rajasthan Hitech Agri. Products Company and another

i) Case in brief:

Complainant/Petitioner had paid a sum of Rs.1,62,500/- to the OPs, being his share in the cost of construction of a green house and spent further amount of Rs.50,000 on digging and construction. Green house got damaged due to strong winds since the torn polythene was not replaced by OPs. District Forum to whom complaint was made seeking compensation of Rs.9,01,000/- directed OPs to compensate the complainant to the tune of Rs.5 Lakhs. O.P No.2 appealed against the order to the State Commission which was allowed. Revision Petition filed by the Complainant against the State Commission's order was dismissed.

ii) Order appealed against:

From the order dated 21.03.2014 in Appeal No.881 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench No.2, Jaipur.

iii) Parties

Mrs. Urmila

- Petitioner

Vs.

Rajasthan Hitech Agri. Products Company & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2515 of 2014 & Date of Judgement: 19-12-14.

v) Acts and Sections referred:

Section 2 (1) (f), (g), (j), (o) & 21(b) of Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) No evidence was led by the Complainant that any warranty against damage to the polythene from cyclone/strong winds was given by O.P No.2 to the Complainant.
- b) No expert evidence produced to show that polythene free from any manufacturing defect will not get torn on account of strong winds/ cyclone.
- c) O.P No.1's contention that the manufacturer gives warranty only against manufacturing defect such as UV degradation accepted.

- d) No agreement placed by the complainant obligating O.P No.2 to repair the damage to the green house such as tearing of the polythene free of cost. No evidence of complainant having made a complaint to O.P No.2 requesting to replace the polythene.

vii) Citation:

Not reported in CPJ and CPR.

6. M/s. Jay Jalaram Traders and Others Vs. Kaushik Dhirajlal Bhatt

i) Case in brief:

Respondent/Complainant alleged that his crop failure was due to the inferior quality of insecticides manufactured by Petitioner 2 and sold by Petitioner No.1. District Forum granted compensation amounting to Rs.80,000/-. Petitioner appealed to the State Commission. Complainant also preferred a special appeal for enhanced compensation. Both the appeals were dismissed by the State Commission. Revision Petition was filed by the Petitioners before the National Commission. Case remanded to District Forum for passing fresh orders after examining the witness based on whose report original order was passed.

ii) Order appealed against:

F.A No.635 of 2007 of the Gujarat State Consumer Redressal Commission at Ahmedabad dated 22-03-2010.

iii) Parties:

M/s. Jay Jalaram Traders and Others - Petitioners

Vs.

Kaushik Dhirajlal Bhatt - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2800 of 2010 & Date of Judgement: 19-12-14.

v) Acts and Sections:

Sections 2(1) (j) and (q) and Section 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- i. The report based on which the orders were passed by the District Forum was not proved either by filing the affidavit of the person who did the analysis or by examining him as a witness.
- ii. Opportunity should be given to the petitioners to cross examine the person who analysed and certified the product as defective.

vii) Citation:

Not reported in CPJ and CPR.

7. Smt. Brijesh Saxena and others Vs. Skoda Auto A.S and Others

i) Case in brief:

Complainant No.1's husband died in an accident while travelling in a car manufactured by O.P No.1. Complainant alleged that the safety measures projected by O.P No.1 were not properly activated due to manufacturing defect and that airbags opened only partially at the time of accident. No technical evidence was produced by the complainant to prove her allegation. It was noted that complainant had already received compensation from Motor Accident Claims Tribunal. Complaint dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Smt. Brijesh Saxena and others - Complainants

Vs.

Skoda Auto A.S and Others - Respondents

iv) Case No and Date of Judgement:

Complaint No.77 of 2006 & Date of Judgement: 19-11-2014.

v) Acts and Sections referred:

Section 2(1) (f), (g) & (o) and 21(a) (i) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Efficiency of the safety measures of the car is dependent on many factors mainly connected to the seriousness of the accident, driving speed, direction of collision, seated position, seat belts etc.,
- b) Surviving passenger's testimony which would have been relevant to the adjudication of the case not produced.
- c) No expert opinion has been produced by the complainant in support of their version that the car had manufacturing defect.
- d) Driver fatigue could also be a contributing factor
- e) Complainant had received a compensation of Rs.41,00,112/- along with interest at 6% p.a. from O.Ps.

vii) Citation:

I (2015) CPJ 235 (NC); 2015(1) CPR 104 (NC).

W) MARINE INSURANCE:

1. M/s. Gladstone Agencies Ltd. Vs. Dugar Brothers Concern & Others

i) Case in Brief:

Similar questions of facts and law are dealt with in three revision petitions here. Revision Petition No.3426 is taken as the lead case.

Dugar Brothers Concern, the complainant, stationed at Nepal, placed an order with M/s. OzE Pulse Pty. Ltd. Australia for supply of 3085 bags, weighing 136.553 Metric Tonnes of Oriental Mustard Seed. At the time of loading, one marine insurance policy under "All Risks" of Tokio Marine Insurance (Malaysia) for a sum of US\$ 55,000 from warehouse to warehouse up to destination at Nepal was obtained. When the goods arrived at Nepal, damage was detected and the matter was reported to the carriers. A Survey was conducted by the nominated surveyor M/s. Gladstone Ltd., Kathmandu which had its head office at Kolkata. The surveyor reported that 1612 bags containing 71.412 Metric Tonnes of Mustard seeds were found in damaged condition. The Complainant's claim for the loss sustained by it was repudiated by the insurer. The

Deficiency in Service - Marine Insurance

District Forum before whom a complaint was filed directed OPs jointly and/or severally to pay to the complainant a sum of Rs.10,65,175.50/- towards loss due to damage, Rs.10,000/- for mental agony and Rs.5000/- towards litigation costs. Similar orders were passed in the remaining two complaints. Appeals filed by M/s. Gladstone Agencies Ltd. before the State Commission were also dismissed. The present revision petitions against the State Commission's order were also dismissed.

ii) Order appealed against:

Revision Petition No.3425 of 2014

From the order dated 04.08.2014 in First Appeal No.379/2013 of State Consumer Disputes Redressal Commission, West Bengal, Kolkata.

Revision Petition No.3434 of 2014

From the order dated 04.08.2014 in First Appeal No.375/2013 of State Consumer Disputes Redressal Commission, West Bengal, Kolkata.

Revision Petition No.3426 of 2014

From the order dated 04.08.2014 in First Appeal No.381/2013 of State Consumer Disputes Redressal Commission, West Bengal, Kolkata.

iii) Parties:

Revision Petition No.3425 of 2014

M/s. Gladstone Agencies Ltd. - Petitioner

Vs.

Dugar Brothers Concern & Others - Respondents

Revision Petition No.3434 of 2014

M/s. Gladstone Agencies Ltd. - Petitioner

Vs.

Dugar Brothers Concern & Others - Respondents

Revision Petition No.3426 of 2014

M/s. Gladstone Agencies Ltd. - Petitioner

Vs.

Dugar Brothers Concern & Others - Respondents

iv) Case No and Date of Judgement:

1. Revision Petition No.3425 of 2014;
 2. Revision Petition No.3434 of 2014;
 3. Revision Petition No.3426 of 2014; &
- Date of Judgement: 13-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Petitioner's contention that it is a Surveyor simpliciter and had nothing to do with the insurance, did not impress the Commission. The Petitioner called himself "Survey and Claims Payable Agent". No explanation was given as to why the title was given.
- b) Customers reposed faith in the insurance company because the name of the M/s. Gladstone Agencies Ltd., finds mention in BOLD letters. If that was not mentioned, the customer would have thought 100 times whether to get insurance policy from OP1 or not.

vii) Citation:

Not reported in CPJ and CPR.

2. Sh. Akkadevi Matsa Vs. Branch Manager, United India Insurance Co. Ltd.

i) Case in Brief:

Appellant/Complainant obtained insurance cover in respect of a fishing board, Devachi Jejuri under a policy called Marine Hull & Machinery Policy. On 05.10.2007, the aforesaid board sailed for fishing and since a plank had become loose, water entered the board which could not be stopped. The boat sank and drowned in the sea. On a claim being lodged to the insurance company, a Surveyor was appointed. In his opinion, the loss of vessel was due to falling of the plank due to normal and seasonal weather and it was not under the terms of the policy. The Surveyor also reported that the fishing vessel had no licence for fishing on the day it got drowned. Accordingly, the claim was not recommended

by the surveyor for payment. The Complainant approached the State Commission which dismissed the complaint. Aggrieved by the State Commission's order, this First Appeal has been filed. State Commission's order set aside and the matter remanded back to the State Commission for passing a fresh order.

ii) Order appealed against:

From the order dated 19.12.2013 in Complaint Case No.CC/10/29 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

iii) Parties:

Sh. Akkadevi Matsa

- Appellant

Vs.

Branch Manager, United India Insurance Co. Ltd. - Respondent

iv) Case No and Date of Judgement:

First Appeal No.330 of 2014 with IA/3786/2014 (Condonation of Delay) & Date of Judgement: 18-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(a) (ii) of the Consumer Protection Act,1986; Section 41 of the Marine Insurance Act.

vi) Issues raised and decided:

- a) The insurance policy issued to the complainant covered amongst others peril of the sea (Clause 6.1.1) and the negligence of repairs (Clause 6.2.4). In the opinion of the surveyor the loosening the plank was attributable to its poor maintenance by the owner of the vessel. Even if it is assumed that the boat was not hit from any hard and blunt substance as claimed by the appellant, it was held that negligence of repair on the part of owner of the boat is clearly covered under the terms of the policy.
- b) The surveyor noted that no licence for fishing had been obtained from the fisheries department under Marine Sea Fishing Control Act and relying upon Section 41 of the Marine Insurance Act, he was of the view that there was an apparent breach of the warranty of legality contained in Section 41 of the said Act. The National Commission observed that no finding had been returned by the State Commission on the important aspect. A clear cut finding is

necessary to determine whether the insurance company is released from its liability under the insurance policy on account of the appellant not possessing such a licence.

- c) For the above said reason, the impugned order dated 19.12.2013 was set aside and the matter returned to the State Commission for passing a fresh order after recording its finding on the question as to whether the complainant possessed the requisite fishing licence in respect of the boat in question on 05.10.2007 or not.

vii) Citation:

Not reported in CPJ and CPR.

3. M/s. Sagar Samrat Pvt. Ltd. Vs. The Oriental Insurance Co. Ltd.

i) Case in Brief:

The Complainant Company had obtained a standard Hull & Machinery policy from the Opposite party in respect of its vessel named MSV Rajlaxmi for the period from 15.05.2001 to 14.05.2002 for a sum of Rs.2.88 crores. The said policy prohibited the insured from plying vessel from 01.06.2001 to 15.08.2001 with leave to ply it 01.06.2001 to 07.06.2001 between specified ports. The Complainant sought permission for the vessel to sail during the monsoon period from 08.06.2001 to 15.08.2001 and additional premium of Rs.98,055/- was deposited towards this request. On 07.06.2001, OP issued a certificate to the complainant certifying inter-alia that MSV Rajlaxmi was covered for plying from Dubai to Porbander between 08.06.2001 to 25.06.2001. The vessel sailed from Dubai on 20.06.2001 with cargo of 1749 drums but unfortunately sank off Pakistan shore due to fire in its engine on 22.06.2001. The OP was informed. Surveyors appointed by the insurance company reported that the cause of the loss was fire in the engine room. They also ruled out mala fide intention of the crew members. The claim was repudiated by the insurance company. Aggrieved of the insurance company's stand, this original complaint has been filed. Complaint allowed.

ii) Order appealed against:

Original Complaint

iii) Parties:

M/s. Sagar Samrat Pvt. Ltd. - Complainant

Vs.

The Oriental Insurance Co. Ltd. - Opposite Party

iv) Case No and Date of Judgement:

Consumer Complaint No.34 of 2007 & Date of Judgement: 21.11.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o) and 21(a) of the Consumer Protection Act, 1986;
Section 29(3) of the Marine Insurance Act.

vi) Issues raised and decided:

- a) The Insurance Company repudiated the claim on the ground that
 - i. the vessel had not reached Porbander on or before 20.06.2001 in terms of the endorsement dated 04.06.2001 made on the policy.
 - ii. It was carrying an inflammable cargo at the time it got sunk.
- b) Held that there was no acknowledgement obtained by the insurance company either with respect to the service of the letter dated 04.06.2001 or with respect to the service of the endorsement on the complainant company. The claim of the insurance company that the letter was delivered by hand was not substantiated.
- c) The certificate dated 07.06.2001 is an admitted document as per which vessels were covered for plying between 08.06.2001 to 25.06.2001. The date of 20.06.2001 mentioned in the letter and endorsement dated 04.06.2001 was contrary to the date of 25.06.2001 mentioned in the certificate dated 07.06.2001. This was yet another suspicious circumstance surrounding the preparation and dispatch of the letter dated 04.06.2001.
- d) Held that the insurance company had permitted the sailing of the vessel between 08.06.2001 and 25.06.2001 without any restrictions such as requiring the vessel to reach Porbander by 20.06.2001 or requiring it not to carry any cargo on its journey to Porbander.

e) Complaint allowed. OP directed to pay Rs.2.88 crores to the complainant along with interest@9% p.a. from the date the claim was repudiated till the date of payment. OP further directed to pay compensation of Rs.50,000/- to the complainant which shall be recovered by the insurance company from the salary of the officers/officials responsible for the preparation of the letter and endorsement dated 04.06.2001.

vii) Citation:

2015(1) CPR 49.

4. M/s. Ruchi Worldwide Ltd. Vs. United India Insurance Co. Ltd.

i) Case in Brief:

The Complainants imported sugar from a Brazilian firm which had insured the same against the risk of loss or damage with Lloyds of London. This insurance did not provide cover in respect of custom duty. The Complainants obtained insurance cover in respect of custom duty from the opposite party/insurance company. It is the case of the respective complainants that on discharge of the goods from the ship, it was noticed that the part of their respective consignments were damaged because of the sugar bags coming in contact with water during ocean transit. On claims being lodged, M/s. Seascan Services (W.B) Pvt. Ltd., Kolkata were deputed on behalf of the foreign insurers for inspection and assessment of loss. According to the surveyor, the damage to the cargo was caused as the bags came in contact with water during transit. The complainants submitted their bill in respect of damage caused to the agents of foreign insurers in India and the said claims were settled by the foreign insurer. The respondent insurer, however, repudiated the claim of the respective complainants for loss of custom duty on the plea that the complainants had practiced fraud on the insurance company and they had obtained the insurance for custom duty cover on 02.02.2000 after coming to know about the loss caused to the consignment somewhere during 31.10.1999 to 03.11.1999. Being aggrieved of repudiation of their respective claims, the complainants preferred the consumer complaints alleging deficiency in service on the part of the opposite party before the National Commission which dismissed the complaint.

ii) Order appealed against:

Original Complaint

iii) Parties:

Original Petition No.44 of 2003:

M/s. Ruchi Worldwide Ltd. - Complainant

Vs.

United India Insurance Co. Ltd. - Opposite Party

Original Petition No.45 of 2003:

M/s. Madhya Pradesh Glychem Industries Ltd. - Complainant

Vs.

United India Insurance Co. Ltd. - Opp. Party

iv) Case No and Date of Judgement:

- i. Original Petition No.44 of 2003,
- ii. Original Petition No.45 of 2003 &
Date of Judgement on 26-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o) and 21(a) of Consumer Protection Act, 1986;
Section 18, 22 of the Customs Act, 1962.

vi) Issues raised and decided:

- a) Opposite Party justified the repudiation on the ground that the insurance contracts themselves were invalid because those were obtained by the complainants by concealing material facts, namely that the sugar bags were already damaged.
- b) The National Commission after perusal of the case observed that damage to the sugar bags due to coming into contact with the water was noticed at the time of unloading of sugar bags from the ship. If this is true, then the complainants could easily have sought abatement of custom duty under section 22 of the Customs Act by bringing the damage caused to the sugar to the notice of the custom authorities. The complaints are silent on this aspect. Final assessment orders if produced would have given the clue whether or not the sugar consignments imported by the

complainants were damaged and if so, whether or not the complainants at the time of final assessment took benefit of abatement of duty.

- c) It was held that complainants had not approached the Commission with clean hands and they had deliberately withheld the best evidence i.e. final custom duty assessment order as envisaged under section 18 (2) of the Customs Act and thereby the Complainants had failed to establish that they actually suffered any custom duty loss. It was therefore held that the insurance company/opposite party cannot be held deficient in service and repudiation of the insurance claims by the respondent was justified. The complaints were, therefore, dismissed.

vii) Citation:

I (2015) CPJ 137; 2014(4) CPR 821.

X) MEDICAL NEGLIGENCE:

1. Sou. Indumati Krishnarao Wankhede Vs. Dr. Ulhas Bendale and another

i) Case in Brief:

The appellant/complainant took her young son, Sanjeev for treatment to opposite party No.1, Dr. Ulhas Bendale, who is a consulting psychiatrist and running his hospital called Yashwant Hospital at Jalgaon (Maharashtra). The said doctor had obtained insurance policy for Rs.10 lakhs from opposite party No.2, Insurance Company for the period from 23.06.1995 to 22.06.1996. The opposite party No.1, Dr. Ulhas Bendale examined the patient on 13.02.1996 and opined that the patient was suffering from schizophrenia. It has been stated in the memo of appeal that opposite party No.1, Dr. Ulhas Bendale, obtained the signatures of the husband of the complainant on a blank form, upon which the written consent was printed later on. On 13.02.1996 itself, the opposite party No.1, Dr. Ulhas Bendale gave treatment of Electro Convulsion Therapy (ECT) and electric shocks were given to the patient without anesthesia. Some other medicines were also given to him. The said treatment of Electro Convulsion Therapy (ECT) was again administered to the patient on 15.02.1996 under general anesthesia,

given by another doctor. The third ECT treatment was given on 19.02.1996 again under general anesthesia. However, the son of the complainant could not survive and died in the early hours of 21.02.1996. The doctor did not advise any post-mortem examination to establish the exact cause of death. The Appellant filed a consumer complaint before the State Commission alleging medical negligence.

Meanwhile, the appellant made a report to the police against opposite party No.1, Dr. Ulhas Bendale under Section 304A and 176 of the Indian Penal Code (IPC) and there was trial in the Court of Chief Judicial Magistrate, Jalgaon, but the doctor was acquitted, vide orders of the Court, dated 16.04.2001. Thereafter, the appellant/complainant filed a criminal revision application no. 347/2001, before the High Court and the same was also dismissed, vide order dated 24.03.2005. The special leave petition, filed before the Hon'ble Supreme Court against the order of the High Court was also dismissed on 07.09.2007.

The present appeal before the National Commission is against the order of the State Commission which dismissed the complaint in October, 2009. Appeal dismissed.

ii) Order appealed against:

From the order dated 30.10.2009 in Consumer Complaint No. 158 of 1997 of the Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Aurangabad.

iii) Parties:

Sou. Indumati Krishnarao Wankhede - Appellant

Vs.

Dr. Ulhas Bendale and another - Respondents

iv) Case No and Date of Judgement:

First Appeal No.3 of 2010 & Date of Judgement : 23-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was pointed out by the National commission from the records that the opposite party No.1, Dr. Ulhas Bendale, performed his duty with reasonable care and caution, which could be expected

from an ordinary skilled person and hence, applying the yardstick enunciated in Jacob Mathew case, the charge of medical negligence against the doctor did not stand proved.

- b) It was also observed that from the facts on record that the appellant/complainant filed criminal proceedings against the said doctor and the matter went right upto the Hon'ble Apex Court, but the complainant lost the battle in the criminal courts at all levels. The charge of medical negligence against doctor had obviously not been proved in any kind of proceedings against the doctor.
- c) In the light of the above circumstances, the present appeal was dismissed and the order of the State Commission was upheld.

vii) Citation:

Not reported in CPJ and CPR.

2. O. P. Tiwari Vs. Director, Nazreth Hospital and another

i) Case in Brief:

It is the case of the Complainant/Petitioner that O.P-2/Respondent.2, a pathologist, had wrongly diagnosed the ulcer in his mouth as cancerous and that the cancer specialist, Dr.B.Paul (OP.3) in OP.1 Hospital, without assessing his case properly, started treating him for cancer. Subsequently on verification in other labs, Petitioner found that the diagnosis was incorrect. Alleging deficiency in service on the part of OPs, the patient filed a complaint before the District Forum which allowed the complaint by holding OP-2 and 3 responsible for negligence and directed OP-2 and OP-3 each to pay Rs.2.5 lacs as compensation to the complainant and Rs.2,000/- towards cost. Aggrieved by the order of the District Forum, the opposite party filed first appeal before the State Commission which allowed the appeal and dismissed the complaint. The complainant has filed this present revision petition against OP 1 and 2 only challenging the order of the State Commission. Revision Petition allowed partly against OP.1/Respondent.1.

ii) Order appealed against:

From order dated 20.08.2009 in First Appeal No.34 of 2007 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

O.P. Tiwari

- Petitioner

Vs.

Director, Nazreth Hospital and another

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3643 of 2009 & Date of Judgement: 24.09.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue was that whether there was any medical negligence in the treatment rendered by the Opposite Parties.
- b) It was pointed out by the National Commission that the patients got themselves admitted in the hospital relying on the hospital to provide them the medical service for which they paid the necessary fee. It is expected from the hospital, to provide such medical service and in case where there is deficiency of service or in cases like this, where the diagnosis was wrong and led to further sufferings and mental agony, the hospital also must be held liable. As, the OP-2 was working in the Nazreth Hospital, (OP-1) under a "Contract of Service," the hospital is vicariously liable for the act of OP-2. Several judgments of Hon'ble Supreme Court like *Dr. Laxman Balakrishnan Joshi Vs. D. Trimbak, Bopu Godbok and Anr.* (AIR 1969 SC 128), *Mittal & Ors Vs. State of Uttar Pradesh and Ors.* (AIR 1989 SC 550), *Indian Medical Association of India Vs. VP Shantha & Ors.* (AIR 1996 SC 550), *Spring Meadows Hospital Vs. Harijot Ahluwalia* (AIR 1998 SC 1801), *Kunal Saha Vs. Dr.Sugumar Mukherji & Ors.* (2006(2) CPR 14 (NC) P.No.62) held that the hospital was vicariously liable on different occasions. Similar view was by this commission in the case *Smt.Rekha Gupta Vs Bombay Hospital Trust & Anr*, 2003(2) CPJ, 160 NC. In the present case, it was held that the only one dose of injection was given by the cancer specialist and there is no proof that the patient suffered physically because of that single dose. However, it was held that the patient deserved compensation for non-economic damages suffered by him including emotional pain,

anguish etc due to professional negligence. Hence, the present revision petition was allowed and the order of State Commission was set aside. The OP-1 hospital was directed to pay total sum of Rs.50,000/- within 90 days to the complainant otherwise it would carry interest @9% per annum till its realization.

vii) Citation:

Not reported in CPJ and CPR.

3. Sree Chitra Tirunal Institute for Medical Sciences and Technology Vs. Smt. Prameela and others

i) Case in Brief:

Late Smt. Chandramathi was diagnosed to be suffering from Rheumatic Heart Disease and Mitral Stenosis. She was taken to the Appellant Hospital for treatment on 30-05-1997. She was advised to undergo a procedure called Balloon Mitral Valvulu Plasty (BMV) which was fixed on 09-07-1997. Later it was postponed to 16-07-1997 and an advance of Rs.70,000/- was taken. It was further postponed to 18-07-1997 since the doctors wanted to perform it during a workshop on BMV which was being held in the Hospital on that day. According to the complainants, there was a complication in the BMV procedure that was done on the second floor and the patient was rushed to the Thoracic Surgery Operation theatre on the third floor for an open heart surgery. The patient did not regain consciousness after the surgery, was in a vegetable stage for the few days and died on 26-07-1997. Alleging negligence and deficiency in service including delay in conducting the heart surgery, a complaint was filed before the State Commission. The State Commission vide impugned order found no deficiency in performing either the BMV procedure or the surgery. However, it held that there was deficiency in service in not obtaining specific consent for conducting the BMV procedure in the workshop. The State Commission directed the Respondent to pay compensation amounting to Rs.3,01,000/- to the complainants. The Complainants as well as the OPs filed separate appeals before the National Commission. The appeals were disposed of by holding that there was no deficiency in the treatment of the patient and the only deficiency was in the consent obtained by them. It was ordered that the OPs would pay a consolidated compensation of

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Rs.1,00,000/- to the complainants along with interest at 12% p.a from the date of the filing of the complaint.

ii) Order appealed against:

First Appeal No.333 of 2008 & 134 of 2009

From the order dated 19-06-2008 in O.P.No.89 of 1999 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

iii) Parties:

First Appeal No.333 of 2008

Sree Chitra Tirunal Institute
for Medical Sciences and Technology - Appellant

Vs.

Smt. Prameela and others - Respondents

First Appeal No.134 of 2009

Smt.Prameela and others - Appellants

Vs.

Sree Chitra Tirunal Institute
for Medical Sciences and Technology - Respondent

iv) Case No and Date of Judgement:

- i. First Appeal No: 333 of 2008
- ii. First Appeal No.134 of 2009 &
Date of Judgement: 25-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- i. The National Commission held that the consent ought to have been taken from her and not from her son-in-law. To that extent, it was held that OPs were clearly deficient in rendering services to her.
- ii. The Commission did not find any evidence of the procedure having been carried negligently or in a casual manner on account of its being witnessed by the doctors who were attending the workshop.

- iii. The Commission rejected the contention that the operation theatre meant for cardiac surgeries was not ready to receive the patient in the event of her developing a complication during BMV procedure.
- iv. The Commission also did not find any evidence to show that the blood supply to the brain of the patient stopped when she was being shifted from the cath lab to the cardio thoracic operation theatre.
- v. The Commission held that there was no deficiency in the treatment of the patient and the only deficiency was in the consent obtained by them. It was ordered that the OPs would pay a consolidated compensation of Rs.1,00,000/- to the complainants along with interest at 12% p.a from the date of the filing of the complaint till the amount is paid to her.

vii) Citation:

IV (2014) CPJ 488; 2014(4) CPR 188.

4. Kanishka (Minor) Vs. Dr. Vibha Dua and another

i) Case in Brief:

Petitioner/Complainant's mother was under treatment of Respondent No.1/OP.No.1 from the inception of pregnancy and a female child, Kanishka (Petitioner) was born on 23-02-2009. The mother and the Petitioner were discharged on the same day after delivery. After a few days, the petitioner seemed to have a problem and did not stop weeping. She was taken to Respondent No.1 who referred her to another specialist. After a series of tests, the Petitioner was finally referred to AIIMS, New Delhi. On 03-06-2009, Petitioner was taken by her parents to Sri. Ganga Ram Hospital, New Delhi where the doctors declared the Petitioner as a patient of Thalassemia Major and advised regular monthly regular transfusion of blood. The doctors at Ganga Ram Hospital and Sun Flag Hospital for blood disorders opined that after the age of two and half or three years the Petitioner should be operated for bone marrow transplant. They further opined that Respondent No.1 was negligent in treating the patient's mother before pregnancy which resulted in the present condition of the Petitioner. Alleging negligence,

a complaint was filed before the District Forum which dismissed the complaint. The Petitioner filed an appeal before the State Commission which was also dismissed. Aggrieved by the order of the State Commission, the present revision petition was filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 14.12.2012 in F. Appeal No.1286 of 2012 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Kanishka (Minor) - Petitioner

Vs.

Dr. Vibha Dua and another - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1005 of 2013 & Date of Judgement: 07.10.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission noted that Thalassemia is a disease of the blood in which a person suffers from anemia as result of destruction of red blood cells (RBCs) and that it is a genetic condition. In this case, nowhere it was mentioned whether it was brought to the notice of Respondent.1 that either parent or any member of the families had the problem of Thalassemia Major or Thalassemia Minor. If it was so, the parents should not only have got themselves tested before marriage and certainly before pregnancy. It was therefore held that no evidence was produced to prove medical negligence on the part of Respondent No.1 and that the order of the fora below did not suffer from infirmity or erroneous exercise of jurisdiction or material irregularity. The Revision petition was accordingly dismissed.

vii) Citation:

I (2015) CPJ 27.

5. Dr. N.J. Karnavat Vs. Patel Ishwarlal Mangalal and others

i) Case in Brief:

The Complainant/Respondent No.1 took his wife (since deceased) to OP.1/Petitioner at his hospital on 08-12-1993 for treatment of fever. OP.1 prescribed some medicines and gave injection. A few days later the patient complained of severe body ache and head ache. The medicines were continued as advised by OP.1. Patient's condition deteriorated further and after three days she developed uterine bleeding. Hysterectomy (removal of uterus) was performed by OP.1 on 11-01-94. Again after nine days, on 20-01-94 Dr.Patni, another surgeon performed operation for intestinal obstruction in the same hospital and resected decayed part of intestine. On 24-01-1994, the Patient was referred to Dr.Rupesh Mehta, OP.2/Respondent.2 who performed another operation on intestine on 26-11-94 at Mehta Hospital, Ahmedabad. It is the complainant's case that OP.2 went abroad from 02-02-1994 to 14-02-1994 handing over the patient to some inexperienced junior doctors as a result of which the patient ultimately died on 16-02-94. Alleging negligence on the part of OPs, Complainant filed complaint before the District Forum seeking a compensation of Rs.5 Lakhs plus other reliefs which was dismissed by the forum. Complainant's first appeal before the State Commission was allowed with a direction to OP.1/Petitioner to pay compensation of Rs.1,75,000/- and Rs.5,000/- as cost to the complainant. Aggrieved by the order of the State Commission, the Petitioner has filed his revision petition. Revision Petition dismissed and punitive cost of Rs.25,000/- was imposed on OP.1.

ii) Order appealed against:

From the order dated 12-03-2012 in F. Appeal No.1468A/2007 of the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

iii) Parties:

Dr. N.J. Karnavat

- Petitioner

Vs.

Patel Ishwarlal Mangalal and others

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2605 of 2012 & Date of Judgement: 07.10.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o) and 21(a) (i) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission held that the Patient was suffering from typhoid since 08.11.93 which was not diagnosed by OP.1 for 20 days and hysterectomy was performed when the patient was still suffering from typhoid. It was further held that the case sheet of the treatment done at Karnavat Hospital by OP.1 or Dr.Patni which was required for deciding issues of medical negligence was not maintained by OP. It was also held that medical negligence was proved against OP.1 and further punitive cost of Rs.25,000/- was imposed on OP.1 to be paid within 90 days. Revision Petition was accordingly dismissed.

vii) Citation:

I (2015) CPJ 161.

6. Mr. Chand Kishore Rajput Vs. M/s. Sood Stone Clinic (Hospital) and another

i) Case in Brief:

The Complainant underwent Lithotripsy (Crushing of the Urinary Stone) performed by OP.2 in OP.1 Clinic on 28.05.1999. On 22.06.1999, he underwent a number of tests which showed the existence of calculus for which he consulted OP.2. A second Lithotripsy was performed on 24.06.1999. It was repeated another three times in July and August, 1999. Complainant went to AIIMS, New Delhi for treatment where he was diagnosed with, "Injury to the soft bulbous urethra and stricture" for which surgery was performed on 07.12.1999. Complainant filed the present complaint before the National Commission against OPs.1 & 2 for deficiency in service and performing lithotripsy negligently which led to soft stricture of bulbous urethra and claimed compensation of Rs.46 lakhs with 18% p.a interest for the expenses incurred and the mental agony suffered by him. Complaint dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Mr. Chand Kishore Rajput - Complainant

Vs.

M/s. Sood Stone Clinic (Hospital) and another - Opp. Parties

iv) Case No and Date of Judgement:

Original Petition No.125 of 2001 & Date of Judgement: 07.10.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o) and 21(a) (i) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission held that the Complainant was irregular in his treatment and did not follow the instructions of OP.2 properly. His conduct appeared to be mala fide in that out of the total charges of Rs.14,000/-, he had paid only Rs.8,000 to the OP Hospital. It was held that OP.2 was a qualified urologist who had acted reasonably and performed lithotripsy after informed consent. It was further held that lithotripsy was not the proximate cause of stricture of bulbous urethra which was diagnosed after five months. The Commission also held that OP.2 succeeded Bolam's test which required that a professional person should show a fair, reasonable and competent degree of skill and was not required to use the highest degree of skill. It was further held that the Complainant failed to prove medical negligence against OPs and accordingly the complaint was dismissed.

vii) Citation:

I (2015) CPJ 101.

7. A. Parameshwar Vs. Asian Institute of Gastroenterology

i) Case in Brief:

The Complainant, a known diabetic and hypertensive, was suffering from Calculus Cholecystitis with Benign Hyperplasia of Prostate (BPH). On 25.11.2006, Surgical Gastroenterologist performed ERCP + Stone Clearance + Stenting. Further on 27-11-2006, two surgeries were performed i.e TURP for BPH and Laparoscopic Cholecystectomy and the

patient was discharged on 03.12.2006. It is the complainant's case that he visited the OP on several occasions thereafter for pain in the abdomen but no steps were taken by OP to remove the stent. The Complainant was under the impression that there was persistent abdominal pain for 4 years and 10 months and pain was relieved after removal of stent by one Dr. Vidya Sagar on 28-09-2011. Alleging negligence and deficiency in service by OP, he filed complaint before the District Forum which allowed the complaint and directed OP to pay compensation of Rs.2 Lakhs with cost of Rs.2000. OP's first appeal to the State Commission was allowed vide impugned order against which this revision petition has been filed by the Complainant. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 12-03-2013 in F. Appeal No.662 of 2012 of the A.P State Consumer Disputes Redressal Commission, Hyderabad.

iii) Parties:

A. Parameshwar - Petitioner

Vs.

Asian Institute of Gastroenterology - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1544 of 2013 & Date of Judgement: 08.10.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was held that the OP/Respondent decided to keep the stent for a longer time considering the health status of the Complainant and that the pain in the abdomen could be due to several reasons other than stent. Hence, he was treated symptomatically by medicines only. After going through the medical literature, the Commission didn't find any medical negligence committed by OP. While coming to this conclusion, the Commission relied upon the case of *Maynard v. West Midlands Regional Health Authority* and *Hunter v. Hanley* 1955 SLT 213.

- b) The Commission also noted that the Hon'ble Supreme Court in *Achutrao Haribhau Khodwa and others v. State of Maharashtra and others*, (1996) 2 SCC 634, had held that negligence cannot be attributed to a doctor so long as he is performing his duties to the best of his ability with due care and caution.
- c) The Revision Petition was accordingly dismissed.

vii) Citation:

I (2015) CPJ 113.

8. Mr. Direndra Rao Jachak Vs. Usha Mullapudi Cardiac Centre and others

i) Case in Brief:

The Complainant, a resident of Chhattisgarh State, had a heart problem. The cardiologist at Nagpur where he underwent Angiography, advised him to undergo replacement of Aortic and Mitral Valve (AVR + MVR). After going through various brochures, the Complainant chose OP.1 hospital for his treatment. On 24-01-2002, surgery was performed by OP.2, 3, 4 with an attending doctor (OP.5). Complainant paid a sum of Rs.1,75,000/-. He was discharged on 11-02-2002. The Complainant on his return to Raipur after discharge from Hyderabad consulted his Cardiologist who after several tests confirmed that there was severe peri-prosthetic leakage and weakening of heart. He was again admitted in OP.1 Hospital on 16-03-2002. Though the doctors advised a re-do surgery, since they were unwilling to do free of cost, the complainant was discharged on 20-03-2002. Thereafter, complainant consulted several cardiologists at different places and was informed that the first surgery was a mess up. Alleging gross medical negligence and deficiency in service on the part of OP, this complaint has been filed. Complaint dismissed with the direction to the OP to do a complete assessment of the patient and perform the re-do surgery free of cost at their centre, if the patient is willing for and his condition is fit for the same.

ii) Order appealed against:

Original Complaint

iii) Parties:

Mr. Direndra Rao Jachak - Complainant

Vs.

Usha Mullapudi Cardiac Centre and others - Opp.Parties

iv) Case No and Date of Judgement:

Original Complaint No.19 of 2004 & Date of Judgement: 08-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o) and 21(a) (i) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was held that the Complainant didn't opt for re-do surgery which was advised to him by OP.5 and other doctors but wasted precious time from 20-03-2002 to 29-09-2003 i.e about one and half year in consulting several doctors.
- b) Relying upon several judgments on medical negligence especially *Bolam V.Friern Hospital Management Committee*, (1957), *Kusum Sharma and others v. Batra Hosptial and Medical Research Centre and others*, (2010) 3 SCC 480, *Smt. Narangiben Subodhchandra Shah & Ors. Vs. Gujarat Research and Medical Institute* (OP.No.171/1997), (2012) III CPJ 509 (NC), *Jacob Mathew's Case* etc., it was held that in the instant case, the OPs/doctors were qualified and competent to perform cardiac surgery, had exercised reasonable competence and skills and gave post-operative care/medical advice. It was further held that the OPs were not liable for any negligent act.
- c) Considering the OPs' offer during arguments to do a re-do surgery at nominal costs, the Commission directed the OP to do complete assessment of the patient and perform the re-do surgery free of cost at their centre if the patient was willing and if his physical condition was fit for the same.

vii) Citation:

IV (2014) CPJ 745.

9. Smt. Rajkumari Vs. Dr. (Smt). R. Singh, Gyn and others

i) Case in Brief:

Complainant/Petitioner underwent ceasarean delivery (LSCS) on 15.06.2001 and a healthy male child was born. She was operated by Respondent No.1, a gynaecologist in association with Dr.S.G.Dandekar, an anaesthetist, Respondent No.2. It is the complainant's case that the consent for LSCS was given under pressure from OP. After the operation, she felt numbness in her right leg and was advised to meet the orthopedic surgeon, who was the husband of Respondent No.1. Since there was no improvement despite the treatment given by him, she was forced to go to other hospitals for proper treatment. Alleging that she suffered disability and numbness in her right leg due to the negligence and wrong treatment by OPs, she filed a complaint in State Commission seeking a compensation of Rs.7 lakhs for physical disability and mental harassment. The complaint was dismissed against which the present appeal has been filed. Appeal dismissed.

ii) Order appealed against:

From the order dated 22.04.2010 in Complaint No.39 of 2003 of the Chattisgarh State Consumer Disputes Redressal Commission, Raipur, Pandri.

iii) Parties:

Smt. Rajkumari - Petitioner

Vs.

Dr. (Smt). R.Singh, Gyn and others - Respondents

iv) Case No and Date of Judgement:

First Appeal No.151 of 2010 & Date of Judgement: 09.10.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(a) (ii) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission held that specific proof of negligence and deficiency in service is a mandatory requirement for initiating any action against the doctor and that complainant did not lead any evidence of any expert opinion to prove her allegation that there was excessive dose of

anesthesia or that the LSCS operation itself caused damage to the nerves leading to numbness and neurological symptoms in the complainant's right leg. After going through extensive medical literature, hospital indoor sheets, other documents and the judgements of the Commission as well the Hon'ble Supreme Court, the Commission concluded that there was no apparent error in the order of the State Commission and dismissed the appeal.

vii) Citation:

IV (2014) CPJ 740.

10. Dr. Kirti B. Nayak Vs. Mrs. Sonalben S. Vyas and another

i) Case in Brief:

Complainant/Respondent No.1 suffered pain during her pregnancy and consulted OP.1/Respondent No.2, Dr. Prakash L. Nayak who referred her to OP.2 / Appellant. OP.2 performed caesarean operation (LSCS) and took out the dead foetus. It is the complainant's case that though the bleeding did not stop, OP.2 proceeded for hysterectomy operation without her and her husband's consent. Alleging medical negligence and deficiency in service, she filed complaint before the State Commission against the OPs. The State Commission partly allowed complaint against OP.2 and dismissed the complaint against OP.1. OP.2 was directed to pay Rs.2,00,000/- towards compensation, Rs.50,000/- towards mental agony and Rs.10,000 as cost. Aggrieved by the order, the appellant has filed the present appeal. Appeal was allowed and the order of the State Commission set aside.

ii) Order appealed against:

From the order dated 31-07-2008 in Complaint No.57 of 1998 of the State Consumer Disputes Redressal Commission, Gujarat, Ahmedabad.

iii) Parties:

Dr. Kirti B. Nayak

- Appellant

Vs.

Mrs. Sonalben S. Vyas and another

- Respondents

iv) Case No and Date of Judgement:

First Appeal No.380 of 2008 & Date of Judgement: 09.10.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(a) (ii) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission perused the consent form and noted that the consent had been taken prior to the caesarean operation. It was held to be an informed and valid consent. It was also held that OP.2 was a qualified and experienced Obstetrician and Gynaecologist and that his clinical decision was correct as per the standard practice during the emergency. He had made all efforts like blood transfusion and medical management to arrest the bleeding which remained unresponsive. It was held that his decision to conduct hysterectomy was not wrong as it was done to save the life of the mother namely the complainant. The Commission relied on the decision of Hon'ble Supreme Court in *Kusum Sharma v. Batra Hospital*, (2010) 3 SCC 480 in which it was held that "medical professionals are entitled to get protection as long as they performed their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals."
- b) Accordingly, the Commission did not find any negligence caused by Appellant/OP.2 and accepted the appeal. The order of the State Commission was set aside and the Complaint was dismissed.

vii) Citation:

IV (2014) CPJ 735.

11. Dr. Joseph George Vs. M.R. Vijayakumar and others

i) Case in Brief:

The complainant sustained injuries on head and shoulder by some attack to kill him and he was admitted in Respondent's Hospital on 16.02.2001 and operated by Respondent No.3/OP.2 (in original complaint). He was discharged on 24.02.2001. Thereafter, he was under follow up treatment at the said hospital. Subsequently, he

experienced weakness and some ill health for which he consulted on O.P.D. basis at the District hospital on 13.09.2001. After the Laboratory test, he was diagnosed as HBsAg (Australia Antigen) +ve. He was admitted in the District Hospital from 13.09.2001 to 19.09.2001 and was under OPD treatment subsequently. He was advised for strict bed rest for six months due to which, he lost his professional income as a tapper. Hence, the complainant alleged that due to use of unsterilized surgical instruments at O.P. hospital, he suffered Hepatitis B Virus (HBsAg) and approached the District Forum which allowed the complaint and awarded compensation of Rs. 2,00,000/-. It was to be recovered from OP-5 i.e. Insurance Company. Aggrieved by the order of the District Forum, the Insurance Company (O.P.5) and Dr. T.A. Abraham (O.P.2 in the original petition) filed the First Appeals before the State Commission. The State Commission dismissed both the appeals and imposed costs of Rs.2,000/- towards appellate proceedings. Hence, aggrieved by the State Commission order, Dr. Joseph George, Managing Director of the Hospital (O.P.5) filed this Revision Petition. Revision petition allowed.

ii) Order appealed against:

From order dated 19.03.2008 in First Appeal No.144 of 2004 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

iii) Parties:

Dr. Joseph George

- Petitioner

Vs.

M.R. Vijayakumar and others

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2721 of 2008 & Date of Judgement: 13-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Held that there was no negligence, fault or deficiency in service caused by OP. It was just an unfortunate occurrence, for which OP could not be held liable. OPs treated him during emergency with all standard precautions. The incubation period of Hepatitis

B virus was 30 to 180 days. There was every possibility that complainant could have contracted the infection prior to visiting the OP hospital. Therefore, the present revision petition was allowed and the order passed by the State Commission was set aside.

- b) Reliance was placed on the medical literature, witness of the Government Doctor, PW.2 and *Supriya Gupta vs. Trustees of Beach Candy Hospital & Research Centre*, IV (2005) CPJ 261 (NC) wherein it was held that “In absence of a thorough medical history and both pre-operative and post-operative investigations and treatments it is impossible to come to any reasonable or probable conclusion why and how the Complainant has contracted Serum Hepatitis-B. Unless the actual source of infection can be located and identify the source of infection by Hepatitis-B virus and the Ops hospital cannot be blamed by theories based on probabilities” for arriving at this decision.
- c) Accordingly, the State Commission’s order was set aside and the revision petition was allowed.

vii) Citation:

Not reported in CPJ and CPR.

12. Sh. Sambhu Nath Das Vs. The Calcutta Medical Research Institute and others

i) Case in Brief:

The Complainant (hereinafter referred as “patient”) was suffering from Calculous Cholecystitis (Gall Bladder Stone) and his surgery was scheduled at 1.30 pm on 17.05.2005, but the OP-2, Dr. Ramesh Agarwal, delayed it, and performed the surgery from 7.30 pm up to 10.30 pm. It is the Complainant’s case that the surgery was negligently performed because there was biliary leak and he suffered a lot due to huge collection of bile. The other allegation of the complainant was that, the OP-2 proceeded abroad (22.5.2005 to 7.6.2005) during post operative period leaving the patient in the hands of inexperienced doctors at OP-1 hospital, who could not manage the complications and hence he was referred to a higher centre where he was again operated and his hospital stay was prolonged. Hence, alleging deficiency in service and

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negligence in treatment, the Complainant filed a complaint before the State Commission against the Calcutta Medical Research Institute, OP-1, Dr. Ramesh Agarwal, OP-2, Dr. Anirban Chatterjee, OP-3 and Mr. Alok Banerjee, OP-4 claiming a compensation of Rs.46 lacs as damages, interest and cost. The State Commission found the OP negligent/deficient in giving treatment to the Complainant and directed to pay Rs.50,000/- to the Complainant along with the cost of Rs.10,000/- by OP-2. Aggrieved by the order of State Commission, the complainant has filed this appeal. Appeal was allowed.

ii) Order appealed against:

Against order dated 31.03.2009 in S. C. No.8/O/2007 of the State Consumer Disputes Redressal Commission, West Bengal, Kolkata.

iii) Parties:

Sh. Sambhu Nath Das - Petitioner

Vs.

The Calcutta Medical Research Institute & Ors. - Respondents

iv) Case No and Date of Judgement:

First Appeal No.211 of 2009 & Date of Judgement: 13-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was observed by the National Commission that OP-2 should have been vigilant during operation of the patient's gall bladder which had dense adhesions. He should have anticipated bile duct injuries and treated the patient with caution. The Commission also observed that knowingly about his absence after operation, he should not have accepted to operate the patient. OP-2 should have managed the patient conservatively or referred to another doctor for surgery itself. He failed in his duty of care. As OP-2 had performed operation at CMRI Hospital (OP.1), the hospital was held vicariously liable though there is no master-servant relationship based on the decision in *Smt. Rekha Gupta Vs Bombay Hospital Trust & Anr*, 2003(2) CPJ, 160, NC. Reliance was also placed on *Dr. Laxman Balkrishna Joshi vs. Dr. Trimbark Babu Godbole*

and Anr., AIR 1969 SC 128 and *A. S. Mittal v. State of U.P.*, AIR 1989 SC 1570 where in it was observed that “ when a doctor is consulted by a patient, the doctor owes to his patient certain duties which are: (a) duty of care in deciding whether to undertake the case, (b) duty of care in deciding what treatment to give, and (c) duty of care in the administration of that treatment. A breach of any of the above duties may give a cause of action for negligence and the patient may on that basis recover damages from his doctor.”

- b) Therefore, first appeal was allowed with modification of the order of the State Commission. It was considered just and proper to enhance the compensation to Rs.10,00,000/- to be paid jointly and severally by OP.1 & OP.2 to the complainant as total compensation, besides Rs.25,000/- towards cost to be paid within 90 days from the date of receipt of the order, otherwise it will carry interest @ 9% per annum till it's realization. For awarding compensation, reliance was placed on the celebrated authority *Kunal Saha's Case* (2014) 1 SCC 384.

vii) Citation:

Not reported in CPJ and CPR.

13. P C Haridasan @ Hari Vs. Lourdes Hospital and others

i) Case in Brief:

The petitioner who had stone in his right kidney was given various options for treatment of the stone and he opted for ESWL (Extracorporeal Shock Wave Lithotripsy), a technique by which electromagnetic waves are passed from outside the body to powder stones in the kidney or ureter. The petitioner got admitted in Respondent hospital on 06.06.2002 and was subjected to ESWL treatment on 07.06.2002. 2500 shock waves were given and the stone appeared to have been partially fragmented. The petitioner was discharged on the same day with medicines and pain killers and asked to report after one month for repeat x-ray and further treatment with ESWL. The petitioner reported to the OPD on 09.07.2002 and he had no symptoms at that time. Since he was not sure whether he had passed the stone fragments, the complainant was asked to take medicines for two more weeks and come for a repeat

x-ray KUB. The petitioner reported on 28.07.2002 to the casualty with pain in the right side of abdomen. He was subjected to one more sitting of ESWL (3000 shock waves) on 30.07.2002 and discharged on 31.07.2002. He was asked to take medicines for one more month and report after that. When he reported on 10-09-2002, another x-ray 'KUB' was taken and he was advised to take medicines for three months. He purchased the medicines and later returned them. Alleging medical negligence on the part of OPs, he filed complaint before the District Forum which directed the opposite parties to refund to the complainant Rs.12,000/- towards treatment expenses and pay him a compensation of Rs.12,000/- and cost of Rs.1,500/- within a period of one month from the date of receipt of the order. Aggrieved by the order of the District Forum, the respondents filed an appeal before the State Commission which allowed the appeal and held that there was no negligence on the part of 2nd opposite party doctor in the treatment imparted to the complainant. Against the decision of the State Commission, the present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the order dated 24.09.2011 in First Appeal No.960 of 2004 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

iii) Parties:

P C Haridasan @ Hari - Petitioner

Vs.

Lourdes Hospital and others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.924 of 2012 & Date of Judgement: 13.10.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The main ground for the revision petition as per the counsel for the petitioner was that the petitioner was not informed that he would require repeated ESWL (Extracorporeal Shock Wave Lithotripsy).

- b) Perusal of the records revealed that that the petitioner had nowhere in his complaint specifically stated as to how the respondents were guilty of deficiency of service except for the fact that the he was not told that he may require second ESWL and that after the first ESWL he felt pain and he further learnt that the stone had not been completely removed from his system. It was also an admitted fact that on the subsequent consultation, the petitioner was only advised medicines as the stone had reached the lower level of ureter and there was no reason to believe it would not be expelled in time.
- c) In the light of the above circumstances, it was held that the petitioner was not able to establish with any cogent evidence that there was any deficiency of service on the part of Respondent No.1 and 2 in the treatment imparted to the Petitioner. Therefore, the present revision was dismissed and the orders of the State Commission were confirmed.

vii) Citation:

IV (2014) CPJ 661.

14. Raghavendra Rao Vs. Dr. Santosh J Karmarkar and another

i) Case in Brief:

Appellant/Complainant had been suffering from urinary incontinence since birth and had been taking treatment in various hospitals. When he approached OP.1/Respondent, he had numbness in the legs below ankles only. OP.1 advised that it was possible to have control over automatic flow of urine by conducting bladder augmentation with appendicular vesicostomy operation. The surgery was performed at OP.2 Hospital (a paediatric hospital) by OP.1/doctor under local anaesthesia given in the spinal cord as well as under general anaesthesia. Only bladder augmentation was done and appendicular vesicostomy was not done. It is the appellant's case that his condition worsened after the surgery and that he had numbness in the region below the knees. The percentage of disability, according to him, increased due to the medical negligence of OPs. He filed a complaint before the State Commission which by impugned order dismissed the consumer complaint after dealing with all issues regarding the alleged incomplete surgery, the

anaesthesia given and carrying out surgery in a paediatric hospital. Aggrieved by the order, the present appeal has been filed. Appeal partly allowed.

ii) Order appealed against:

From the order dated 25-03-2009 in C.C.No.22 of 2005 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

iii) Parties:

Raghavendra Rao - Appellant

Vs.

Dr. Santosh J Karmarkar and another - Respondents

iv) Case No and Date of Judgement:

First Appeal No.181 of 2009 & Date of Judgement: 14-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(a) (ii) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The contention of the appellant that the surgery should not have been performed at the paediatric hospital was rejected because the complainant approached the hospital of his own free will and requisite permission had been obtained from the OP.2 Hospital.
- b) In so far as the surgery part is concerned, the doctor's version that during the course of operation the internal examination of the patient did not permit the carrying out of appendicular vesicostomy for technical reasons was accepted. It was held that in any case if the second part of the surgery was not done, it did not amount to medical negligence.
- c) The charge of medical negligence on the score that anaesthesia was not given properly was held as not proved on the ground that a safe and internationally accepted procedure known as epidural analgesia was given under the direct supervision of a qualified doctor having specialization in anaesthesia.
- d) In this case, it was found from the document dated 06-11-2002 entitled 'informed consent' that all possible implications had been

explained to the complainant and his mother but the said document had not been signed by the Complainant who was an adult major but it was signed by his mother. Relying on the decision of the Hon'ble Supreme Court in *Samira Kohli v. Dr.Prabha Manchanda & Anr*, [(2008) 2 SCC 1], it was held that the consent obtained cannot be treated as 'valid and real' consent. To that extent there was negligence on the part of OP.1/doctor and the Commission decided that OP.1/doctor should pay a sum of Rs.25,000/- to the appellant patient for his failure to obtain 'valid and real' consent.

- e) The present appeal was partly allowed and the order of the State Commission modified to the extent that Respondent No.1 should pay the appellant a sum of Rs.25,000/- within a period of four weeks from the date of the order.

vii) Citation:

IV (2014) CPJ 478; 2014(4) CPR 383.

15. Dr. P.R. Venugopal Vs. T.K. Sheena and others

i) Case in Brief:

The Complainant-1, Smt. T.K.Sheena had undergone Post-Partum Sterilisation (PPS) operation at Central Hospital Tellichery performed by Dr. P.R. Venugopal (OP-1) on 13.01.2002 and she was discharged on 19.01.2002. Thereafter, she became pregnant and hence filed a complaint against the OP-1, doctor and OP.2, a proprietor of the hospital seeking a compensation of Rs.5,00,000/-. The District Forum allowed the complaint and awarded Rs.1,00,000/- towards compensation and Rs.1,000/- as costs of litigation to the Complainant. Against the order of the District Forum, the OP filed the First Appeal before the State Commission. The State Commission dismissed the Appeal. Hence, OP.1 filed this Revision Petition before the National Commission. Revision Petition allowed.

ii) Order appealed against:

From the order dated 17.12.2013 in First Appeal No.679/2012 of State Consumer Disputes Redressal Commission, Kerala, Thiruvananthapuram.

iii) Parties:

Dr. P.R. Venugopal

- Petitioner

Vs.

T.K. Sheena and others

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1582 of 2014 & Date of Judgement: 15-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The National Commission pointed out that in the case on hand, Dr. Venugopal, was a qualified Gynaecologist. The National Commission did not find any negligence committed by him in conducting the tubectomy operation. He had explained about the fact of non-identification of right fallopian tube, and asked for follow-up by hysterosalpingogram(HSG). The patient did not turn up for further investigations as advised by OP-2. The surgery was performed by a technique known and recognized by medical science. Therefore, failure, due to natural causes would not provide any ground for claim. It was for the woman who conceived the child to decide whether, to go for medical termination of pregnancy or not. Once, the woman missed the menstrual cycle, it was expected of the couple to visit the doctor and seek medical advice. A reference to the provisions of the Medical Termination of Pregnancy Act, 1971 is apposite. Therefore, it was held that there was no negligence on the part of doctor and the State. The Revision petition was therefore allowed and complaint was dismissed by relying on *State of Punjab Vs. Shiva Ram and Ors* (2005)7SCC. The orders of both the fora below were set aside.

vii) Citation:

IV (2014) CPJ 706; 2014(4) CPR 585.

16. Dr. R.K. Sharma Vs. Smt. Murttiya Devi

i) Case in Brief:

In this case, the complainant alleged that the opposite party/doctor did not diagnose the patient, who was her husband, properly and continued the medicines of anti-tuberculosis for 8 months without conducting proper tests. By the time it was diagnosed, as a case of 'Sarcoidosis' it was in an advanced stage and the patient died on 30-11-2004. Therefore, she filed a complaint before the District Forum alleging deficiency in service and medical negligence. The District Forum allowed the complaint and ordered the opposite party to pay a sum of Rs.1,00,000/- as compensation and Rs.1,000/- towards costs. Aggrieved by the order of the District Forum, both the parties filed cross appeals before the State Commission which were dismissed. Hence, both the parties approached the National Commission by filing two separate revision petitions. Revision Petition No.1262 of 2009 has been filed by Dr. R. K. Sharma challenging the medical negligence and the Revision Petition No.3205 of 2009 has been filed by the complainant for enhancement of compensation. Revision Petition No.1262 of 2009 was allowed and the Revision Petition 3205 of 2009 was dismissed.

ii) Order appealed against:

Revision Petition No.1262 of 2009

From order dated 6.3.2009 in First Appeal No.3 of 2007 of the Uttarakhand State Consumer Disputes Redressal Commission, Dehradun.

Revision Petition No.3205 of 2009

From order dated 06.03.2009 in First Appeal No.4 of 2007 of the Uttarakhand State Consumer Disputes Redressal Commission, Dehradun.

iii) Parties:

Revision Petition No.1262 of 2009

Dr. R.K. Sharma

- Petitioner

Vs.

Smt. Murttiya Devi

- Respondent

Deficiency in Service - Medical Negligence

Revision Petition No.3205 of 2009

Smt. Murttiya Devi

- Petitioner

Vs.

Dr. R.K. Sharma

- Respondent

iv) Case No and Date of Judgement:

- i. Revision Petition No.1262 of 2009
- ii. Revision Petition No.3205 of 2009 &
Date of Judgement: 15-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that there was no negligence caused by OP in diagnosis and treatment of the patient. OP treated the patient with proper care and caution. It was pointed out that the medical texts also supports that, distinguishing sarcoidosis from pulmonary tuberculosis can sometimes be a great challenge to physicians. The OP advised the patient for further reference to the higher centre, when his treatment did not show satisfactory response. The cause of death of patient was due to interstitial fibrosis and respiratory failure. It may be possible progression of either PTB or Sarcoidosis. Therefore, on the basis of the medical literature and reference to the decisions of Apex court in *Achutrao Haribhau Khodwa and Ors. vs. State of Maharashtra and Ors.*, (1996) 2 SCC 634, *Kusum Sharma* (MANU/SC/0098/2010) & *Martin F. D'souza vs. Mohd. Ishfaq*, (2009) 3 SCC1, it was held that there was no medical negligence committed by OP. Accordingly, the Revision Petition No.1262 of 2009 was allowed and the Revision Petition No.3205 of 2009 was dismissed.

vii) Citation:

IV (2014) CPJ 710.

17. Dr. Harbans Singh and another Vs. Devi Lal Parikh

i) Case in Brief:

Complainant/Respondent was suffering from Hemophilia, a genetic bleeding disease in which due to deficiency of any blood component, blood fails to clot and results in extra bleeding and swelling of joints. Any surgery on those patients should be performed after examining factor VIII level in the blood. It is the complainant's case that the petitioners, when approached by him for treatment of piles, operated on him in the absence of necessary facility and without examining the factor VIII level. Continuous bleeding of piles was due to this operation which stopped only after prolonged treatment. The respondent faced severe mental agony due to daily bleeding and spent a lot of money. Alleging medical negligence and unfair trade practice, he filed complaint before the District Forum which was dismissed. Aggrieved by the order of the District Forum, the respondent filed an appeal before the State Commission which set aside the order of the District Forum against which this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 26.10.2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur in Appeal No.287 of 2006.

iii) Parties:

Dr. Harbans Singh and another - Petitioners

Vs.

Devi Lal Parikh - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.268 of 2013 & Date of Judgement: 29-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that there was nothing on record to show that Petitioner No.1 and 2 were deficient or negligent in the treatment protocol given to the respondent or that the 'act and conduct of the respondents amounted to gross negligence in treatment which resulted in incessant bleeding

even after surgery'. The Cryosurgery was undertaken to cure the haemorrhoids causing the bleeding from the rectum for the last eight years. However, the respondent was a haemophilic from birth and cryosurgery cannot cure this genetic disorder for all time. Hence, the present revision petition was allowed and the impugned order of the State Commission was set aside and the order of the District Forum was confirmed.

vii) Citation:

IV (2014) CPJ 685; 2014(4) CPR 525.

18. Mrs. Shaminder Kaur and others Vs. Batra Hospital Medical Research Centre and others

i) Case in Brief:

Mr. Tejinder Singh, husband of Complainant. No .1 and father of Complainants. 2- 4 who suffered a heart attack on 03-10-2000 was treated initially at Amar Hospital, Patiala and was later admitted in OP.1 Hospital on reference. He was operated on 16-10-2000. While he was still in ICU, he fell in the bathroom at 11.30 P.M on 21-10-2000 and died the next day. The OP certified the cause of the death as 'shock due to Gastro intestinal hemorrhage (GI) and Cardiac failure'. Alleging medical negligence and deficiency in service by the Hospital, this original complaint has been filed praying for total compensation of Rs.41,80,000/- from the OPs. Complaint was dismissed against OP.2 & 3 and partly allowed against OP.1.

ii) Order appealed against:

Original Petition

iii) Parties:

Mrs. Shaminder Kaur and others - Complainants

Vs.

Batra Hospital Medical Research Centre & Ors. - Opp. Parties

New India Assurance Co Ltd & Ors. - Impleaded Parties

iv) Case No and Date of Judgement:

Original Petition No.121 of 2002 & Judgement on 03-11-2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) The issues considered were: (1) whether there was any negligence by the OP.2 and 3 doctors in diagnosis and during the treatment of the patient and (2) whether the OP.1 hospital was deficient in its services during treatment. Placing reliance on medical literature and the judgements of the Hon'ble Supreme Court in *C.P.SreeKumar(Dr.) v. S.Ramanujam*, (2009) 7 SCC 130 and *Kusum Sharma v. Batra Hospital*, it was held that the medical negligence against the doctors OPs.2 & 3 was not proved. However, it was held that the deficiency in service on the part of the hospital was proved to a limited extent since there was no one, staff or attendant, in the ICU when the patient went to the bathroom late in the night on 21-10-2000 and the patient was unattended. The hospital OP.1 was held liable for deficiency in service due to laxity of ICU staff.
- b) Accordingly, the complaint filed against OP.2 & 3 was dismissed and the complaint against OP.1 was partly allowed. OP.1 was directed to pay the total sum of Rs.2,00,000/- to the complainant within 90 days.

vii) Citation:

I (2015) CPJ 428.

19. Dr. Rajni Kumari Vs. Amar Kant Sharan

i) Case in Brief:

The complainant took his wife for delivery of third pregnancy to the OP. In the course of treatment, complainant's wife died. Alleging deficiency in service and medical negligence, the complainant filed a complaint before the District Forum. The Forum allowed the complaint and awarded Rs.5,00,000/- as a compensation Rs.50,000/- for maintenance of children and Rs.15,000/- for litigation costs. Aggrieved by the order of District Forum, the OP preferred the first appeal before the State Commission, which was dismissed with the modification that the

direction to pay a sum of Rs.50,000/- on account of maintenance of children was disallowed. Aggrieved by the order of the State Commission, the OP filed this Revision Petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 09.07.2014 in Appeal No.247/2009 of the Bihar State Consumer Disputes Redressal Commission, Patna

iii) Parties:

Dr. Rajni Kumari - Petitioner

Vs.

Amar Kant Sharan - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3744 of 2014 with IA /7051/2014, IA/7052/2014 (For stay, condonation of delay) & Date of Judgement: 03-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held, that on the basis of entire facts, the improper and unbelievable medical records and the available evidence on file, the OP was negligent on several counts. During post-delivery (LSCS), the patient suffered asthmatic attack, which was also not properly diagnosed and managed by the OP. It was further held that the OPs failed to perform specific investigations to substantiate their diagnosis of asthma. It was also held unacceptable that during very crucial stage, the OP advised the shifting of patient to the higher centre. Therefore, the orders of the fora below were upheld and the present revision petition was dismissed.

vii) Citation:

2014(4) CPR 764.

20. Dr. Anil Jain Vs. Ramesh Kumar and others

i) Case in Brief:

Pooja, minor daughter aged 1½ year of the Complainant was got admitted in the hospital of OP No.1 & 2-Petitioner on 31.1.2008 due to

vomiting and diarrhoea. It was alleged that on 2.2.2008 OP No.2 operated Pooja and discharged her on 6.2.2008. It was further alleged that during operation, OP No.1 injected left hand of Pooja negligently which caused infection to her left hand and three fingers of left hand were totally infected. Alleging deficiency on the part of OPs, Complainant filed complaint before District Forum which directed OP No.1 to pay Rs.4,00,000/- compensation and OP NO.1 & 3 to pay Rs.5,00,000/- jointly and severally and dismissed complaint against OP No.2. OP No.1 & 3 filed appeal before State Commission and State commission dismissed both the appeals against which, this revision petition has been filed. Petition allowed and case remanded to the State Commission for fresh hearing.

ii) Order appealed against:

From the order dated 01.06.2012 in Appeal No. 1632/2010 & 861/2011 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Dr. Anil Jain - Petitioner/Opp. Party (OP)

Vs.

Ramesh Kumar and others - Respondents/ Complainants

iv) Case No and Date of Judgement:

Revision Petition No.2649 of 2012 & Date of Judgement: 07-11-2014.

v) Acts and Sections referred:

Section 2 (1) (g),(o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that that left hand of the child was not operated at all but on account of IV fluid there was swelling in the left hand and complications arose in the fingers of left hand. Complainant's child was admitted due to vomiting and diarrhoea and she was operated only for Intestinal Obstruction, but the State Commission wrongly dismissed appeal observing that there was negligence in conducting operation of left hand of the child which was apparently patent mistake on the part of State Commission. In such circumstances, revision petition was allowed and the order passed by the State Commission was set aside and

matter remanded back to State Commission to decide it afresh after going through the record and after giving opportunity of being heard to the parties.

vii) Citation:

I (2015) CPJ 118; 2014(4) CPR 678.

21. Consumer Education and Research Society & Ors. Vs. Dr. K.M.Shah & Ors.

i) Case in Brief:

This complaint was filed by the Consumer Education and Research Society, Ahmedabad Complainant-1 and Complainant-2 (represented by his legal heirs after his death) against the Surgeon OP-1 and OP-2, for alleged medical negligence in treating the patient, Complainant – 2 negligently which resulted in the pathetic and vegetative condition of the patient throughout his life. Complaint dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Consumer Education and Research Society & Ors. - Complainants

Vs.

Dr. K. M. Shah and another

- Opp. Parties

iv) Case No and Date of Judgement:

Consumer complaint No.16 of 2006 & Date of Judgement: 11-11-2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

Held that complainant failed to prove negligence on the part of OPs because they took utmost care after cardiac arrest for revival of the patient and after revival, with the consent of relatives of patient, the patient was immediately shifted to another Hospital for cardio-

respiratory support and management. Furthermore, the principle of '*res ipsa loquitur*' has no applicability to the facts of the present case, because the developments were not within the absolute control of the OP doctors. The patient was obese and had a huge abscess on the left side of neck since long time, which could not be said to be within the control of the OP. It was apparent that, patient and his relatives, delayed to take the treatment, they took the Ludwig's Angina after tooth extraction casually and carelessly. Therefore, there was no medical negligence on the part of the OPs. The Commission came to this finding based on the landmark decisions in *Jacob Mathew Case*, *Bolam v. Friern Hospital Management Committee*, *Martin F De Souza Case* and *C.P.SreeKumar (Dr.) v. S.Ramanujam* (2009) 7 SCC 130. The present complaint was accordingly dismissed.

vii) Citation:

I (2015) CPJ 435.

22. Grewal Hospital and another Vs. Shersingh

i) Case in Brief:

Respondent filed a complaint before the District Forum against the Petitioners alleging that due to the negligence on the part of the Petitioners, his son could not reach Apollo Hospital in time and therefore lost his life. District Forum held that there was no negligence on the part of the petitioners and they had acted as was required to be done in the given situation. Complainant filed an appeal before the State Commission which allowed the complaint with a direction to the Petitioners to pay to the Respondent a lump sum compensation in the sum of Rs.3,00,000/-, within one month of the receipt of the copy of order, failing which, the Petitioners have been directed to pay interest @ 9% p.a. from the date of the filing of the complaint till realization. Against the decision of the State Commission, this revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the Order dated 19.12.2012 in First Appeal No. 541/2012 of Punjab State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Grewal Hospital and another - Petitioners

Vs.

Shersingh - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.946 of 2013 & Date of Judgement: 11-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue involved in the present case was whether there was any medical negligence on the part of the petitioners. In this connection, the National Commission examined the liability of physicians in case of medical negligence with the help of some landmark judgements viz. *Bolam Vs. Friern Hospital Management Committee*, (1957), 1 WLR, 582 (the Bolam's test), *Jacob Mathew Vs. State of Punjab & Anr.* (2005) 6 SCC 1, *Indian Medical Association Vs. V.P. Shantha and Ors.*, (1995) 6 SCC 651 and *Kusum Sharma & Ors. Vs. Batra Hospital and Medical Research Centre & Ors.* (2010) 3 SCC 480. The key questions to be answered are: (i) whether the doctor in question possessed the medical skills expected of an ordinary skilled practitioner in the field at that point of time; and (ii) whether the doctor adopted the practice (of clinical observation diagnosis – including diagnostic tests and treatment) in the case that is accepted as proper by a responsible body of professional practitioners in the field.
- b) Held that no medical negligence had been established against the Petitioners in the emergent treatment of the deceased for Acute Anterior Wall Myocardial Infarction (AMI) but medical negligence and deficiency in service stood proved against them for their failure to transfer the deceased to the Cardiac Care Center with the required alacrity. Therefore, there was serious lapse on the part of the Petitioners, amounting to medical negligence and deficiency in service on their part. Therefore, the orders of the fora below were upheld and the present revision petition was dismissed.

vii) Citation: IV (2014) CPJ 766; 2014(4) CPR 646.

23. Smt. Mithlesh Vs. Medical Officer, Primary Health Centre and another

i) Case in Brief:

Petitioner/Complainant, who had four children, underwent family planning operation on 12.12.2003 at Primary Health Center. The said operation was performed by the respondents with the help of another doctor. Petitioner claims that operation fee of Rs.65/- was charged and Rs.350/- granted to her by UP Government was received by them with her consent. Sometime after the operation, the petitioner experienced symptoms of pregnancy once again. As a result, she suffered great mental agony and fell ill, because of which, she had to spend Rs.15,000/- for her treatment and protection of her pregnancy. The petitioner claimed that she had to spend Rs.30,000/- for her delivery and incur other medical expenditure. Further, she would have to spend lakhs of rupees for the rearing and maintenance of her child. Hence, she filed a complaint before the District Forum which allowed the complaint and directed Primary Health Center to pay Rs.1 lakh as compensation and Rs.5000/- for mental agony and Rs.2000/- as cost of litigation to the appellant. Aggrieved by the order of the District Forum, the OPs 1 and 3 filed an appeal before the State Commission which set aside the order of the District Forum against which the present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 10.09.2014 of the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow in Appeal no. 2278 of 2011.

iii) Parties:

Smt. Mithlesh - Petitioner

Vs.

Medical Officer, Primary Health Centre & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No. 3997 of 2014 & Date of Judgement: 14-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21 (b) of the Consumer Protection Act, 1986 & Section 3 of the Medical Termination of Pregnancy Act, 1961.

vi) Issues raised and decided:

- a) The issue was whether there was any medical negligence on the part of the surgeon who did the tubectomy operation
- b) The Commission upheld the Respondent's contention that the petitioner gave birth to the child 35 weeks and 5 days after the operation, while the normal period for the birth of a child is 37 weeks to 42 weeks. From the same it was clear that the petitioner had conceived the child prior to the operation.
- c) Held that the petitioner has not given any evidence to show that she has paid Rs.65/- for the operation and that the grant of Rs.150/- given by the Government was retained by the respondents.
- d) Held that the petitioner has failed to show why on coming to know of her pregnancy, she did not opt for MTP. In *Dr. P.R.Venugopal Vs. T.K Sheena & ors. (R.P.No.1582/2014 decided on 15th October,2014)* the National Commission observed that "having gathered the knowledge of conception, in spite of having undergone sterilization if the couple opts for bearing the child, it ceases to be an unwanted child".
- e) Held that the petitioner failed to prove any deliberate negligence on the part of the doctor while conducting the operation and therefore the orders of the fora below are upheld by relying on the SC Judgement of (2005) 7 SCC – *State of Punjab v. Shiv Ram*. Revision petition was dismissed.

vii) Citation:

I (2015) CPJ 15; 2014(4) CPR 601.

24. Sajjan Kumar Chaudhary & Others Vs. Indraprastha Apollo Hospitals & Others

i) Case in Brief:

The Complainant and his two daughters have filed this complaint against the OPs for alleged medical negligence in causing the death of the wife of Complainant No.1 after Renal Transplant (RT). It is their case that the patient was undergoing regular dialysis and hence it was neither an emergency nor complainant had pressed for early RT. They

alleged that OPs performed RT in a hurried manner with a purely commercial objective and that the doctors used excessive doses of anaesthetic agents and steroids. Held that medical negligence was not proved. Complaint dismissed.

ii) Order appealed against:

Original Petition

iii) Parties:

Sajjan Kumar Chaudhary & Others - Complainants

Vs.

Indraprastha Apollo Hospitals & Others - Opp. Parties

iv) Case No and Date of Judgement:

Original Petition No.166 of 2001 & Date of Judgement: 18-11-2014.

v) Acts and Sections referred:

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

vi) Issues raised and decided:

- a) Held that the complainant signed the consent form with his open eyes and cannot take frivolous ground that he signed some blank papers.
- b) Renal Transplant is a major planned surgery that needs proper planning, counselling, donor selection and a number of investigations. Complainant's submissions with regard to these were found bereft of merit.
- c) Transplantation is a complex process. The functioning of the kidney after RT is dependent on several factors including immunological incompatibility of the donor kidney. The Commission disagreed that there was negligence by OP doctors while performing Renal Transplant and Post Transplant biopsies.
- d) Hon'ble Supreme Court in *Kusum Sharma Vs. Batra Hospital* had observed that "Courts have to be extremely careful to ensure that unnecessarily professionals are not harassed and (or else) they will not be able to carry out their professional duties without fear". It was observed in *C.P.Sreekumar (Dr.) Vs. S.Ramanujam (2009) 7 SCC 130* that "The onus to prove medical negligence lies largely

on the claimant and that this onus can be discharged by leading cogent evidence". A mere averment in a complaint which is denied by the other side can, by no stretch of imagination be said to be proved. It is the obligation of the complainant "to provide the *facta probanda* as well as the *facta probantia*".

- e) Held that the doctors who performed the transplant surgery were well qualified having vast professional experience in their speciality and that even the hospital infrastructure did not show any deficiency. Therefore the complainant was dismissed.

vii) Citation:

Not reported in CPJ and CPR.

25. Dr. Dilip C. Shah Vs. Subhashchandra and another

i) Case in Brief:

Respondent/Complainant approached the Petitioner/OP Doctor with complaint of problem in his left eye. OP advised him surgery for cataract in the said eye. The surgery was performed by the OP Doctor in his hospital. The complainant has alleged that he lost vision in his left eye because of wrong procedure done by the OP Doctor due to which he suffered retinal detachment in his left eye. He got another surgery done at a hospital in Mumbai and then at Dahod, but despite these two surgeries, his vision could not be restored. So he filed complaint before the District Forum which dismissed the complaint saying that the complainant had not produced any evidence to prove that his eye-sight was lost due to negligence on the part of the OP Doctor. The retinal detachment had occurred after about 1½ months of the surgery for cataract. An appeal was filed by the complainant before the State Commission, which allowed the same on the ground that retinal detachment could not have occurred due to sneezing etc. The State Commission directed the petitioner Doctor to pay Rs.4 lakh as damages and Rs.1,000/- as litigation cost. Hence, this revision petition. Revision Petition allowed.

ii) Order appealed against:

From the order dated 20.03.2014 in FA No.99/2011 of Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench at Udaipur.

iii) Parties:

Dr. Dilip C. Shah

- Petitioner

Vs.

Subhashchandra and another

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2385 of 2014 & Date of Judgement: 26-11-2014.

v) Acts and Sections referred:.

Sections 2(1) (g) & (o), 19 and 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue was whether any negligence was shown by the OP Doctor in performing cataract surgery upon the left eye of the complainant which resulted in subsequent retinal detachment after a period of about 1½ months.
- b) Held that the charge of medical negligence against the OP Doctor is not proved and hence, the State Commission took an erroneous view that the OP Doctor should be made to pay compensation of Rs.4 lakh for damages and Rs.11,000/- as cost of litigation. However, it was clear from the record that the OP Doctor had not taken the consent of the complainant before performing surgery for which he is liable to pay compensation to the complainant. The order passed by the State Commission was, therefore, modified to the extent that the petitioner/OP Doctor shall pay a sum of Rs.50,000/- to the complainant for his failure to obtain valid consent before performing surgery upon the left eye of the complainant. The payment was to be made within a period of 4 weeks from the date of the order failing which the OP Doctor shall be liable to pay interest @ 12% p.a. on the said amount.
- c) The Commission relied upon the decisions *Achutrao Haribhau Khodwa and others Vs. State of Maharashtra and others* [(1996) 2 SCC 634] , *Jacob Mathew Vs. State of Punjab* [(2005) 6 SCC (1)]. and *Samira Kohli vs. Dr Prabha Manchanda & Anr* ((2008) 2 SCC1)

vii) Citation:

2014(4) CPR 817.

26. The Chief Medical Officer Escorts Heart Institute & Research Centre and Anr. Vs. Mr. Ramesh Chand Sharma

i) Case in Brief:

The Respondent/Complainant's allegation is that the doctor gave him wrong treatment intentionally in order to extract money. Based on the complaint, the District Forum directed the OPs to refund the Complainant, an amount of Rs.2,82,265/-, paid as entire cost of operation, along with Rs.1,00,000/- for mental agony and Rs.3,000/- as costs of litigation. Against the order of District Forum, the OPs filed a first appeal before State Commission, which was partly allowed by awarding lump sum compensation of Rs.2,50,000/-. Aggrieved by the order of State Commission the OPs filed this revision petition. Petition allowed.

ii) Order appealed against:

Against order dated 01.07.2008 in First Appeal No.797/2005 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

The Chief Medical Officer Escorts
Heart Institute & Research Centre and Anr. - Petitioner(s)

Vs.

Mr. Ramesh Chand Sharma - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3602 of 2008 & Date of Judgment: 02-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue in this case was whether any deviation of standard of practice was adopted by the doctor.
- b) Held that the patient cannot claim his right for free treatment/surgery on the basis of allegations of medical negligence. It is a known fact that with the best skills in the world, things sometime go wrong in medical treatment or surgical operation. A doctor need not be held negligent simply because something went wrong. The Hon'ble Apex Court, as well as the National Commission in a catena of decisions have held that, the doctor is not liable for

negligence because someone else of better skill or knowledge would have prescribed a different treatment or operated in a different way. He is not guilty of negligence if he has acted in accordance with the practice accepted as proper by a reasonable body of medical professionals. In the case of *Dr. Laxman Balkrishna vs. Dr. Trimbak*, AIR 1969 SC 128, Hon'ble Supreme Court has held the above view. In the case of *Indian Medical Association vs. V. P. Shantha* (1995) 6 SCC 651, the Hon'ble Supreme Court has decided that the skill of a medical practitioner differs from doctor to doctor and it is incumbent upon the Complainant to prove that a doctor was negligent in the line of treatment that resulted in the life of the patient.

- c) Revision Petition allowed, Orders passed by the fora below were set aside. Complaint dismissed.

vii) Citation:

Not reported in CPJ and CPR.

27. Dalbir Singh Vs. Lala Harbhagwan Memorial & Dr. Prem Hospital Pvt. Ltd and Anr.

i) Case in Brief:

The case of the Complainant was that Complainant's father was hale and hearty, and died due to negligence of OP-1. Also the OP was not a qualified urologist, not having necessary machine or equipment. Hence, the complainant filed a complaint before the State Commission which allowed the complaint and ordered the OPs to pay Rs.3 lakhs as compensation and Rs.20,000/- as litigation expenses. Aggrieved by the order of State Commission, both the parties filed cross appeals before the National Commission. First appeal No.200 of 2010, filed by the complainant for enhancement of compensation was dismissed while FA No.223 of 2010, filed by OP-1 for quashing of the order passed by the State Commission was allowed.

ii) Order appealed against:

From order dated 08.06.2010 in Complaint Case No.56 of 1996 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

First Appeal No. 200 of 2010

Dalbir Singh - Appellant

Vs.

Lala Harbhagwan Memorial &
Dr. Prem Hospital Pvt. Ltd and Anr. - Respondents

First Appeal No. 223 of 2010

Lala Harbhagwan Memorial &
Dr. Prem Hospital Pvt. Ltd. & Anr. - Appellants

Vs.

Dalbir Singh - Respondent

iv) Case No and Date of Judgement:

First Appeal No.200 of 2010 & First Appeal No.223 of 2010 & Date of Judgement: 02-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue raised in this case was that doctor was not a qualified urologist, who performed the surgery without any experience and expertise and is a general surgeon.
- b) Held that OP-1 (doctor) was not negligent while performing operation and during treatment of post-operative complications. He acted with due care and caution, as per reasonable standards of medical practice. Not possessing Urology qualification alone would not constitute negligence. The decision of *Bolam v. Frien Hospital Management Committee* (1957) 1 WLR 582 is relevant. Hon'ble Supreme Court in *Kusum Sharma v. Batra Hospital* has warned that "Courts have not be extremely careful to ensure that unnecessarily, professionals are not harassed and (or else) they will not be able to carry out their professional duties without fear".

vii) Citation:

Not reported in CPJ and CPR.

28. Col. Shrawan Kumar Jaipuriyar (Retd.) Vs. Commandant, Base Hospital, Delhi Cantt & Anr.

i) Case in Brief:

Complainant brought his wife, a cancer patient and diabetic to Delhi on 12.10.2010 for emergency treatment. His grouse was that while OP2 denied admission despite her critical condition, OP1 admitted her but performed certain procedures without her consent. She developed infection and paraplegia i.e., could not move her lower limbs and became senseless. She was later treated in All India Institute of Medical Sciences (AIIMS) and other hospitals. Complainant's allegation is that OP1 and AIIMS made a wrong and negligent diagnosis that the patient had extension of cancer in her spine and as a result of the wrong treatment, she died with severe agony. He filed a complaint before the National Commission seeking a compensation of Rs.3 Crores. Held that there was no negligence in diagnosis and treatment of the patient. Complaint dismissed.

ii) Order appealed against:

Original Complaint.

iii) Parties:

Col. Shrawan Kumar Jaipuriyar (Retd.) - Complainant

Vs.

Commandant, Base Hospital, Delhi Cantt & Anr. - Opposite Parties

iv) Case No and Date of Judgement:

Consumer Complaint No.274 of 2012 & Date of Judgement: 04.12.2014.

v) Acts and Sections referred:

Sections 2(1)(g) & (o) and 21(a)(i) of The Consumer Protection Act,1986.

vi) Issues raised and decided:

- a) The main issues raised by the complainant were,
 - i. the OP failed to take informed consent
 - ii. the paraplegia was due to infection caused by negligence of OP doctors performing the Lumbar Puncture(LP), and
 - iii. the patient was wrongly diagnosed and advised treatment for cancer metastasis.

- b) The argument of the OP that though there was no written consent, the patient who was herself a doctor, was orally explained and informed about the decision to perform LP, was accepted as constituting oral consent. In *Samira Kohli's case AIR 2008 SC1385*, Hon'ble Supreme Court had referred to two different schools of thought viz., the "real consent" followed in UK and the "informed consent" followed in America and had preferred "real consent" in Indian context.
- c) Held that doctors at OP1 and OP2 had performed their duty reasonably during the diagnosis and treatment of the patient. The paraplegia of the patient cannot be attributed to Lumbar Puncture and there can be many other causes of paraplegia in a debilitated patient.
- d) Considering entirety of facts and relying upon several judgements of Hon'ble Apex Court like *Dr.Laxman Balakrishna Joshi Vs. Dr.Trimbak Babu Godbole* (1996) 1 SCR 206 and *Achutrao Haribahau Khodwa and Ors. Vs. State of Maharashtra and Ors.* MANU/SC/0600/1996, it was held that there was no negligence in diagnosis and treatment.
- e) Complaint dismissed.

vii) Citation:

Not reported in CPJ and CPR.

29. Dr. Stepheena and another Vs. Lilly Joseph

i) Case in Brief:

The Complainant, a Laboratory Technician, underwent abdominal hysterectomy, which was performed by O.P-1 at O.P-2 Hospital. During operation, she suffered injury to the bladder which was noticed on 10th post-operative day. She remained in the hospital for 25 days for further treatment, and thereafter, underwent 2 major operations at Malabar Hospital, Kozhikode on 24.05.2003 and on 09.08.2003 but no avail. She took treatment at Kasturba Hospital at Manipal, Karnataka, where she was operated again and was discharged. The complainant alleged that due to medical negligence on the part of O.Ps, she was subjected for long treatment, she lost her profession and suffered mental agony. She

filed a complaint before the District Consumer Disputes Redressal Forum which allowed the Complaint and directed the O.Ps to pay a sum of Rs.5,60,000/- as compensation, together with costs of Rs.5,000/- Aggrieved by that order, the Petitioner filed two separate First Appeal Nos.289/2008 and No.340/2008 before the State Consumer Disputes Redressal Commission to set aside the order passed by the District Forum and the Complainant preferred First Appeal No.FA/380/2008 for enhancement of compensation. The State Commission passed a common order and confirmed the negligence of O.P/Petitioner. It modified the order of District Forum, and directed the OPs to pay Rs.3,69,000/- with interest @ 12% per annum and the liability of compensation on the first Petitioner was quantified at Rs.1,00,000/. Aggrieved by the order of State Commission, the parties filed these two revision petitions. Both the Petitions dismissed on merits. R.P.2568 was also dismissed on the ground of inordinate delay.

ii) Order appealed against:

R.P.No.3257-3259 of 2010

From order dated 03.06.2010 in First Appeal No.189, 340 and 380 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

R.P.No.2568 of 2012

From order dated 03.06.2010 in First Appeal No.189, 340 and 380 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram.

iii) Parties:

R.P.No.3257-3258 of 2010

Dr. Stepheena and another - Petitioner(s)

Vs.

Lilly Joseph - Respondent

R.P.No.2568 of 2012

Lilly Joseph - Petitioner(s)

Vs.

Dr. Stepheena and another - Respondent

iv) Case No and Date of Judgement:

- a) Revision Petition No.3257- 3259 of 2010
- b) Revision Petition No.2568 of 2012 &
Date of Judgement: 10-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 & 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Hon'ble Supreme Court in the case of *Dr. Laxman Balkrishna Joshi v. Dr. Trimbark Babu Godbole and Anr.*, AIR 1969 SC 128 and *A. S. Mittal v. State of U.P.*, AIR 1989 SC 1570, laid down that,
“when a doctor is consulted by a patient, the doctor owes to his patient certain duties which are: (a) duty of care in deciding whether to undertake the case, (b) duty of care in deciding what treatment to give, and (c) duty of care in the administration of that treatment. A breach of any of the above duties may give a cause of action for negligence and the patient may on that basis recover damages from his doctor”
- b) OP1 was held negligent on the following counts :
 - i. She did not immediately seek opinion or assistance from the Urologist who was working in the same hospital when the patient developed complications immediately after the surgery. But, she took help of another surgeon who repaired the bladder injury. The records show that the O.P took help from Urologist only on 10th Post operative day, when the patient developed Vesico Vaginal Fistula (VVF).
 - ii. The consent taken by O.P, prior to hysterectomy was a Blanket Consent and not an Informed Consent. The consent does not show details about whether the patient was informed about conditions (like Endometriosis or adhesions), which may cause possible injury to bladder during operation.
 - iii. She had not produced histopathological report to support her diagnosis of multiple fibroids and Endometriosis.
- c) Held that the OP cannot take advantage on the “basis of known complication”. Hence it was an act of omission, an act of negligence.

d) The quantum of damages awarded was held justified by evidence of economic loss and non-economic harm. Economic damages include past and future medical expenses, lost, past and future income, and other costs. The State Commission had made well considered observations and awarded the proper compensation; therefore it did not warrant interference. However, RP 2568/2010 was also dismissed on the ground of inordinate delay.

vii) Citation:

I (2015) CPJ 203; 2015(1) CPR 347.

30. Harishbhai Shamjibhai and others Vs. Dr. D.C. Gohil

i) Case in Brief:

The patient (Husband of the Petitioner No.2) took treatment for pain in throat on 28.05.1997 from Respondent/OP, an Ayurveda specialist. The doctor gave him some medicines and injection. Since there was no improvement he was referred to a specialist, Dr. Shah, who opined that the OP/doctor has not taken care while giving injection. Hence, it led to infection, septicemia and gangrene in the hip and whole body. Ultimately, on 10.6.1997, the patient died. Therefore, the complainant No.1 Ramaben, the wife of deceased, along with her two sons, Harishbhai and Narendrabhai (Petitioners 1 & 3) filed a complaint before the District Forum, Rajkot claiming compensation of Rs. 3 lakhs with 18% interest from the OP. The District forum allowed the complaint and ordered the OP to pay Rs.96,000/- with interest @ 9% p.a. from the date of complaint and Rs.5,000/- as costs. Aggrieved by the order of District Forum, the OP filed first appeal before the State Commission, Gujarat, which was allowed while dismissing the complaint. Hence, against that order, the Petitioners/Complainants have filed this revision petition. Petition allowed holding that it is a clear case of Medical negligence and a higher compensation of Rs.3 lakhs ordered.

ii) Order appealed against:

From order dated 13.11.2009 in First Appeal No.742 of 2007 of the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad.

iii) Parties:

Harishbhai Shamjibhai and others - Petitioners

Vs.

Dr. D.C. Gohil - Respondent

iv) Case No and Date of Judgement:

Revision Petition No. 480 of 2010 & Date of Judgement : 10.12.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o) & (r), 19 & 21(b) of the Consumer Protection Act, 1986; Section 15(2)(b) of Indian Medical Council Act, 1956 and Indian Medicine Centre Council Act, 1970.

vi) Issues raised and decided:

- a) The first contention of the Petitioner was that OP was not qualified to give allopathic treatment since he is an Ayurveda Practitioner. His qualification is B.A.M.S. and L.M.P. OP having studied one particular system of medicine, cannot possibly, claim complete knowledge about the drugs of other systems of medicine. The transgression into other branches of medicine would tantamount to quackery and amounted to Unfair Trade Practice and also violation of Section 15(2) (b) of the Indian Medical Council Act, 1956. The decision in *Poonam Verma vs. Ashwin Patel and Others* (1996) 4 SCC 332 by Hon'ble Supreme Court is relevant.
- b) OPs contention that there was no negligence is not accepted. It was held that the decision given in *Dr. Mukhtiar Chand and Ors. Vs. State of Punjab and Ors.* (1998) 7 SCC 579 by Hon'ble Supreme Court is not applicable to the present case.
- c) The quantum of award for damages performs two functions; it compensates one who is harmed and it imposes costs on negligent medical service provider. Therefore, the complainants deserve higher compensation.
- d) Revision petition was allowed with cost of Rs.300,000/- (three lakhs) as per the law laid down by the Hon'ble Apex Court from time to time. The OP was directed to comply with the order within 90 days from the date of receipt of the order, otherwise it will carry interest @ 12% pa, till its realisation.

vii) Citation:

I (2015) CPJ 231; 2015(1) CPR 345.

31. Kalpana Vs. Dr. K. Ramalakshmi and another

i) Case in Brief:

The complainant alleged before the District Forum that she had spent a sum of Rs.15 lakh towards hospitalisation, medicine etc. and Rs.1 lakh towards other expenses and Rs.2 lakhs towards extra nourishment in view of the Medical Negligence caused by OPs 1 & 2 in the course of surgery performed on her for medical termination of pregnancy and tubectomy. District Forum ordered that both OPs are guilty of medical negligence and are liable to pay a sum of Rs.14,13,100/- to the complainant within 15 days. OPs filed appeals before the State Commission which were allowed and the order of the District Forum was set aside. Present revision petition is against the orders of the State Commission. Held that Medical Negligence is clearly established and that whole liability of the payment would be on OP1 with interest at 9% p.a. from the date of order of District Forum.

ii) Order appealed against:

From the order dated 30.12.2013 in FA No.322/2012 and FA No.323/2012 of A.P. State Consumer Disputes Redressal Commission, Hyderabad.

iii) Parties:

Kalpana	-	Petitioner
Vs.		
Dr. K. Ramalakshmi and another	-	Respondent(s)

iv) Case No and Date of Judgement:

Revision Petition No.1811-1812 of 2014 &
Date of Judgement: 11-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) (o), 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) O.P.1 contended that the operation was performed upon the complainant by her and not by OP.2 Dr. Niranjan Reddy. She denied that the patient suffered complications involving vomiting, abdomen bleeding, etc. after the operation. She admitted, however, that on 4-5-2008, she referred the complainant to CMC Hospital, Vellore by giving a letter dated 4-5-2008. If any patient

develops complications after the tubecto my operation, she has to be referred to higher institutions.

- b) The OPs advised the complainant to go to Government SVRR (Ruya) Hospital, Tirupati, where her problem could have been rectified free of cost. However, the complainant and her husband insisted that a referral letter should be given in favour of CMC Hospital, Vellore. The OPs provided care to the complainant at CMC Hospital, Vellore as well, and OP-2 visited CMC Hospital, Vellore several times to see the complainant and inquire about her health condition regularly.
- c) The State Commission had stated that the complainant had not adduced any expert evidence in support of the allegations made against the OPs. It was held that there could be no better expert evidence than the statement given by Dr. Philip Joseph. He had clearly stated that the patient was found to have perforation in uterus as well as in intestine and that she was in a critical condition when brought to their hospital, just two days after the surgery done by the OPs. The State Commission, however, believed the version of Dr. Venkatarami Reddy, who is a very junior level doctor having done his Post Graduation only two years back.
- d) OP.1, as a medical professional, was expected to bring a reasonable degree of skill and knowledge and was expected to exercise a reasonable degree of care as held by the Hon'ble Supreme Court in Kusum Sharma Vs. Batra Hospital reported in [(2010) 3 SCC 480].
- e) It was held that the medical negligence in the present case was clearly established from the material on record. However, the order passed by the District Forum is ordered to be modified to the extent that there shall be no liability against the OP-2 Dr. Niranjana Reddy because the surgery was done by the OP-1 Dr. K. Ramalakshmi. The whole liability of payment of Rs.14,13,109/- shall be discharged by OP-1, Dr. K.Ramalakshmi along with interest @9% p.a. from the date of the order passed by the District Forum.

vii) Citation:

I (2015) CPJ 79; 2015(1) CPR 314.

Y) MISLEADING ADVERTISEMENT:

1. Amol Lokesheao Motghare Vs. Hindustan Unilever Ltd. & Others

i) Case in Brief:

Petitioner/Complainant purchased 'Gold Mohur Brand Poultry Feed' manufactured by Respondent No.1/OP1 through Respondents/OPs 2-5, the local dealers. Contrary to the claim made by the OP1 in its advertisement, several birds started losing weight and died after giving the said feed because of the presence of Aflatoxin-B1, in high percentage. A Complaint was filed before the District Forum claiming a total of Rs.97,527/- towards compensation, mental agony and costs. District Forum dismissed the complaint. On appeal, the State Commission partly allowed the appeal and directed OP1 to pay a sum of Rs.45,000/- with interest @ 9% p.a. along with Rs.10,000/- towards mental agony and Rs.5,000/- as costs . The Present Revision Petition filed by the complainant against the State Commission's order seeking enhanced compensation dismissed.

ii) Order appealed against:

Against the order dated 07.08.2013 in First Appeal No.A/99/1257 of the State Consumer Disputes Redressal Commission, Circuit Bench, Maharashtra, Nagpur.

iii) Parties:

Amol Lokesheao Motghare - Petitioner
Vs.

Hindustan Unilever Ltd. & Others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3304 of 2013 & Judgement dated 01-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Clause 4.6 of the Indian Standard Poultry Feeds Specification (IV revision) postulates that Aflatoxin-B limit in the poultry feed should not exceed 500mcg/kg/ppb. The Complainant has not

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produced evidence to prove that the birds died due to excess limit of Aflatoxin-B1 and also failed to prove that only Gold Mohur Feeds were given to the birds.

- b) If the feed was toxic, the entire lot of birds should have died but in the instant case only a few birds have died. The Complainant claimed Rs.46,487/- on account of dead birds which the State Commission considered and passed a reasoned order. Held that the complainant did not deserve enhanced compensation.

vii) Citation:

Not reported in CPJ and CPR.

Z) POSTAL SAVINGS:

1. Smt. Vedavalli Parthasarathy & Anr Vs. The Assistant Director of Postal Services & Anr

i) Case in Brief:

Complainant No.1/Petitioner No.1 along with her late husband opened two accounts in the Post Office at Mylapore, Chennai under Monthly Income Scheme as per which the monthly interest on the deposit of Rs.3 Lakhs in each account made by them will be credited to the SB A/c. When they shifted to Pune, the accounts were transferred and interest was credited to their SB A/c. Complainant No.1's husband died on 06-06-2003. Complainant No.2 who was posted at Pune was transferred to Vishakapatnam in January, 2007. The MIS accounts were also transferred at their request but interest was not paid from March onwards. Alleging deficiency in Service, Complainants filed complaint before the District Forum which allowed the complaint directing OPs to pay Rs.4,90,750 with 12% interest p.a and Compensation of Rs.2 Lakhs. Appeal filed by OP was partly allowed by State Commission vide impugned order directing OP to pay Rs.91,600. Present revision petition challenging the order of the State Commission was dismissed.

ii) Order appealed against:

From the order dated 03.01.2012 in Appeal No. 953/2010 of the A.P. State Consumer Disputes Redressal Commission, Hyderabad.

iii) Parties:

Smt. Vedavalli Parthasarathy & Anr - Petitioner/Complainants
Vs.

The Assistant Director of
Postal Services & Anr - Respondents/Opp.Parties

iv) Case No and Date of Judgement:

Revision Petition No.2765 of 2012 & Date of Judgement: 07-11-2014.

v) Acts and Sections referred:

Sections 2(1)(g) & (o),19 and 21(b) of the Consumer Protection Act,1986.

vi) Issues raised and decided:

- a) It was noted that as per Rule 168(8) of P.O S.B Manual-Vol -I read with Rule 22 of P.O .S.B Manual Vol.I, when one of the depositors dies, the Joint A/c should be treated as A/c of single depositor. In the present case, violating the aforesaid rules, the officials had wrongly treated it as Joint A/c by including the name of the Second Complainant and further committed error in paying interest.
- b) The State Commission, considering judgements of Hon'ble Apex Court in (1998) 9 SCC 706 - *The Post Master, Dargamitta, HPO, Nellore Vs. Ms.Raja Prameelamma* and in *Arulmighu Dhandayudhapani Swami Thirukoil, Palani through its Joint Commissioner Vs. D.G of Post Offices* rightly observed that when deposits were made in contravention of Rule 168(8) of Post Office S.B Manual, Officials of Post Office are entitled to close the account and recover the amount paid in excess. It was held that the State Commission has rightly modified the order of District Forum and deleted grant of compensation.
- c) Since there was no illegality, irregularity or jurisdictional error in the impugned order, the revision petition was dismissed.

vii) Citation:

2014(4) CPR 673.

2. The Post Master General and another Vs. Shri Basant Sahani

i) Case in Brief:

The complainant/respondent booked a consignment with the petitioners to be delivered through speed post to M/s. Super Knit Industries, 5409-A-26, New Market, Sadar Bazar, New Delhi paying a sum of Rs.120/- as postal charges. The aforesaid consignment carried three demand drafts for Rs.9,970/- each. The grievance of the complainant is that the said demand drafts instead of being delivered to M/s. Super Knit Industries were delivered to Manoj Enterprises on 09-11-2002. The drafts were also got encashed by Manoj Enterprises. The District Forum before whom complaint was made, directed the petitioners to pay a compensation of Rs.30,000/- to the complainant along with interest on that amount at the rate of 12% per annum. The petitioners were also directed to pay Rs.5,000/- as compensation and Rs.2,000/- as cost of the litigation. The petitioners' appeal to the State Commission was dismissed. Present revision petition against the order of the State Commission is allowed in view of Rule 66(b) of the Post Office Rules.

ii) Order appealed against:

From the order dated 28-07-2008 in FA No.116 of 2008 of the Andhra Pradesh State Consumer Disputes Redressal Commission at Hyderabad.

iii) Parties:

The Post Master General and another	- Petitioner(s)
Vs.	
Shri Basant Sahani	- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4788 of 2014 & Date of Judgement: 17-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) and (o), 19 & 21(b) of the Consumer Protection Act, 1986 & Section 6 of the Indian Post Office Act read with Rule 66B of the Post Office Rules.

vi) Issues raised and decided:

- a) The complaint was resisted by the petitioners primarily on the ground that in view of the provisions contained in Section 6 of the Indian Post Office Act and Rule 66B of the Rules framed

thereunder, they were exempt from any liability on account of the loss, misdelivery, delay or damage to the consignment. The above said rule also makes it clear that compensation payable by the government is restricted to an amount equal to the composite speed post charges whereas in case of the loss of such an article or loss of or damage to its contents, the compensation would be restricted to double the amount of speed post charges or Rs.1,000/- whichever be less.

- b) A case of misdelivery cannot be considered to be worse than a case of loss of a postal article and therefore in view of the Rule 66B, the liability of the petitioners would be restricted to double the amount paid by the complainant.
- c) Therefore, the National Commission modified the order passed by the State Commission by restricting the liability of the petitioners to Rs.240/-, along with interest on that amount at the rate of 10% per annum, from the date, the matter was brought to the knowledge of the petitioners.

vii) Citation:

Not reported in CPJ and CPR.

AA) PROVIDENT FUND / PENSION SCHEME:

1. Regional Provident Fund Commissioner Vs. H.G. Vijaykumar and another

i) Case in Brief:

The Complainants in the all the 35 revision petitions were working in Karnataka Agro Industries Corporation/OP.2. They had opted for Employees' Pension Scheme 1995. Their pension on retirement was fixed by the Regional Provident Fund Commissioner, OP.1/Petitioner as per para 12(4) and 12(7) of the said scheme whereas the complainant's contention was that it should have been fixed in terms of para 12(4) read with para 10(2) of the scheme and that they should have been given the benefit of weightage of two years. Their complaint was allowed by the District Forum which was upheld by the State Commission on appeal by the Petitioner. Aggrieved by the orders of the State

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Commission, these revision petitions have been filed. All the revision petitions dismissed.

ii) Order appealed against:

- i. From the orders dated 07-06-2013 in F. Appeal No.587-592 of 2013 of the State Consumer Disputes Redressal Commission, Bangalore.
- ii. From the orders dated 06-09-2013 in F. Appeal No.1228-1255 of 2013 of the State Consumer Disputes Redressal Commission, Bangalore.
- iii. From the orders dated 29-01-2014 in F. Appeal No.1411 of 2013 of the State Consumer Disputes Redressal Commission, Bangalore.

iii) Parties:

Revision Petition No.2238 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

H.G. Vijaykumar and another - Respondents

Revision Petition No.2239 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Hatti Veerarajan and another - Respondents

Revision Petition No.2240 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

S.V. Gajendra and another - Respondents

Revision Petition No.2241 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

S.M. Narayana Swamy and another - Respondents

Revision Petition No.2242 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

K.V. Jyothir Bhanu and another - Respondents

Revision Petition No.2243 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Sri Sannaiah and another - Respondents

Revision Petition No.2244 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

R. Shrinivas Rao - Respondent

Revision Petition No.2245 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Puroshottama.S - Respondent

Revision Petition No.2246 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

H.C. Nagaraja Rao - Respondent

Revision Petition No.2247 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Venkata Swamy.G - Respondent

Revision Petition No.2248 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Y.Kumar - Respondent

Revision Petition No.2249 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

A.Paramasivan - Respondent

Deficiency in Service - Provident Fund / Pension Scheme

Revision Petition No.2250 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

K.Kalachar - Respondent

Revision Petition No.2251 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

K.V.Narayana - Respondent

Revision Petition No.2252 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

B.Jayappa - Respondent

Revision Petition No.2253 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

B.Muddappa - Respondent

Revision Petition No.2254 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

S.Chandrashekarappa - Respondent

Revision Petition No.2255 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Makanur Kotrappa - Respondent

Revision Petition No.2256 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Mahalingam - Respondent

Revision Petition No.2257of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Sri.G.Mahadevappa - Respondent

Revision Petition No.2258 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Shri.H.K.Prabhakara - Respondent

Revision Petition No.2259 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Shri.K.B. Linge Gowda - Respondent

Revision Petition No.2260 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Smt.Jayalakshamma - Respondent

Revision Petition No.2261 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Shri.Ramaiah.D - Respondent

Revision Petition No.2262 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Sri.C.Subramanyam - Respondent

Revision Petition No.2263 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Mohan Rao.H - Respondent

Deficiency in Service - Provident Fund / Pension Scheme

Revision Petition No.2264 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Nabi Sab.K - Respondent

Revision Petition No.2265 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Kumar Swamy.N - Respondent

Revision Petition No.2266 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Sri Abdul Rahim - Respondent

Revision Petition No.2267 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

B.M.Venkatesha - Respondent

Revision Petition No.2268 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

M.R.Gundachary - Respondent

Revision Petition No.2269 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

H.G.Gobindaiah - Respondent

Revision Petition No.2270 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

G.Lokeshappa - Respondent

Revision Petition No.2271 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

Gopalakrishna - Respondent

Revision Petition No.2272 of 2014

Regional Provident Fund Commissioner - Petitioner

Vs.

G.Murudappa - Respondent

iv) Case No and Date of Judgement:

Revision Petitions No.2238-2272 of 2014 with IA No.3353/2014, IA No.3354/2014, IA No.3355/2014 (For Stay, Exemption from filing the Certified Copy and Condonation of delay) &

Date of Judgement: 14-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was noted that para 10(2) of the Employees Pension Scheme, 1995 was amended on 24-07-2009. Before amendment, para 10(2) read as follows: "In the case of the member who superannuates on attaining the age of 58 years and/or who has rendered 20 years pensionable service or more, his pensionable service shall be increased by adding weightage of two years."

After amendment, the said para read as follows:

"In the case of the member superannuates on attaining the age of 58 years and who has rendered 20 years pensionable service or more, his pensionable service shall be increased by adding weightage of two years."

- b) Out of 35 employees, 31 of them had retired prior to 24-07-2009 and were entitled for the benefit of two years weightage. The remaining four employees had retired at the age of 58 years and had rendered service for more than 20 years. It was therefore

held that the District Forum had rightly calculated the pension and view taken by the Fora below could not be faulted. The revision petitions were accordingly dismissed.

vii) Citation:

Not reported in CPJ and CPR.

2. The Regional Provident Fund Commissioner Vs. Manjulaben Kalidas Raval

i) Case in Brief:

The complainant at the age of 50 years and by virtue of para No. 12(7) of the Pension Scheme opted for getting the monthly pension scheme at the reduced rate and submitted the form 10(B) to the opponent on 14.09.2001. On 22.10.2002, the opponent gave credit of Rs. 28,448/- including commutation and Pension Arrears after causing a delay of 240 days. The interest for the delayed period of 240 days was not paid. The grievance of the complainant is that she is entitled to get the pension in the sum of Rs. 903/- but the opponent has granted the original pension only of Rs. 793/-. Therefore, she filed the complaint before the District Forum which directed to pay interest to the complainant for the period from 14/10/2001 to 22/10/2002 at the rate prevalent at the relevant time and also the cost of Rs.1,000/- (Rupees one thousand only) to complainant for cost of this complaint. Aggrieved by that order, the complainant filed the appeal before the State Commission. The State Commission set aside the pension granted by the opponent to the complainant from 14/9/01 under Pension Scheme Para-12(4) and passed orders to grant the pension under Pension Scheme Para-12 (3) with a direction to pay difference amount of Rs.164/- per month from the aforesaid date with 9% interest p.a. till its realization and also Rs. 3,000/- for the cost of this appeal to the complainant. Aggrieved by that order the present Revision Petition has been filed by the Opposite Party. Revision Petition dismissed.

ii) Order appealed against:

Against the order dated 09.10.2013 in First Appeal No. 608/2009 of the State Consumer Disputes Redressal Commission, Gujarat, Ahmedabad.

iii) Parties:

The Regional Provident Fund Commissioner - Petitioner

Vs.

Manjulaben Kalidas Raval - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.903 of 2014 with IA/593/2014, IA/910/2014
(Placing additional documents, Condonation of Delay) &

Date of Judgement: 03-11-2014

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19, 21(b) of the Consumer Protection Act, 1986
& para 12 (3) & (4) of the Employees Pension Scheme, 1995

vi) Issues raised and decided:

- a) It was noted that clause (3) is applicable in the case of an existing member in respect of whom the date of commencement of pension is after 16th November, 2005 and Clause (4) applies to those pensioners whose date of commencement of pension is between 16-11-2002 and 16-11-2005. It was held that the case of the complainant is fully covered under Clause (3).
- b) Consequently, Revision Petition was dismissed. Arrears if any, and additional costs of Rs. 10,000/-, were ordered to be paid to the complainant through demand draft, within 45 days of the receipt of the order, otherwise it will carry interest @ 9% till its realization in addition to orders rendered by the Fora below.

vii) Citation:

II (2015) CPJ 284; 2014(4) CPR 752.

3. Regional Provident Commissioner, Guntur Vs. M. Krishna

i) Case in Brief:

Respondents/Complainants in these six revision petitions opted for reduced pension (falling under the category of early pension). They have also claimed two years weightage in service. Both the fora had decided in favour of the Respondents. These revision petitions have been filed by the Petitioner on the ground that the State Commission's

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order is violative of Para 10(2) of the Employees Pension Scheme, 1995. Revision Petitions dismissed.

ii) Order appealed against:

From the orders dated 27.09.2013 in First Appeal No. 725/13, 730/13, 753/13, 757/2013, 763/13, 738/13 of the State Consumer Disputes Redressal Commission, A.P., Hyderabad.

iii) Parties:

Revision Petition No.1588 of 2014

Regional Provident Commissioner, Guntur - Petitioner

Vs.

M. Krishna - Respondent

Revision Petition No.1644 of 2014

Regional Provident Commissioner, Hyderabad & Anr - Petitioner

Vs.

Y. Sambaiah - Respondent

Revision Petition No.1781 of 2014

Regional Provident Commissioner, Hyderabad & Anr - Petitioner

Vs.

J. Narasimharao - Respondent

Revision Petition No.1782 of 2014

Regional Provident Commissioner, Hyderabad & Anr - Petitioner

Vs.

V. Rama Koteswar Rao - Respondent

Revision Petition No.1783 of 2014

Regional Provident Commissioner - Petitioner

Vs.

N. Sambasivarao - Respondent

Revision Petition No.1795 of 2014

Regional Provident Commissioner, Hyderabad & Anr - Petitioner

Vs.

N. Subba Rao - Respondent

iv) Case No and Date of Judgement:

- i. Revision Petition No.1588 of 2014 with IA/2088/1014, IA/2089/2014 (Stay, Condonation of Delay)
- ii. Revision Petition No.1644 of 2014 with IA/2203/1014, IA/2204/2014 (Stay, Condonation of Delay)
- iii. Revision Petition No.1781 of 2014 with IA/2480/1014, IA/2481/2014 (Stay, Condonation of Delay)
- iv. Revision Petition No.1782 of 2014 with IA/2482/1014, IA/2483/2014 (Stay, Condonation of Delay)
- v. Revision Petition No.1783 of 2014 with IA/2484/1014, IA/2485/2014 (Stay, Condonation of Delay)
- vi. Revision Petition No.1795 of 2014 with IA/2493/1014, IA/2494/2014 (Stay, Condonation of Delay) &
Date of Judgement: 10-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that a conjoint reading of Paras 10(2) & 12(7) of the Employees Pension Scheme,1995 would show that there is no difficulty in giving advantage of 2 years as laid down in para 10(2) even to those petitioners who have availed benefit of para 12(7) and that the assumption of OP/ Petitioner is incorrect. Hence, revision petitions were dismissed.

vii) Citation:

1 (2015) CPJ 12; 2014(4) CPR 670.

AB) PURCHASE / REGISTRATION OF PLOT / FLAT:

1. Mrityunjaya Chakravorty Vs. Sukanta Das

i) Case in Brief:

The complainant entered into an agreement for purchase of a flat on 27.01.2011 with the OP. He paid a total amount of Rs.3,40,000/- at Rs.1000 per sq.ft for 340 sq.ft in the ground floor as per the agreement. The conveyance deed was registered and executed on 18.11.2011. It

transpired that the flat measured 327 sq. ft. which was less by 13 sq. ft. The petitioner entered into the flat after 4 months and found that the flat was not constructed properly. It was damp due to soaking of water and the inside wall of the flat stood cracked due to use of poor quality building materials for construction. The request made by the complainant to rectify the defects fell on the deaf ears. The complainant filed a complaint before the District Forum which directed the OP to pay Rs.13,000/- and repair the defects. Costs of Rs.5,000/- as compensation and costs of litigation to the tune of Rs.2,000/- were also imposed. Aggrieved by that order, the Opposite Party filed an appeal before the State Commission which accepted the appeal partly and directed that petitioner is entitled to Rs.13,000/- and compensation in the sum of Rs.5,000/- within one month from the date of order. Against the decision of the State Commission, this revision petition is filed. Revision Petition partly allowed.

ii) Order appealed against:

From order dated 14.06.2013 in S.C. Case No. FA/857/2012 of the State Consumer Disputes Redressal Commission, West Bengal, Kolkata.

iii) Parties:

Mrityunjaya Chakravorty

- Petitioner

Vs.

Sukanta Das

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2492 of 2013 & Date of Judgement: 03-11- 2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that the respondent/OP is liable to pay Rs.13,000/- (at Rs.1000 per sq.ft for the shortfall of 13 sq.ft) with interest at the rate of 9% p.a. from the date of its receipt from 27.01.2011 till realization to the complainant. The compensation awarded by the State Commission in the sum of Rs. 5,000/- was upheld. The said amount was to be paid within 45 days from the receipt of the copy of the order otherwise the entire amount including compensation will carry interest at the rate of 12% after the expiry of the said 45 days till realization.

vii) Citation: 2014(4) CPR 754.

2. Mr. Beatty Tony Vs. M/s. Prestige Estate Projects Pvt. Ltd.

i) Case in Brief:

Petitioner/Complainant entered into an agreement with the OP No.2 for purchase of a residential flat for a consideration of Rs.40,03,600/- as per which the possession of the property was to be delivered within 39 months i.e. by 01.10.2008. A grace period of 3 months was also allowed. In the event of delay, OPs were required to pay interest at the rate of 7% p.a. to the complainant. The case of the complainant is that he made payment of instalments as per schedule but the possession was offered to the complainant only on 23.12.2011. Alleging deficiency in service, he filed a complaint in the District Forum. The Forum directed the OP to pay interest at the rate of 7% p.a on the amount of Rs.37,93,421/- for a period of 32 months, amounting to a sum of Rs.7,08,105/- and cost of litigation amounting to Rs.10,000/- to the complainant. The OPs filed an appeal before the State Commission which was allowed on the ground that the complainant himself was a defaulter in payment of instalments. Aggrieved by the order of the State Commission, the petitioner has filed this revision petition. Revision petition allowed. The order of the State Commission was set aside and the order of the District Forum was restored.

ii) Order appealed against:

From the order dated 05.02.2014 in Appeal No.2119 of 2012 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

iii) Parties:

Mr. Beatty Tony

- Petitioner

Vs.

M/s. Prestige Estate Projects Pvt. Ltd.

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3135 of 2014 with IA/5203/2014 (Condonation of delay) & Date of Judgement: 18-11-2014.

v) Acts and Sections referred:

Sections 2(1)(d), (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The contention of the OP that the complainant was not a Consumer within the meaning of Section 2(1) (d) of the Consumer Protection Act, since he booked the flat for investment/commercial purpose was not accepted by the Commission.
- b) The OP had given 4 reasons in the letter dated 01.03.2007 for postponing the date by which possession was to be handed over by them. It was held that none of them except flooding at site due to heavy rains would be covered under the expression *force majeure*. It was also noted that the OP did not adhere even to the dead line stipulated in their letter dated 01.03.2007.
- c) Further, held that State Commission was not justified in taking the view that the complainant himself had defaulted in payment of the balance amount. He had paid 15 instalments in time and had offered payment of even the 16th instalment but the OPs asked him to make the said payment at the time of handing over the possession.
- d) Held that the OPs were under contractual obligation to pay interest to the complainant at the rate of 7% p.a. Accordingly, the revision petition was allowed setting aside the order of the State Commission and restoring the order of the District Forum.

vii) Citation:

2015(1) CPR 81.

3. Smt. P. Ratnakumari Vs. Mr. Y. Kiran Kumar

i) Case in Brief:

Complainant/Appellant entered into an agreement of sale with Opposite Party/Respondent on 12.8.2009 for purchase of 450 sq. yds. in Sy. Nos.330, 331, 332, 337, 338, 339, 340 part 341, 342, 343, 345 & 347 etc. for Rs.12,60,000/-. Complainant paid the aforesaid amount but there was no development on the site and it was not free from all encumbrances, hence, requested for refund of the amount. Opposite Party did not return the amount. Alleging deficiency on the part of Opposite Party, Complainant filed complaint before State Commission which directed Opposite Party to pay Rs.9,45,000/- (75% of the

deposited amount) with 9% p.a. interest and further allowed compensation of Rs.20,000/- and cost of Rs.5,000/- against which this appeal has been filed by Complainant for enhancement. Appeal allowed.

ii) Order appealed against:

Against the order dated 21.11.2013 in Complt. Case No.27 of 2013 of Andhra Pradesh State Commission, Hyderabad.

iii) Parties:

Smt. P. Ratnakumari - Complainant/Appellant

Vs.

Mr. Y. Kiran Kumar - Respondent/Opposite Party

iv) Case No and Date of Judgement:

First Appeal No.880 of 2013 & Date of Judgement: 26-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue is whether State Commission rightly allowed deduction of 25% from the amount paid by Appellant?
- b) In the present case, Opposite Party sold plot to the Complainant and made fraudulent representation that plot sold is free from all encumbrances whereas this plot was under mortgage of HMDA.
- c) Held that the Complainant was entitled to get refund of full amount from Opposite Party and State Commission committed error in allowing deduction of 25% amount on the ground that Complainant himself cancelled the booking and wanted refund of sale consideration. Complainant was entitled to get refund of the full amount paid by him towards purchase of plot. Appeal allowed. Order awarding amount of Rs.9,45,000/- was substituted by amount of Rs. 12,60,000/- and rest of the order was affirmed.

vii) Citation:

II (2015) CPJ 52; 2015(1) CPR 18.

4. Sri Mantu Ranjan Dutta Vs. Sri Sumit Mallick and others

i) Case in Brief:

Complainant/respondent No.1 & 2 entered into an agreement for purchase of 771 sq. ft. flat from OP No.4/Respondent No.3 on 22.5.2010 for a consideration of Rs.10,75,000/-. Complainant paid entire amount except Rs.25,000/- towards consideration, but OP No.3 did not execute deed of conveyance in spite of repeated requests. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP No.1 & 2/Petitioners and Respondent No.5 resisted complaint and submitted that power of attorney granted to OP NO.3 & 4 has been revoked by deed of revocation dated 15.6.2007 and OP No.4 is not owner of the property and there was no obligation on the part of OP No.1 & 2 to execute deed of conveyance in favour of the complainant. OP No.3 & 4 also resisted complaint and submitted that OP No.1 & 2 owner of the land are withholding registration of flat. It was further submitted that OP No.4 was given absolute power to register deeds in favour of intended purchasers and OP No.1 & 2 has illegally revoked power of attorney and there is no deficiency on the part of OPs and prayed for dismissal of complaint. District Forum after hearing both the parties allowed complaint and directed complainant to pay balance money Rs.25,000/- to OP No.4 and directed OP No.4 to execute sale deed and further directed OP No.1 & 2 to confirm execution of deed and further awarded Rs.1,00,000/- for mental agony and Rs.10,000/- as litigation cost against all the OPs. OP No.1 filed appeal before State Commission which was dismissed by impugned order against which this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

Against the Order dated 26-11-2013 in S.C. Case No.FA/143/2013 of the State Commission West Bengal.

iii) Parties:

Sri Mantu Ranjan Dutta

- Petitioner

Vs.

Sri Sumit Mallick and others

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No. 599 of 2014 & Date of Judgement: 28-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Whether petitioner is liable to make any payment as ordered by District Forum?
- b) Held that no averment has been made against OP No.1. No doubt, OP No.1 & 2 are the owners of the property and they entered into an agreement for development of land with OP No.3 & 4 and by irrevocable power of attorney they authorized OP No.3 & 4 to sell 60% of flats as per agreement. OP No.3 & 4 entered into an agreement with complainant for sale and purchase of flat which did not bear signatures of OP No.1 & 2. It is also admitted case of the parties that no consideration was received by OP No.1 & 2 towards sale of flat by OP No.3 & 4 to the complainant. District Forum also directed OP No.4 to receive balance consideration and execute conveyance deed and OP No.1 & 2 were directed to confirm execution of deed. There was no occasion for the District Forum to direct OP No.1 & 2 to pay compensation and litigation cost, as no deficiency was pleaded in the complaint against OP No.1 & 2. State Commission further committed error in dismissing appeal only on the basis of irrevocable power of attorney executed by OP No.1 & 2 in favour of OP No.3 & 4. All compliance were to be made by OP No.3 & 4 and nothing was to be done by OP No.1 & 2 and in such circumstances, order awarding compensation against OP No.1 was held liable to be set aside as only OP No.1 had filed appeal as well this revision petition.

vii) Citation:

Not reported in CPJ and CPR.

5. Sri Mantu Ranjan Dutta Vs. Sri Ahindra Mohan Biswas and others

i) Case in Brief:

Complainant/respondent No.1 & 2 entered into an agreement for purchase of 771 sq. ft. flat from OP No.4/Respondent No.3 on 22.5.2010 for a consideration of Rs.13,50,000/-. Complainant paid entire amount except Rs.1,00,000/- towards consideration, but OP No.3 did not execute

deed of conveyance in spite of repeated requests. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP No.1 & 2/Petitioners and Respondent No.5 resisted complaint and submitted that power of attorney granted to OP No.3 & 4 has been revoked by deed of revocation dated 15.6.2007 and OP No.4 is not owner of the property and there was no obligation on the part of OP No.1 & 2 to execute deed of conveyance in favour of the complainant. OP No.3 & 4 also resisted complaint and submitted that OP No.1 & 2 owner of the land are withholding registration of flat. It was further submitted that OP No.4 was given absolute power to register deeds in favour of intended purchasers and OP No.1 & 2 has illegally revoked power of attorney and there is no deficiency on the part of OPs and prayed for dismissal of complaint. District Forum after hearing both the parties allowed complaint and directed complainant to pay balance money Rs.1,00,000/- to OP No.4 and directed OP No.4 to execute sale deed and further directed OP No.1 & 2 to confirm execution of deed and further awarded Rs.1,00,000/- for mental agony and Rs.10,000/- as litigation cost against all the OPs. OP No.1 filed appeal before State Commission which was dismissed by impugned order against which this revision petition has been filed. Petition allowed.

ii) Order appealed against:

Against the Order dated 26.11.2013 in S.C. Case No.1003/2012 of the State Commission West Bengal.

iii) Parties:

Sri Mantu Ranjan Dutta

- Petitioner

Vs.

Sri Ahindra Mohan Biswas and others

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.598 of 2014 & Date of Judgement: 28-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Whether petitioner is liable to make any payment as ordered by District Forum?

b) Held that no averment has been made against OP No.1. No doubt, OP No.1 & 2 were owner of the property and they entered into an agreement for development of land with OP No.3 & 4 and by irrevocable power of attorney they authorized OP No.3 & 4 to sell 60% of flats as per agreement. OP No.3 & 4 entered into an agreement with complainant for sale and purchase of flat which did not bear signatures of OP No.1 & 2. It is also admitted case of the parties that no consideration was received by OP No.1 & 2 towards sale of flat by OP No.3 & 4 to the complainant. District Forum also directed OP No.4 to receive balance consideration and execute conveyance deed and OP No.1 & 2 were directed to confirm execution of deed. There was no occasion for the District Forum to direct OP No.1 & 2 to pay compensation and litigation cost, as no deficiency was pleaded in the complaint against OP No.1 & 2. State Commission further committed error in dismissing appeal only on the basis of irrevocable power of attorney executed by OP No.1 & 2 in favour of OP No.3 & 4. All compliance were to be made by OP No.3 & 4 and nothing was to be done by OP No.1 & 2 and in such circumstances, order awarding compensation against OP No.1 was held liable to be set aside as only OP No.1 had filed appeal as well this revision petition.

vii) Citation:

Not reported in CPJ and CPR.

6. Shri. Harpreet Singh Kohli & Anr. Vs. M/s. Nelu Estate Movers Pvt. Ltd. & Others

i) Case in Brief:

The Complainants are partners of a firm called M/s. Midland Overseas, OP1 is a real estate firm and OP2 to 5 are Directors of OP1. Complainant booked a first floor flat admeasuring 951.61 sq. ft. The total consideration for the flat was Rs.77,74,798/- .The Complainant paid a sum of Rs.10 lakhs by way of pay order dated 31.07.1995 towards part consideration. OPs executed the receipts in which it was stated that detailed agreement for the balance payment with other terms and conditions will be prepared and executed within 15 days there from. However, OPs did not take any further steps. Complainants gave notice

for refund of the amount; OPs raised a number of issues. Complainants approached the Commission praying for a direction to OPs to complete construction and deliver possession. Complaint allowed with a direction to the OPs to pay a sum of Rs.10 lakhs with interest @ 9% p.a. from the date of payment i.e. 31.07.1995 till its realisation.

ii) Order appealed against:

Original Petition

iii) Parties:

Shri. Harpreet Singh Kohli & Anr. - Complainants

Vs.

M/s. Nelu Estate Movers Pvt. Ltd & Others - Opposite Parties

iv) Case No and Date of Judgement:

Original Petition No.418 of 2000 & Date of Judgement: 01.12.2014.

v) Acts and Sections referred:

Sections 2(1)(g), (o) and 21(a)(i) of The Consumer Protection Act,1986.

vi) Issues raised and decided:

- a) OPs claimed that complainants are not “consumers” since Complainant 1 is the General Manager of M/s. Midland Constructions (India) owned by the Sh.O.S.Kohli, who is the father of Complainant No.1 and the husband of complainant No.2. The construction of the flat in question was delayed because the said Sh.O.S.Kohli failed to pay OP1 Rs.1 crore and execute a joint venture agreement. Held that the purpose of M/s. Midland Construction (India) and OP1 vide joint venture agreement may be commercial but in the present case the flat is meant for residence of the general manager of another company and therefore, it is not a commercial transaction.
- b) OPs claimed that the complaint is barred by limitation since cause of action for filing the complaint arose on 15.08.1995 i.e., 15 days after the receipt was executed on 30th July, 1995. Complainants filed the complaint on 16.09.2000. Held that it is settled law that the complainants have got continuous cause of action till the possession is given and the sale deed is executed. The decisions in “*Lata Construction & Ors. Vs. Dr.Rameshchandra Ramnikal Shah and Anr. [AIR 1999 SC380]*”, “*Meerut Development*

Authority Vs. Mukesh Kumar Gupta, IV (2012) CPJ 12(SC)” and “*Bhagyalaxmi Constn. Vs. Monoranjan Basak & Ors., Civil Appeal No.28910 of 2013* are relevant.

- c) The argument of the OPs that M/s. Midland Overseas and M/s. Midland Construction (India) are the same entities operating under different names was not accepted by the Commission .
- d) Since the construction cannot be done for a long time, the OPs were directed to pay a sum of Rs.10 lakhs with interest @10% p.a. from the date of payment till its realisation.

vii) Citation:

I (2015) CPJ 573.

7. Kanpur Development Authority Vs. Sri Brij Mohan Azmani

i) Case in brief:

The Respondent who purchased a plot from the original allottees submitted an application to the petitioner authority for mutation in his name. The mutation was allowed by the authority but on payment of sum of Rs.1,37,713.48/- which included Rs.1,25,596.48/- towards profit/interest. The Respondent approached the District Forum on the ground that the recovery of profit/interest was in contravention of G.O. No.1292/KDA/2000-2001 dated 10.01.2001 issued by the petitioner authority according to which no dividend will be charged on the sale of any house or plot if sold after 5 years of taking possession or registry, whichever is earlier. District Forum directed the petitioner authority to refund Rs.1,25,596.48/-, which it had charged towards profit from the complainant along with interest @10% p.a. on that amount. The authority approached the concerned State Commission by way of an appeal which was dismissed. Present revision petition filed against the order of State Commission. Petition allowed and the demand of dividend/profit by the petitioner authority held justified.

ii) Order appealed against:

From the order dated 03.11.08 in FA 2038/2007 of Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

Kanpur Development Authority - Petitioner

Vs.

Sri Brij Mohan Azmani - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4874 of 2008 & Date of Judgement: 11-12-2014.

iv) Acts and Sections referred:

Section 2(1)(g), (o), 19 & 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The house, in question, was purchased by the complainant on 02.08.1989, more than two years before the G.O. dated 03.09.1991 came to be issued by the Government. The benefit of the aforesaid G.O. dated 03.09.1991 obviously would accrue only in respect of those sales of houses or plots which were carried out on or after 03.09.1991.
- b) There is no material on record to show that there was any other G.O. applicable on 2.08.1989 and exempting the sale of a house/plot from levy of the profit/dividend. There is nothing in the circular dated 10.01.2001 to indicate that the G.O. issued on 3.09.1991 was retrospective in nature.
- c) The demand of dividend/profit by the petitioner Authority was fully justified.

vii) Citation:

I (2015) CPJ 149; 2015(1) CPR 336.

8. A.P. State Bankers Vs. M/s. Anuradha Properties & Township Pvt. Ltd. and Others

i) Case in Brief:

Complainants/Respondents 2 to 6 were members of the petitioner's society. Complainants 2 to 4 paid a sum of Rs.4,60,000/- and Complainants/Respondents No.5 & 6 paid Rs.5,60,000/- to the petitioner for purchase of plots from Respondent No.1. The sale consideration for the plots purchased by the complainants/Respondents 2 to 6 was agreed

to be Rs.10,41,850/-. The payments received by the petitioner's society were passed on to the Respondent No.1. Complainant's grievance is that the Respondent No.1 did not obtain necessary approval from HUDA/HMDA for the purpose of development and did not even fix demarcation stone on the side. They requested Respondent No.1 to cancel the sale deed and refund the money to them. When that was not done, they approached the District Forum which dismissed the complaint on the ground that the cancellation of sale deed and re-conveying plot to the O.P cannot be directed by the Consumer forum. Complainants approached the State Commission by way of appeal. State Commission directed the society and the builder to refund the amount which the complainant had paid along with interest at 9% p.a. Revision Petition filed by the petitioner before the National Commission. Held, since the Petitioner Society had transferred the amount received from the Complainant to Respondent No.1, Complainant can claim the amount only from Respondent No.1. Revision Petition allowed and the order directing the Petitioner society to refund the amount in question set aside. Rest of the State Commission order maintained.

ii) Order appealed against:

From the order dated 15.04.2014 in First Appeal No. 468 of 2012 of the A.P. State Consumer Disputes Redressal Commission, Hyderabad.

iii) Parties:

A.P. State Bankers

- Petitioner

Vs.

M/s. Anuradha Properties &
Township Pvt. Ltd. and Others

- Respondent(s)

iv) Case No and Date of Judgement:

Revision Petition No.3189 of 2014 & Date of Judgement:16-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) (o), 19 & 21(b) of Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Petitioner Society had transferred the entire sale consideration to Respondent No.1. The complainants had not paid the balance sale consideration either to Petitioner Society or to Respondent No.1.

- b) The money which the complainant had initially paid was adjusted by Respondent No.1 towards part payment of the sale consideration and sale deed in favour of the complainant was also executed. The grievance of the complainant can be addressed only by Respondent No.1 and not by Petitioner society. There is no deficiency of service on the part of Petitioner society.

vii) Citation:

I (2015) CPJ 152; 2015(1) CPR 287.

AC) PURCHASE/TRANSFER OF SHARES:

1. M/s. Sterlite Industries (India) Ltd. Vs. Smt. Kumuda Bhaskarn and others

i) Case in Brief:

The complainant Nos.1, 2 & 3 who are respondents herein are shareholders and also holders of debentures of M/s. Sterlite Industries (India) Ltd. who are petitioners herein and were OP No.2 before the District Forum. Complainant Nos.1 & 2 jointly owned 100 equity shares and the 3rd complainant individually held another 100 equity shares of the petitioner Co. The petitioner Co. cancelled the share certificates held by the respondents/complainants without following the procedure established by law including the procedure which was specified in the scheme approved by the Hon'ble High Court of Bombay. As per the averment, the procedure laid down in the scheme approved by the High Court was not followed by the petitioner/OP No.2 and OP No.1, respondent No.4 herein who was the Registrar and Transfer Agent for the shares/debentures of the petitioner Co. In the circumstances, it was alleged by the complainants that for no fault of theirs they were made to suffer both mental agony and financial loss. Their repeated requests and demands made to the OPs to redress their grievance went in vain. Alleging deficiency in service and unfair trade practice on the part of the OPs, the three complainants filed a joint complaint before the District Forum which directed to give all the benefits to the complainants, relating to the said shares, as if the shares were never cancelled. The opposite parties were held liable to pay compensation of Rs.10,000/- (Rupees ten thousand) to the complainants and Rs.5,000/

- (Rupees five thousand) as cost. The opposite parties were granted 30 days times to comply with the order. Aggrieved of the aforesaid order, OP No.2/petitioner filed an appeal before the State Commission which dismissed the appeal against which this revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 18.3.2011 in Appeal Nos. 1403 of 2010 and 1595 of 2010 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore

iii) Parties:

M/s. Sterlite Industries (India) Ltd.	- Petitioner
Vs.	
Smt. Kumuda Bhaskarn and others	- Respondents

iv) Case No and Date of Judgement:

Revision Petition Nos.1887-1888 of 2011 &
Date of Judgement: 09.10.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The National Commission upheld the order of the State Commission which held that the District Forum had thoroughly considered each and every aspect of the matter and rightly come to the conclusion that OPs were at fault and there was a deficiency in service on their part. There was a substantial proof that the complainants for no fault of theirs, were made to suffer both monetary loss and mental agony. OPs had not strictly followed the scheme in letter and spirit and thereby caused loss to the complainants. Under the circumstances, it was held that the complainants deserved the relief and that the finding of the District Forum appeared to be just and proper. It was further held that the appellant had failed to show that the impugned order suffered from any legal infirmity, or that it suffered from any error apparent on the face of record warranting interference. Therefore, the present revision petition was dismissed.

vii) Citation:

IV (2014) CPJ 604; 2014(4) CPR 436.

2. Smt. Pramila Gupta & Anr. Vs. M/s. Lupin Chemicals Ltd. & Others

i) Case in Brief:

The Complainants purchased 200 shares of Respondent/OP No.1 through OP No.2. After the shares were transferred in the name of complainants by OP1, OP3 who was the original share holder wrote to OP1 claiming that the aforesaid shares were not sold by him. OP-1, consequently cancelled the transfer of shares in the name of the complainants. The matter was reported to the Police and an FIR was registered. The Complainants were arrested and had to spend 16 days in custody. They approached the State Commission seeking compensation for the harassment and mental agony undergone by them. The State Commission dismissed the complaint against OP1 and OP3, but directed OP2 to pay compensation amounting to Rs.10 lakhs to the complainants besides the actual cost of the shares amounting to Rs.10,000/-. Interest at 10% p.a. from the date of filing complaint was also awarded. Aggrieved by the quantum of compensation, appellants filed this appeal. Held that the amount of compensation awarded by the State Commission is adequate. Appeal dismissed.

ii) Order appealed against:

Order dated 22.07.2010 in complaint case No.84 of 1996 of the U.P State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

Smt. Pramila Gupta & Anr. - Appellants

Vs.

M/s. Lupin Chemicals Ltd. & Others - Respondents

iv) Case No and Date of Judgement:

First Appeal No.295 of 2010 & Judgement dated 12.12.2014.

v) Acts and Sections referred:

Section 2(1)(g),(o),19 & 21(a)(ii) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Complainants are not entitled to any compensation from OP1 since the company transferred the shares in the name of the complainants after complying with the prescribed procedure.

When they received a complaint from the shareholder alleging that the shares in question had not been sold by him, they are fully justified in cancelling the transfer. There was no deficiency in service on their part.

- b) As far OP2 & 3 are concerned, either of them could be wrong. Since OP2 did not come forward before the State Commission to prove that the sale was actually carried out by OP3 and the transfer deeds were duly signed by him in pursuance of the said sale, the State Commission directed OP2 to pay the compensation.
- c) No amount of pecuniary compensation can really compensate the complainants for the mental torture, harassment, and agony, which they must have suffered on account of their detention in custody for 16 days. Considering the facts and circumstances of the case, the compensation awarded by the State Commission cannot be said to be inadequate.

vii) Citation:

I (2015) CPJ 257; 2015(1) CPR 312.

AD) RAILWAYS:

1. Dharm Prakash Verma Vs. Chairman, Railway Board

i) Case in Brief:

The complainant filed complaint before the District Forum alleging deficiency in service on the grounds that his tickets were not confirmed, the train arrived 2 hours later than the scheduled time, uncomfortable journey, non-availability of pantry car etc. He also alleged that the Superfast Train stopped at many unscheduled small stations moving with a slow speed of 32 km per hour and covered the distance of 227 kms in about 7 and a half hours as a result of which he missed his train due to fault of the opposite party. The District Forum dismissed the complaint holding that in the circumstances of this case, there was no deficiency or error in the service by the OPs. Aggrieved of the order of the District Forum, the petitioner filed an appeal before the State Commission which was also dismissed against which the present revision petition has been filed. Revision Petition was dismissed.

ii) Order appealed against:

From the order dated 8.5.2013 in Appeal No.215/2009 of the Uttrakhand State Consumer Disputes Redressal Commission, Dehradun.

iii) Parties:

Dharm Prakash Verma

- Petitioner

Vs.

Chairman, Railway Board

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2309 of 2013 & Date of Judgement: 31-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was noted that the District Forum had considered each of the allegations made by the Complainant vis-à-vis the point-wise rebuttal by the railway authorities and come to the conclusion that in the circumstances of the case, there was no deficiency or error in service. The Forum had passed a detailed and speaking order. The State Commission had not only considered the appeal in the light of the rules and regulations of the railways but had also examined the judgements relied upon by the Petitioner in support of his allegations. It was therefore held that there was no material irregularity, illegality or infirmity in the order of the State Commission which would justify National Commission's interference. Hence, the revision petition was dismissed.

vii) Citation:

IV (2014) CPJ 681; 2014(4) CPR 515.

AE) TRANSPORT OF GOODS:

1. British Airways Plc Vs. Gems Art Factory and others

i) Case in Brief:

The Complainant dispatched four handmade silk carpets worth US \$ 8,000 to a buyer in Detroit, USA on request by engaging opposite parties No.2 & 3 for the purpose of facilitating transportation of goods through

the appellant. On 17.03.1997, Complainant received a letter from the appellant informing that the buyer had refused to take delivery of the goods and sought disposal instructions with respect to the consignment. Thereupon the Complainant instructed the appellant on 20-03-1997 to re-book the goods for delivery to him at his cost. However, the goods were not sent back to India and the buyer on account of not receiving the goods in time, debited the amount which he had to pay to the complainant to his account. Alleging deficiency on the part of OPs, a complaint was filed before the State Commission which vide impugned order directed the OPs to pay a sum of US \$11,000 or its equivalent Indian rupees along with interest at 9% p.a. A sum of Rs.1,00,000/- was also awarded as compensation to the Complainant for mental agony, loss of business and good will. Rs.5,000/- towards cost of litigation was also awarded. Aggrieved by the said order, separate appeals were filed by British Airways as well as by the Asia Transport Company. No appeal was preferred by OP.No.3 Lyraid Pvt. Ltd. Both the appeals were allowed.

ii) Order appealed against:

First Appeal No.81 & 134 of 2005

From the order dated 06-01-2005 in Complaint No.10/98 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

First Appeal No.81 of 2005

British Airways Plc - Appellant

Vs.

Gems Art Factory and others - Respondents

First Appeal No.134 of 2005

Asia Transport Company - Appellant

Vs.

Gems Art Factory and others - Respondents

iv) Case No and Date of Judgement:

First Appeal No.81 & 134 of 2005 & Date of Judgement: 29.09.2014.

v) Acts and Sections referred:

Sections 2(1)(g), (o), 19 and 21 (b) of the Consumer Protection Act, 1986 & Carriage by Air Act, 1972.

vi) Issues raised and decided:

- a) The National Commission held that the territorial jurisdiction in a complaint against an international carrier such as British Airways has to be determined only in accordance with the provisions of Carriage by Air Act, 1972 (Clause 29 contained in Schedule-II). Since British Airways did not have an establishment in Jaipur at the time the consignment was entrusted to its agent M/s. Asia Transport Company, the State Commission at Jaipur did not have territorial jurisdiction to entertain the complaint, though British Airways was deficient in rendering services to the complainant to the extent of not complying with the disposal instructions given by the Complainant.
- b) As regards the appeal filed by the Asia Transport Company, since it was not independently engaged as an agent of the complainant and no fee or reward was paid to the said firm by the complainant, it was held that the complainant is not entitled to any payment from the appellant – Asia Transport Company.
- c) Consequently, both the appeals were allowed and the impugned order to the extent it pertained to the appellants was set aside.

vii) Citation:

IV (2014) CPJ 625; 2014(4) CPR 164.

AF) TRAVEL AGENCY / SERVICE:

1. Orbit Tours & Trade Fairs Pvt. Ltd. Vs. Mr.Vivian Rodrigues & Ors.

i) Case in Brief:

Respondents/Complainants participated in a tour of China called 'Canton Fair 2005' during the period 25-04-2005 to 30-04-2005 organised by the Petitioner on payment of Rs.77,700(US \$ 1468). The Petitioner had advertised that about 7500 stalls showing recent developments in technology would be on display. Respondents were interested in knowing the latest technologies in furniture and interior. But by the time they went, the display of furniture and interior had already concluded. Moreover, the accommodation provided to them was below the standard

advertised and the air-conditioning at the lodging went out of order for more than 24 hours causing discomfort. Respondents asked for refund of the amount on their return. But the Petitioner refused to entertain the claim. The Complaint filed in the District Forum was allowed and the Forum directed the Petitioner to pay Rs.77,700/- (US \$ 1468) together with Rs.2000 as cost. When the appeal was pending before the State Commission, Respondent No.1 expired and since no legal heir was brought on record, the appeal against him stood abated. The appeal against Respondent No.2 was decided in the absence of the Petitioner by dismissing the same. Present revision petition against the State Commission's order dismissed with cost of Rs.5,000 to be paid to the Consumer Legal Aid A/c of the Commission.

ii) Order appealed against:

Against the order dated 27-02-2013 in F.A.No.A/07/1086 of the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai.

iii) Parties:

Orbit Tours & Trade Fairs Pvt Ltd - Petitioner

Vs.

- | | |
|---|-------------------|
| 1) Mr.Vivian Rodrigues
(deleted as per order dated 9.7.2014) | - Respondent No.1 |
| 2) Mr.Sandeep Salvi | - Respondent No.2 |

iv) Case No and Date of Judgement:

Revision Petition No.1551 of 2013 with I.A No.2699 of 2013 (For Stay) & Date of Judgement: 17-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was observed by the Commission that the Petitioner had been callous and careless in pursuing litigation before the State Commission as well as the National Commission as evident from the fact that he had included the deceased Vivian Rodrigues as a Respondent in the revision petition.

- b) On merits, it was found that both the District Forum and the State Commission had appreciated the facts and circumstances and evidence led by the parties and arrived at a correct conclusion. In terms of Hon'ble Supreme Court decision in *Rubi Chandra Dutta v. United India Insurance Co Ltd* 2011 (3) SCALE 654, it was held that there was no material irregularity or illegality or jurisdictional error in the orders of the fora below to warrant interference. Accordingly, the revision petition was dismissed.

vii) Citation:

IV (2014) CPJ 639; 2014(4) CPR 449.

2. M/s. Spring Travels Pvt. Ltd Vs. Yunus Khan and another

i) Case in Brief:

Complainants/Respondent No.1 in all the revision petitions had booked return air tickets for themselves and their family under LTC scheme from Indore to Delhi and Delhi to Baghdora and back to Indore via Delhi. They had paid full amount to OP.No.1/ Respondent No.2. On reaching Delhi, they came to know that Petitioner had cancelled return tickets for Delhi – Baghdora – Delhi. Consequently, they had to return to Indore and refund the entire amount to the government along with interest. Alleging deficiency on the part of the OPs, complaints were filed before the District Forum. The Forum allowed the complaints and directed OPs jointly and severally to return ticket charges with 8% p.a interest and further allowed Rs.5,000/- for mental agony and Rs.1,000/- as costs of litigation. Appeal filed by the Petitioner was dismissed by the State Commission. Present revision petitions had been filed challenging the State Commission's order. Revision Petitions were allowed and the State Commission's order set aside. The order of the District Forum to the extent of fastening liability on the petitioner was set aside and complaint against the petitioner was dismissed.

ii) Order appealed against:

Revision Petition No.4587 of 2012

From the order dated 7.7.2012 in Appeal No. 368/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.4588 of 2012

From the order dated 7.7.2012 in Appeal No. 369/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.4589 of 2012

From the order dated 7.7.2012 in Appeal No. 370/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.4590 of 2012

From the order dated 7.7.2012 in Appeal No. 371/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.4591 of 2012

From the order dated 7.7.2012 in Appeal No. 372/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.4592 of 2012

From the order dated 7.7.2012 in Appeal No. 373/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.4593 of 2012

From the order dated 7.7.2012 in Appeal No. 636/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.4594 of 2012

From the order dated 7.7.2012 in Appeal No. 637/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.4595 of 2012

From the order dated 7.7.2012 in Appeal No. 638/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.4596 of 2012

From the order dated 7.7.2012 in Appeal No. 639/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.4597 of 2012

From the order dated 7.7.2012 in Appeal No. 640/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Deficiency in Service - Travel Agency / Service

Revision Petition No.4598 of 2012

From the order dated 7.7.2012 in Appeal No. 641/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.4599 of 2012

From the order dated 7.7.2012 in Appeal No. 642/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.4600 of 2012

From the order dated 7.7.2012 in Appeal No. 643/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.4601 of 2012

From the order dated 7.7.2012 in Appeal No. 644/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

Revision Petition No.4602 of 2012

From the order dated 7.7.2012 in Appeal No. 645/2010 of the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal.

iii) Parties:

Revision Petition No.4587 of 2012

M/s. Spring Travels Pvt. Ltd - Petitioner/Opp. Party
Vs.

Yunus Khan and another - Respondents

Revision Petition No.4588 of 2012

M/s. Spring Travels Pvt. Ltd - Petitioner/Opp. Party
Vs.

Mohd. Shafique Ansari and another - Respondents

Revision Petition No.4589 of 2012

M/s. Spring Travels Pvt. Ltd - Petitioner/Opp. Party
Vs.

Gulam Hussain Ansari and another - Respondents

Revision Petition No.4590 of 2012

M/s. Spring Travels Pvt. Ltd - Petitioner/Opp. Party
Vs.

Altaf Hussain and another - Respondents

Revision Petition No.4591 of 2012

M/s. Spring Travels Pvt. Ltd - Petitioner/Opp. Party

Vs.

Mohd. Mukhtiar Khan and another - Respondents

Revision Petition No.4592 of 2012

M/s. Spring Travels Pvt. Ltd - Petitioner/Opp. Party

Vs.

Hanif Mohmad and another - Respondents

Revision Petition No.4593 of 2012

M/s. Spring Travels Pvt. Ltd - Petitioner/Opp. Party

Vs.

Navneet Kumar Sharma and another - Respondents

Revision Petition No.4594 of 2012

M/s. Spring Travels Pvt. Ltd - Petitioner/Opp. Party

Vs.

M.A. Shaikh and another - Respondents

Revision Petition No.4595 of 2012

M/s. Spring Travels Pvt. Ltd - Petitioner/Opp. Party

Vs.

S.R. Patwa and another - Respondents

Revision Petition No.4596 of 2012

M/s. Spring Travels Pvt. Ltd - Petitioner/Opp. Party

Vs.

Atul Kumar and another - Respondents

Revision Petition No.4597 of 2012

M/s. Spring Travels Pvt. Ltd - Petitioner/Opp. Party

Vs.

Ajit and another - Respondents

Deficiency in Service - Travel Agency / Service

Revision Petition No.4598 of 2012

M/s. Spring Travels Pvt. Ltd - Petitioner/Opp. Party

Vs.

Sunil Verma and another - Respondents

Revision Petition No.4599 of 2012

M/s. Spring Travels Pvt. Ltd - Petitioner/Opp. Party

Vs.

Rajeev Bhatt and another - Respondents

Revision Petition No.4600 of 2012

M/s. Spring Travels Pvt. Ltd - Petitioner/Opp. Party

Vs.

S.G. Goswami and another - Respondents

Revision Petition No.4601 of 2012

M/s. Spring Travels Pvt. Ltd - Petitioner/Opp. Party

Vs.

Sushil Kumar Sharma and another - Respondents

Revision Petition No.4602 of 2012

M/s. Spring Travels Pvt. Ltd - Petitioner/Opp. Party

Vs.

Rajendra P. Vorana and another - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4587-4602 of 2012 &

Date of Judgement: 31.10.2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Perusal of the records showed that the complainants made payment to M/s.Timeless Travels Pvt. Ltd./Respondent No.2 for booking hotels etc and Respondent No.2 got air tickets booked through Petitioner. The Complainants in the revision petitions

also admitted that they had not made any payment to the petitioner. Therefore, there was no privity of contract between the Complainants and the Petitioner and merely because Petitioner got air tickets cancelled, no deficiency of service can be imputed on the part of Petitioner vis-à-vis the Complainant. The Commission based on the evidence available came to the conclusion that the Petitioner had got the tickets booked on the assurance given by Respondent No.2 but when payment was not received, Petitioner got the tickets cancelled and received refund.

- b) Perusal of the records also showed that the amount paid by the Complainant to M/s.Timeless Travels Ltd included air ticket charges as well as hotel charges and admittedly hotel arrangements were not made by the Petitioner. There is no evidence to show that the amount of hotel booking was made by M/s.Timeless Travels Ltd to the Petitioner. It was therefore held that the District Forum committed error in fastening liability for refund of whole amount on the petitioner jointly with the Respondent and that the State Commission committed further error in dismissing the appeal.
- c) Correspondence between Respondent No.2 and the administrative officer of the office in which the complainants were working also made it clear that the Respondent No.2 only was liable to refund the amount to the complainants.
- d) Consequently revision petition was allowed. The order of the State Commission was set aside. The order of the District Forum was modified and the liability fastened on Petitioner was set aside. Complaint was dismissed against the Petitioner.

vii) Citation:

IV (2014) CPJ 577; 2014(4) CPR 499.

3. SOTC Division of Kuoni Travel Pvt. Ltd. Vs. S. Thamilvannan

i) Case in Brief:

The Respondents in the three revision petitions planned to visit Germany and for the purpose they made payment of Rs.71,000/- each to the petitioner company. They were denied visa by the German consulate and were informed about cancellation of the tour package

only at 12 am on 02.10.2009. They were scheduled to leave for Germany on 03.10.2009. The complainants approached the petitioner company for refund of the amount which they had paid to it. The petitioner company, however, rejected their request on the ground that under the terms and conditions notified at the time of booking, the entire amount paid by them stood forfeited. Being aggrieved with the decision of the petitioner company, the complainants approached the concerned District Forum by way of separate complaints. District Forum directed the petitioner company to pay Rs.71,000/- each to the complainants along with Rs.25,000/- as compensation and Rs.2,000/- each as costs of litigation. The petitioner company approached the concerned State Commission by way of separate appeals which were dismissed. The Present Revision Petitions have been filed challenging the State Commission's order. Revision Petitions dismissed.

ii) Order appealed against:

Revision Petition No.4169 of 2014

From the order dated 22.07.2014 in First Appeal No.618 of 2011 Tamilnadu of State Consumer Disputes Redressal Commission, Chennai.

Revision Petition No.4170 of 2014

From the order dated 22.07.2014 in First Appeal No.197 of 2013 Tamilnadu of State Consumer Disputes Redressal Commission, Chennai.

Revision Petition No.4171 of 2014

From the order dated 22.07.2014 in First Appeal No.200 of 2013 Tamilnadu of State Consumer Disputes Redressal Commission, Chennai.

iii) Parties:

Revision Petition No. 4169 of 2014

SOTC Division of Kuoni Travel Pvt. Ltd. - Petitioner

Vs.

S. Thamilvannan - Respondent

Revision Petition No. 4170 of 2014

SOTC Division of Kuoni Travel Pvt. Ltd. - Petitioner

Vs.

K. S. Marimuthu - Respondent

Revision Petition No. 4171 of 2014

SOTC Division of Kuoni Travel Pvt. Ltd. - Petitioner

Vs.

M. Naina Mohamed - Respondent

iv) Case No and Date of Judgement:

- a) Revision Petition No.4169 of 2014 with IA/8168/2014, IA/8069/2014 for Stay, Exemption from filing the Certified Copy.
- b) Revision Petition No.4170 of 2014 with IA/8170/2014, IA/8071/2014 for Stay, Exemption from filing the Certified Copy.
- c) Revision Petition No.4171 of 2014 with IA/8172/2014, IA/8073/2014 for Stay, Exemption from filing the Certified Copy &

Date of Judgement: 02.12.2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), (r) 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) In this case, the issue was as to whether there was any deficiency on the part of the petitioner company in rendering services to the complainant in connection with their application for grant of visa by the Embassy of Germany.
- b) Held that the petitioner company was clearly deficient in rendering services to the complainant and in fact it indulged in unfair practice by accepting money from the complainants belatedly at a time when it knew that they stood almost no chance for getting visa for travelling to Germany. Therefore, confirmed the orders of the District Forum, which had been upheld by the State Commission.

vii) Citation:

Not reported in CPJ and CPR.

4. Air Deccan (Now known as Kingfisher Airlines Ltd.) Vs. TPS Phoolka & Others

i) Case in Brief:

Respondents/Complainants had booked two air tickets for travel by the morning flight from Mumbai to Delhi by petitioner's Airline on 03.01.2007 by paying Rs.9,930.40. The Petitioner/OP cancelled the tickets and sent an SMS at 2:40 a.m. to the respondent that the flight was cancelled. Respondents allege that the petitioner not only failed to arrange an alternative ticket by Air Deccan Airlines but refused to refund the amount of the cancelled tickets. Respondents were forced to take an evening flight from another airline paying Rs.21,280/- and travel by road throughout the night to attend a meeting at Patiala on 04.01.2007. The District Forum before whom a complaint was filed allowed the complaint directing the opposite party to make payment of Rs.21,280 with interest at 9% p.a. since 31.01.2007 and also compensation of Rs.50,000/- for mental agony and harassment and Rs.1,000/- as costs. The Appeal filed by the petitioner before the State Commission was dismissed. This Revision Petition against the order of the State Commission was also dismissed.

ii) Order appealed against:

From the order dated 12.12.2012 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh in First Appeal No.145 of 2008 with IA Nos.3416 and 3417 of 2013 (Stay, Condonation of Delay).

iii) Parties:

Air Deccan (Now known as Kingfisher Airlines Ltd.) - Petitioner

Vs.

TPS Phoolka & Others

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2076 of 2013 & Date of Judgement: 08-12-2014.

v) Acts and Sections referred:

Section 2(1) (g) & (o) and 21(b) of The Consumer Protection Act,1986.

vi) Issues raised and decided:

- a) Records showed that the cancellation of DN660, the flight in question was not only due to bad weather at Delhi, as contended

by the petitioner but also because it had been diverted to rescue passengers from another flight DN665.

- b) Although full fare was taken, the petitioner had given no evidence to support that they either offered rescheduling or offered full refund on 30.01.2007.
- c) Since there was no jurisdictional or legal error in the order of the State Commission, the RP was dismissed as per guidelines given by Hon'ble Supreme Court in *Mrs. Rubi (Chandra) Dutta Vs. M/s. United India Insurance Co. Ltd.*, 2011(3) Scale 654.

vii) Citation:

I (2015) CPJ 414; 2015(1) CPR 364.

AG) VEHICLE INSURANCE:

1. Ekasila Chemicals Ltd. Vs. The Branch Manager United India Insurance Co. Ltd.

i) Case in Brief:

Complainant/Petitioner's vehicle was insured with OP/Respondent for a period of one year from 7.10.2007 to 6.10.2008. On 5.1.2008, vehicle met with an accident and OP was given intimation. OP appointed surveyor. Complainant paid Rs.7,51,378/- towards repair of the car and submitted claim and OP sent cheque of Rs.1,00,000/- along with discharge voucher. Complainant accepted cheque under protest and sent intimation to OP. Alleging deficiency on the part of OP, complainant filed complaint before District forum which allowed complaint partly and directed OP to pay Rs.20,850/- with 8% p.a. interest and further awarded Rs.2,000/- as costs. Appeal filed by the complainant was dismissed by State Commission vide impugned order against which, this revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 21.06.2012 in Appeal No.369 of 2011 of the A.P. State Consumer Disputes Redressal Commission, Hyderabad.

iii) Parties:

Ekasila Chemicals Ltd. - Petitioner/Complainant

Vs.

The Branch Manager
United India Insurance Co. Ltd. - Respondent/OP

iv) Case No and Date of Judgement:

Revision Petition No.4145 of 2012 & Date of Judgement: 18-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was pointed out by the National Commission that perusal of receipts revealed that receipt of Rs.4,50,000/- dated 12.2.2008 did not contain any vehicle number and in such circumstances, it could not be inferred that this advance payment was made towards repair of insured vehicle. No doubt, receipt dated 18.2.2008 for Rs.2,86,378/- contained vehicle number, but as observed by the District forum, to prove this payment, petitioner should have filed statement of account to prove that cheques had been encashed.
- b) In the above said circumstances, the revision petition was dismissed and the orders of the fora below were confirmed.

vii) Citation:

IV (2014) CPJ 413; 2014(4) CPR 14.

2. The New India Assurance Company Ltd. Vs. Dev Kumar and others

i) Case in Brief:

Complainant purchased a Chevrolet Tavera vehicle and got it insured with the Petitioner/Insurance company for the period from 25-07-2012 to 24-07-2013 for an IDV of Rs.7,83,589/-. The vehicle met with an accident on 30-07-2012 when it fell into a roadside deep ditch. Since the vehicle got extensively damaged and had to be retrieved with the help of a crane, the insurance company was informed. A surveyor was appointed to assess the damage. The claim however was repudiated by the insurance company on the ground that the vehicle had been purchased under taxi quota and was being used as a transport vehicle without the driver holding a license to drive a transport vehicle. Alleging deficiency in service, Complainant filed a complaint before the District Forum which directed the Insurance Company to pay Rs.7,81,589/- to the complainant, as assessed by the Surveyor in his report dated 22-08-2012 along with compensation of Rs.20,000/- on account of deficiency in service and Rs.10,000/- as cost. The Forum permitted OP No.1 to dispose of the salvage assessed at Rs.3,00,000/- at its discretion. Being aggrieved from the order of the District Forum, the insurance company approached the State Commission by way of an appeal. On dismissal of the appeal by the State Commission, the insurance company had filed this revision petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 10-06-2014 in FA No.214 of 2014 of Chandigarh State Consumer Disputes Redressal Commission at UT Chandigarh.

iii) Parties:

The New India Assurance Company Ltd. - Petitioner/OP

Vs.

Dev Kumar and others

- Complainants/Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3459 of 2014 with I.A.No.6101 of 2014 (For stay)
& Date of Judgement: 22-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Sections 2(33), (35), (47) & 3 of the Motor Vehicles Act, 1988.

vi) Issues raised and decided:

- a) The question was whether the rejection of the claim by the Insurance Company was justified or not.
- b) The National Commission held that the rejection of the claim was not just for the following reasons:
 - i. The invoice issued by the seller of the vehicle to the complainant has not been produced nor has the insurance company produced the RC of the vehicle to prove that it was registered as a taxi. The insurance company must have taken copy of the RC whether it be permanent or temporary while issuing the cover note in respect of the vehicle in question. In the absence of any such document, it cannot be said that the vehicle in question was obtained under taxi quota.
 - ii. There is no material to indicate that the vehicle in question was actually being used for carrying passengers for hire or reward or that it had been so adapted that it could be used for the carriage of passengers for hire or reward. Therefore, the insurance company has failed to prove that the said vehicle was a public service vehicle.
 - iii. Since the vehicle in question was neither a public service vehicle nor a private service vehicle nor a goods carriage nor an educational institutional bus, it does not fall within the purview of the Section 2(47) of the Motor Vehicle Act. Consequently, there was no need to obtain a driving license which entitled the driver to drive a transport vehicle.
- c) Therefore, the present revision petition was dismissed and the orders of the fora below were upheld.

vii) Citation:

Not reported in CPJ and CPR.

3. CEO, Cholamandalam MS General Insurance Co. Ltd. and another Vs. Mr. Abhijat Saini and another

i) Case in Brief:

Respondent No.1/Complainant got his Safari LX car insured with the Petitioner for the period from 22-10-2003 to 21-10-2004 through their agent- Respondent No.2/OP.2. The vehicle met with an accident and fell into deep gorge at Damtaal, District Kangra, HP. The vehicle was towed and police report was lodged at Damtaal on 06-11-2003. The Petitioners were informed but despite insurance they refused to get the vehicle repaired. An investigator appointed by the Petitioners visited the accident site along with the Complainant on 19th and 20th April, 2004. It was a case of total loss and Complainant claimed market value of Rs.6,93,157/-. Petitioners repudiated the claim on the ground that the agent, Respondent No.2 had played fraud in collusion with Respondent No.1 by issuing a cover note with back date and also on the ground that Respondent No.1 had taken an unduly long time in informing the Petitioner's Company. The District Forum before whom a complaint was filed allowed the complaint, directed OP.1&2 to pay Rs.6,90,488/- to the Complainant and take custody of the car and also awarded Rs.50,000/- as compensation on account of deficiency in service and Rs.10,000/- as cost of litigation. The appeal filed by the Petitioners was dismissed by the State Commission vide impugned order against which the present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 18-01-2008 in Appeal No.A-07/83 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

CEO, Cholamandalam MS General
Insurance Co. Ltd. and another

- Petitioners

Vs.

Mr. Abhijat Saini and another

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No:1207 of 2008 & Date of Judgement: 29-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The National Commission noted that as per copy of the cover note placed on record, it was issued on 22-10-2003 and if the Petitioners believed that the cover note was a forged one, they should have taken criminal proceedings with Respondent No.2. There was nothing on record to show that the Petitioners cancelled the said cover note or took any other legal step in that regard. It was therefore held that the Petitioners' plea had not been substantiated.
- b) The Commission held that the Complainant had informed the Police immediately about the accident. Though there was some delay in informing the Petitioners, neither the factum of accident nor damages to the vehicle had been disputed by the Petitioners.
- c) It was therefore held that the orders of the State Commission did not call for any interference. The Revision petition was accordingly dismissed.

vii) Citation:

2014(4) CPR 178.

4. M/s. Royal Sundaram Alliance Insurance Co. Ltd. Vs. Mr. Rustam Shaukat Ali Khan

i) Case in Brief:

The Complainant took an insurance policy from the Petitioner Company in respect of a trailer for the period of one year from 19-06-2010. On 02-06-2011, the said trailer along with 13 other trailers was loaded with goods. After unloading, all the trailers except the trailer in question returned back. On enquiry, the Complainant came to know that the aforesaid trailer had unloaded the goods on 05-06-2011. Since the complainant's efforts to locate the vehicle and contact the driver were not successful, he reported the matter to the Police on 07-06-2011. However, the Police registered FIR only on 07-06-2011. Since the Complainant's claim was repudiated by the Petitioner Company, a complaint was filed before the District Forum. Allowing the complaint, the Forum directed the Petitioner Company to pay Rs.9 lakh to the complainant with 9% interest p.a from the date of filing the complaint,

Rs.10,000/- as compensation for mental agony and Rs.5,000 towards cost of litigation. On appeal by the Petitioner Company, the State Commission partly allowing the appeal, directed the Insurance Company to make payment of claim on non-standard basis i.e 75% of the claimed amount along with interest at 9% p.a. Still dissatisfied, the Petitioner Company filed the present revision petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 05-06-2014 in F. Appeal No.A/14/118 of Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

iii) Parties:

M/s. Royal Sundaram Alliance Insurance Co. Ltd. - Petitioner

Vs.

Mr. Rustam Shaukat Ali Khan - Respondent

iv) Case No and Date of Judgement:

Revision Petition No:3647 of 2014 with IA/6653/2014, IA/6654/2014 (For Stay and Condonation of Delay) & Date of Judgement: 07-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission held that the trailer in question had unloaded the goods on 05-06-2011 only and therefore, the Complainant could not have been reasonably sure by 06-06-2011 that the vehicle had been stolen. The Insurance Company was admittedly informed on 07-06-2011; it was therefore held that there was no breach of condition No.1 of the insurance policy that the insurance company should be informed immediately upon the occurrence of the accident or loss or damage.
- b) Secondly, the Commission held that the Complainant was not expected to rush to the Police without contacting the driver and finding out from him why he had not returned. There was therefore no delay in reporting the matter to the police.
- c) The Commission further held that the owner cannot be held guilty of negligence in employing the driver since the latter had

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worked with his father earlier. It was also held that the insured had taken all reasonable steps to safeguard the vehicle from loss or damage.

d) As regards the delay in filing the FIR, the Commission held that it was for the concerned Police Officer to register FIR after receiving the complaint and that the blame cannot come to the complainant.

e) The revision petition was accordingly dismissed.

vii) Citation:

Not reported in CPJ and CPR.

5. G. Siddesh Vs. The Branch Manager, ICICI Lombard General Insurance Co. Ltd.

i) Case in Brief:

Complainant/Petitioner's truck KA 17 A 7497 was insured by OP/ Respondent for a period of one year commencing from 12.6.2011 to 11.6.2012. On 3.6.2012, vehicle met with an accident and was severely damaged. Complainant incurred expenditure of Rs.3,23,285/- in repairs and submitted claim, but, OP repudiated the claim on the ground that complainant violated terms and conditions of policy. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which dismissed complaint. Appeal filed by complainant was dismissed by State Commission as barred by limitation as well as on merits against which, this revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 29.08.2013 in Appeal No.1173 of 2013 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

iii) Parties:

G. Siddesh - Petitioner/Complainant

Vs.

The Branch Manager,
ICICI Lombard General Insurance Co. Ltd. - Respondent/OP

iv) Case No and Date of Judgement:

Revision Petition No.618 of 2014 & Date of Judgement: 13-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was held that the State Commission had rightly observed that the complainant had not produced any documentary evidence in support of his illness and rightly dismissed appeal as barred by limitation.
- b) Secondly, in the present case, against the capacity of 1+4, there were 1+11 passengers in the vehicle which was held to be clear cut violation of the terms and conditions of the policy and in such circumstances, petitioner was not entitled to any claim on non-standard basis and State Commission had not committed any error in affirming order of District Forum dismissing complaint. Therefore, revision petition was dismissed.

vii) Citation:

IV (2014) CPJ 635; 2014(4) CPR 406.

6. Oriental Ship Agency Pvt. Ltd Vs. The Oriental Insurance Co. Ltd and another

i) Case in Brief:

In this case, the complainant's vehicle was insured with the Oriental Insurance Company Limited/OP on 19.09.1995 for a sum assured of Rs.1,56,00,000/- for the period w.e.f. 19.09.1995 to 18.09.1996. The registration of the subject vehicle was transferred in the name of M/s.Ornate Multi Modal Carrier Pvt. Ltd in R.T.O. record w.e.f. 21.08.2000 for a period of five years vide lease agreement dated 01.08.2000. Even after the transfer of registration, the complainant kept on renewing the insurance policy on year to year basis in its own name and the last policy was for Rs.80.00 lakhs for the period w.e.f. 19.09.2003 to 18.09.2004. On 08.11.2003 the subject vehicle met with fire accident resulting in damage to the subject vehicle. Despite the clarifications

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given by the Complainant to the surveyor the insurance claim of the complainant was repudiated by the opposite party on the ground that at the time of accident, the complainant had no insurable interest in the vehicle. Being aggrieved of the repudiation of his claim, the complainant filed the complaint before the National Commission. Complaint dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Oriental Ship Agency Pvt. Ltd - Complainant

Vs.

The Oriental Insurance Co. Ltd and another - Opp.Parties

iv) Case No and Date of Judgement:

Original Petition No.112 of 2005 & Date of Judgement: 16-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), and 21(a) (i) of The Consumer Protection Act, 1986, Section 7 of the Marine Insurance Act & Sections 39,41 and 51 of the Motor Vehicles Act, 1988.

vi) Issues raised and decided:

- a) The issue involved in this case was whether on the date of fire accident, the complainant had insurable interest in the subject vehicle and whether the entry in the RTO record pertaining to transfer of registration of vehicle in the name of someone other than the original registered owner can be treated as the proof of transfer of ownership of vehicle.
- b) Section 51(1) of the Motor Vehicles Act makes it clear that when an application for registration of a motor vehicle under hire purchase, lease or hypothecation is made, the registering authority is required to make an entry in the certificate of registration regarding existence of the said agreement. Perusal of the records revealed that there was no such entry. This implied that at the time of application for transfer of ownership, the complainant or the transferee company did not mention about any lease agreement between the parties and didn't intimate the

insurance company about the transfer of registration in the RTO record. Adding to that, complainant had been getting the insurance policy renewed in his favour even after the transfer of ownership/registration by concealing the said material information from the insurer.

- c) It was held that the insurance contract obtained by the petitioner after the transfer of registration in favour of third party was not valid. As the complainant by his own act had allowed the transfer of ownership of vehicle in the record of RTO on 21.08.2000, he was estopped from taking a contradictory plea. Thus, the plea of the complainant that the subject vehicle was given on lease to the sister concern and ownership was not transferred, was devoid of any merit. Otherwise also, at the time of accident the complainant not being the owner had no insurable interest in the subject vehicle. As such, the repudiation of claim by the insurance company could not be termed as deficiency in service. Hence, present complaint was accordingly dismissed.

vii) Citation:

IV (2014) CPJ 721; 2014(4) CPR 490.

7. Sultan Singh Vs. The Branch Manager, The New India Assurance Ltd and others

i) Case in Brief:

Petitioner/Complainant insured his car with O.P No.1, insurance company for Rs.4,01,788 for the period 10-08-2011 to 09-08-2012. On 17-12-2011, the car got fire resulting in extensive damage. The accident was reported to the insurance company. OP appointed a surveyor who after inspection recommended settlement of the claim on total loss basis. But the insurance company repudiated the claim on the ground that by holding two driving licenses, the driver of the car had violated the provisions of the Motor Vehicles Act, 1988. The Petitioner filed consumer complaint before the District Forum which dismissed the complaint. The State Commission also dismissed the appeal vide impugned order against which this revision petition has been filed by the Petitioner. Revision Petition allowed.

ii) Order appealed against:

Against the order dated 26.08.2013 in First Appeal No. 580/2013 of the State Commission Haryana, Panchkula.

iii) Parties:

Sultan Singh - Petitioner

Vs.

The Branch Manager,

The New India Assurance Ltd and others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4852 of 2013 & Date of Judgement: 16-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986

vi) Issues raised and decided:

- a) It was noted that the Complainant first submitted a driving license of the driver purported to have been issued by Licensing Authority, Mathura which was found to be fake. However, before the claim was repudiated the Complainant submitted the original driving license of the driver issued on 23-11-2011 by RTO, Gurgaon and valid upto 22-11-2014. Both the fora below had held that the second driving license produced by the Complainant cannot be taken into consideration. But the National Commission caused the second driving license to be verified with regard to its genuineness and found that it was a genuine license issued by RTO, Gurgaon on 23-11-2011 i.e prior to the accident. Therefore, it was held that at the time of the accident, the driver was having a valid driving license to drive the vehicle in question.
- b) As regards the alleged violation of Section 6 of the Motor Vehicles Act, 1988, it was held by the Commission that since the first license produced by the Complainant was found to be fake, it cannot be said that the driver of the subject car had obtained license from transport authority, Gurgaon in violation of Section 6 of the Act.

- c) The Commission accordingly allowed the revision petition and directed the insurance company to pay to the petitioner a sum of Rs.3, 79,000 against its insurance claim on total loss basis as assessed by the Surveyor with interest at 9% p.a from the date of repudiation of claim till the date of realization.

vii) Citation:

IV (2014) CPJ 751; 2014(4) CPR 464.

8. M/s. PRS Construction and Exporter Vs. The Authorized Signatory, Reliance General Insurance Co. Ltd. and another

i) Case in Brief:

Complainant/appellant's vehicle OR 05 AT 7016 was insured by OP/respondent for a period of one year from 18.02.2012 to 17.02.2013. Vehicle met with an accident on 24.4.2012 and suffered extensive damage. Matter was reported to the Police as well as to OP. On the next day, the complainant lodged claim with OP. It was further submitted that in the presence of surveyor, authorized representative demanded Rs.5,00,000/- as advance for repairs, but payment was not made. Alleging deficiency on the part of OP, complainant filed complaint before the State Commission which directed OP to pay Rs.9,30,000.50 with 9% p.a. interest from 01.10.2012 till payment and further awarded Rs.7,000/- as costs. Aggrieved by the order of the State Commission, this appeal has been filed by the Complainant. Appeal was dismissed.

ii) Order appealed against:

From the order dated 1.7.2013 in Consumer Complaint No.37/2012 of the Orissa State Consumer Disputes Redressal Commission, Cuttack.

iii) Parties:

M/s. PRS Construction and Exporter - Appellant/Complainant

Vs.

The Authorized Signatory,
Reliance General Insurance Co. Ltd & Anr. - Respondents/ OPs.

iv) Case No and Date of Judgement:

First Appeal No.560 of 2013 & Date of Judgement: 29-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was pointed out by the National Commission that only two estimates were filed by the complainant. They had not filed repair bills to show that more than Rs.9,30,000/- was spent by complainant in getting vehicle repaired. In such circumstances, State Commission had not committed any error in allowing compensation as per surveyors report. As far as delay in assessment of loss is concerned, it was noted that vehicle met with an accident on 24.4.2012 and could not be brought to garage till 23.6.2012. In such circumstances, intimation by OP to the complainant regarding making payment of Rs.9,30,000/- as per surveyors report cannot be said to be delay in assessment of loss. Hence, appeal filed by the appellant was dismissed.

vii) Citation:

I (2015) CPJ 210; 2014(4) CPR 538.

9. New India Assurance Co. Ltd. Vs. Birender Mishra

i) Case in Brief:

Complainant/Respondent got his Tata Sumo HR 5BT 2888 insured with OP/petitioner for a period of one year from 22.8.2003 to 21.8.2004. On 9.5.2004, vehicle met with an accident and suffered extensive damage and complainant spent Rs.1,15,975/- on repairs of the vehicle and submitted claim to OP. OP repudiated claim on the ground that driver was holding two driving licences and vehicle was registered as a taxi, but driver was holding licence of LM (NT) plus TSR. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which directed OP to pay Rs.1,15,975/- with 9% p.a. interest and further allowed compensation of Rs.5,000/- and Rs.2,000/- as cost of litigation. Appeal filed by the OP was dismissed by leaned State Commission against which, this revision petition has been filed along with application for condonation of delay of 14 days. Revision Petition allowed.

ii) Order appealed against:

From the order dated 9.5.2008 in Appeal No.08/225 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

New India Assurance Co. Ltd - Petitioner/Opp. Party

Vs.

Birender Mishra - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.3737 of 2008 & Date of Judgement: 29-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was noted that as per insurance policy, it was commercial vehicle insured for carrying nine passengers. It was not disputed that the driver was authorized to drive light motor vehicle - non transport (LMV) (NT) plus Three Seater Rickshaw (TSR). He was not authorized to drive a transport vehicle.
- b) Held that a person who does not hold licence to drive transport vehicle cannot drive transport vehicle and if he drives transport vehicle, Insurance Company cannot be fastened with any liability. District Forum committed error in allowing complaint and State Commission further committed error in dismissing appeal. Therefore, revision petition filed by the petitioner was allowed and order passed by the State Commission was set aside based on the decision of National Commission in *United India Insurance Co. Ltd. Vs. Arvind Kumar III* (2008) CPJ 191 (NC) & *National Insurance Co. Ltd. Vs. Sansar Chand III* (2010) CPJ 256 (NC).

vii) Citation:

IV (2014) CPJ 652; 2014(4) CPR 536.

10. Smt. Meena Devi Jain Vs. ICICI Lombard General Insurance Co. Ltd. and others

i) Case in Brief:

The petitioner got his new car insured by OP insurance company, respondents No.1 and 2 in this petition. The I.D.V. value of the vehicle was fixed at Rs.8,92,050/-. Petitioner's car got involved in an accident during the period of insurance on 12.05.2009 and was completely damaged. The Petitioner made the claim on total loss basis which was repudiated by the insurance company on the ground that the damaged vehicle could be repaired by replacing body parts available with the dealer. The Surveyor appointed by the Insurance Company had assessed the damage at Rs.2,92,369.50. However, there was neither a reply nor the petitioner gave her consent to start the repair work of the vehicle. But she filed complaint before the District Forum against the OPs. District Forum partly allowed the complaint and directed the Non-applicant No.1 and 2 to pay Rs.2,92,370/-to the applicant with 6% interest on it from 16.05.2011 upto the date of payment, Rs.25,000/- for deficiency in service and harassment and Rs.3,000/- for expenses. Against the orders of District Forum, OP filed appeal and the Petitioner also filed appeal for enhancement of the compensation. But the State Commission dismissed both the appeals against which the present revision petition has been filed. Revision Petition was dismissed.

ii) Order appealed against:

From the order dated 26.12.2013 in F.A. No.13/169 of the Chhatisgarh State Consumer Disputes Redressal Commission, Raipur.

iii) Parties:

Smt. Meena Devi Jain - Petitioner

Vs.

ICICI Lombard General Insurance Co. Ltd. & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1573 of 2014 & Date of Judgement: 31-10-2014.

v) Acts and Sections referred:

Sections 2(1)(g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that since the vehicle was not completely damaged, it was not a case of "Total Loss" and hence the petitioner was not entitled to compensation on total loss basis and as such there was no deficiency in service and the orders of the fora below were upheld.

vii) Citation:

IV (2014) CPJ 668; 2014(4) CPR 517.

11. Bhagwat Vs. Branch Manager

i) Case in Brief:

Petitioner/Complainant purchased the vehicle which was insured with the Respondent/Insurance Company on the same day for a period of one year, i.e., from 18.12.2006 to 17.12.2007. Temporary registration under section 43 of the Motor Vehicles Act was obtained for the said vehicle which was valid till 18.01.2007. However, no application was given to the Regional Transport Officer for registration of the said vehicle as per the requirements of section 39 of the Motor Vehicles Act. The said vehicle met with an accident on 09.05.07 and suffered damage. Insurance Company repudiated the claim of the petitioner/complainant on the ground that the vehicle was not registered with the transport authorities. A consumer complaint was then filed before the District Forum which dismissed the same on the ground that the petitioner/complainant had used the vehicle without registration and thus, committed breach of the provisions of the Motor Vehicles Act. An appeal filed by the petitioner against the order of the District Forum was also dismissed. It is against this order that the present revision petition has been made. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 28.03.14 in First Appeal No. 596/2011 of Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Aurangabad.

iii) Parties:

Bhagwat	-	Petitioner/Complainant
	Vs.	
Branch Manager, United India Insurance Co.	-	Respondent/OP

iv) Case No and Date of Judgement:

Revision Petition No.3044 of 2014 & Date of Judgement: 05-11-2014.

v) Acts and Sections referred:

Section 2 (1) (g) & (o), 19, 21(b) of the Consumer Protection Act, 1986 & Section 39 & 192 of the Motor Vehicles Act, 1988.

vi) Issues raised and decided:

Held that that for failure to meet the statutory requirements regarding the registration of vehicle, the complainant was not entitled to get the claim even on 'Non-Standard basis based on the decision of Hon'ble Apex Court in *Narinder Singh Vs. New India Assurance Co. Ltd.* Therefore, the orders of the fora below were upheld and the present revision petition was dismissed.

vii) Citation:

IV (2014) CPJ 698; 2014(4) CPR 699.

12. National Insurance Company Ltd. Vs. Smt. Princy Roy

i) Case in Brief:

The Respondent/Complainant's husband bought a Maruti Omni Van from one Mr.M Shivanandan, by making part payment of Rs.50,000/- out of a total consideration of Rs.90,000/- and Mr.Shivanandan allowed the respondent's husband to renew/transfer the insurance of the said vehicle in his name, after compliance of the requisite formalities and the said vehicle came to be insured by the petitioner/opposite party in the name of respondent's husband. Meanwhile, on 27th April 2007 respondent's husband met with accident and died on the spot. Respondent lodged her claim in terms of the said insurance policy with the petitioner claiming a sum of Rs.2 Lakhs. But the claim was rejected by the Insurance Company on the ground that that the registration certificate of the Maruti Omni stood in the name of Mr.M. Shivanandan and the deceased had no insurable interest in the vehicle. So the Respondent filed complaint before the District Forum which directed to pay death benefit of Rs.2 lakh to complainant together with simple interest thereon at 9% per annum from 26.09.2007 (which is the date 3 months from filing of the insurance claim) till the date of actual payment along with further sum of Rs.45,000/- towards vehicle repairs.

Aggrieved by the order of the District Forum, the Petitioner filed an appeal before the State Commission which dismissed the appeal with costs against which this revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 04.07.2012 of the Goa State Consumer Disputes Redressal Commission, Panaji in First Appeal no. 26 of 2010.

iii) Parties:

National Insurance Company Ltd. - Petitioner

Vs.

Smt. Princy Roy - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3740 of 2012 & Date of Judgement: 11-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986 & Sections 2(30), 50 and 177 of the Motor Vehicles Act, 1988.

vi) Issues raised and decided:

- a) The issue was whether the Respondent could avail herself of the benefit when the ownership of the insurance policy has not been transferred to the Respondent's husband even though the possession of the van vested with him legally.
- b) Held that Petitioner had failed to check whether all the requirements were met before transferring/ renewing the said policy in favour of Roy Baby and thereafter the respondent, which they failed to do. The benefit of the said insurance policy cannot be denied to the insured on specious grounds and due to the omission on the part of the petitioner in ensuring adherence to the requirements before issuing the said policy. This showed the gross negligence of the petitioner and the careless and casual manner of their working while processing proposal for insurance policies or their transfer/ renewal. Therefore, the orders of the fora below were upheld and the present revision petition was dismissed.

vii) Citation:

II (2015) CPJ 109; 2014(4) CPR 637.

13. Oriental Insurance Co. Ltd. Vs. Abdul Saleem

i) Case in Brief:

Respondent/Complainant had insured his goods transport vehicle with the Petitioner for the period from 30.11.2005 to 29.11.2006. The vehicle met with an accident 08.02.2006. The Petitioner was informed immediately. The Surveyor sent by him recommended the claim of Rs.3 lakhs towards repair and replacement of parts. But the petitioner repudiated the claim on the ground that at the time of accident the driver had licence to drive only Light Transport Vehicle whereas the vehicle in question is a Medium Goods Vehicle. Respondent filed a complaint before the District Forum which dismissed the same. But his appeal was allowed by the State Commission which directed the petitioner pay Rs.1,86,500/- to the respondent as compensation with interest @ 6% p.a. from the date of complaint. Aggrieved by the order of the State Commission, the petitioner has filed the present revision petition. Revision petition allowed. State Commission's order set aside and District Forum's order restored. Complaint filed by the respondent was dismissed.

ii) Order appealed against:

From the order dated 08.01.2008 in First Appeal No.517 of 2007 of Karnataka State Consumer Disputes Redressal Commission, Bangalore.

iii) Parties:

Oriental Insurance Co. Ltd. - Petitioner

Vs.

Abdul Saleem - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2495 of 2008 & Date of Judgement: 17-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986; Sections 3 of the Motor Vehicle Act, 1988 read with Rule 16 of the Rules and Form No.6.

vi) Issues raised and decided:

- a) As per driving licence the driver was authorized to drive Transport Vehicle (Goods Carriage) not exceeding 7,500 kgs Gross Vehicle Weight (GVW). In the present case the gross weight of the vehicle

was 10,500 kgs and the driver did not have a valid licence to drive the vehicle.

- b) Section 3 of the Motor Vehicles Act clearly provides that no person shall drive a Transport Vehicle other than a motor car or motor cycle hired for his own use or rented under any scheme made under Sub-section(2) of Section 75 unless his driving licence specifically entitles him to do so. The driving licence of the driver in this case did not entitle him to drive Medium Goods Vehicle. The decision of the Apex Court in *New India Assurance Co. Ltd. Vs. Prabhu Lal* (AIR 2008 SC 614) is applicable in this case.
- c) The order passed by the State Commission was set aside and the order passed by the District Forum, dismissing the complaint of the respondent, stood restored.

vii) Citation:

2015 (1) CPR 98.

14. Oriental Insurance Co. Ltd. Vs. Mushtaq Khan & Anr.

i) Case in Brief:

A vehicle registered in the name of one Smt. Malti Devi was sold by OP1/Respondent No.2 which was insured with OP2/Petitioner for a period of one year for a sum of Rs.3,64,500/-. On account of non payment of instalments by the owner, vehicle was possessed by OP1 and sold to the Complainant. But vehicle was not transferred in the name of the complainant. On 04.01.2008, vehicle was damaged in an accident and the Surveyor appointed by OP2 estimated the repair at Rs.6,62,869/- (considered as total loss). Complainant made a claim to OP2 but no payment was made. A Complaint was filed before the District Forum which allowed the complaint and directed OP2 & 3 to pay Rs.3,64,500/- with interest@9% p.a. and further awarded Rs.1,000/- as litigation expenses. Appeal filed by the OP was dismissed by the State Commission. This Revision petition challenging the State Commission's order is allowed.

ii) Order appealed against:

From the order dated 03.07.2013 in Appeal No.2170 of 2011 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

Oriental Insurance Co. Ltd. - Petitioner/Opp. Party (OP)

Vs.

Mushtaq Khan & Anr. - Respondents/Complainants

iv) Case No and Date of Judgement:

Revision Petition No.3618 of 2013 & Date of Judgement: 21-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It is admitted case of the parties that after the purchase of old vehicle by the complainant on 07.11.2007, vehicle continued in the name of the seller and neither registration certificate nor insurance policy was transferred in the name of the complainant till the accident on 04.01.2008.
- b) After 30.06.2002, as per GR17, subsequent purchaser was under an obligation to get the vehicle and insurance policy transferred in his name within 14 days from the date of transfer of registration certificate in his name for claiming damages to the vehicle.
- c) In the light of judgements in *I (2014) CPJ 493 (NC) – Sandeep Gupta Vs. United India Insurance Co. Ltd. & another* and *I (2014) CPJ 128 (NC) - New India Assurance Co. Ltd. Vs. Ashok Thakur*, it was held that the complainant was not entitled to any claim regarding damages to the vehicle and the petitioner has not committed any deficiency in repudiating the claim.
- d) Consequently, the revision petition was allowed and the orders of the State Commission and the District Forum were set aside. The Complaint stood dismissed.

vii) Citation:

II (2015) CPJ 145; 2015(1) CPR 29.

15. New India Assurance Co. Ltd. & Anr. Vs. Mohd.Faiyaz Khan, Major & Anr.

i) Case in Brief:

The Respondent/Complainant got his vehicle insured with the petitioner company for the period w.e.f. 25.06.2001 to 24.06.2002. During the subsistence of the insurance policy, he sold the vehicle to the Respondent No.1/Complainant No.1 Mohd. Faiyaz Khan. Complainant no.2 despite the purchase of vehicle did not get registration of the vehicle transferred in his name. However, before the expiry of insurance cover, a second insurance cover was obtained on the said vehicle in the name of Kripa Shanker Rai care of Mohd. Faiyaz Khan effective for the period 18.09.2001 to 17.09.2002. The vehicle was stolen on 16.04.2002. The theft was reported to the police and intimation was sent to the insurance company. Respondent No.1 filed insurance claim which was repudiated by the insurance company on the ground that he had no insurable interest in the stolen vehicle because after the purchase of vehicle, he did not get the registration transferred in his name in terms of Section 149 (2) (B) of the Motor Vehicles Act, 1988. Respondent No.1 filed a complainant in the District Forum which directed the petitioner opposite parties to pay to the complainants a sum of Rs.2,50,000/- with 6% interest thereon w.e.f. date of theft till the payment of amount besides Rs.4,000/- was also awarded as compensation for mental agony and harassment and Rs.1,000/- against litigation charges. The petitioner/opposite party preferred an appeal seeking dismissal of complaint. The complainants also preferred an appeal against the order of the District Forum seeking enhancement of compensation. The State Commission dismissed the appeal preferred by the petitioner/opposite party and allowed the appeal preferred by the complainants by enhancing the interest awarded by the District Forum from 6% to 9% p.a. Being aggrieved of the order of the State Commission, the petitioner has preferred this revision petition. Petition dismissed.

ii) Order appealed against:

From the order dated 4.3.2008 in Appeal No.1996/2005 & 1911/2006 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

New India Assurance Co. Ltd. and another - Petitioners

Vs.

Mohd.Faiyaz Khan, Major and another - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1935 of 2008 & Date of Judgement: 27-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986; Section 149(2)(B) & 157 of the Motor Vehicles Act, 1988.

vi) Issues raised and decided:

- a) It was contended by the petitioner that prior to the date of theft the interest in the insured vehicle had been transferred to Complainant No.1 and by failing to get the registration of vehicle transferred in his name within the prescribed period, he cannot be said to have the insurable interest in the vehicle.
- b) Held that original insurance cover taken by Complainant no.2 was effective from 25.06.2001 to 24.06.2002. After the sale of said vehicle to the Complainant No.1, a fresh insurance cover during the subsistence of original insurance was issued by the petitioner insurance company in the name of Complainant No.2 showing his address as care of Mohd. Faiyaz Khan for the period 18.09.2001 to 17.09.2002. This circumstance particularly change of address on second cover note c/o Mohd. Faiyaz Khan clearly shows that the insurance company was aware of change of ownership of the vehicle. That being the case, the petitioner insurance company is estopped from raising the plea of there being no insurable interest in favour of the subsequent owner Mohd. Faiyaz Khan. Therefore, the revision petition filed was dismissed and orders of the fora below upheld.

vii) Citation:

2014(4) CPR 815.

16. M/s. HDFC Ergo General Insurance Co. Ltd. Vs. Shri Bhagchand Saini

i) Case in Brief:

The tractor belonging to the Respondent/Complainant duly insured with the Petitioner, was stolen on the night of 06.12.2011. Police case was registered on 08.12.2011. Insurance claim made to the Petitioner was repudiated on the ground that there was a delay of 98 days in giving intimation to them. District Forum allowed the claim on non standard basis saying that 75% of the insured value of the vehicle should be given to the claimant along with interest @9% p.a. An appeal was made before the State Commission which was dismissed. Present Revision Petition challenging the order of the State Commission was allowed.

ii) Order appealed against:

From the order dated 11.06.2014 in First Appeal No.318 of 2014 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

M/s. HDFC Ergo General Insurance Co. Ltd. - Petitioner

Vs.

Shri Bhagchand Saini - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3049 of 2014 with IA/4956/2014 (For Stay) & Date of Judgement: 04-12-2014.

v) Acts and Sections referred:

Sections 2(1)(g) & (o), 19 & 21(b) of the Consumer Protection Act,1986 & Section 125 of the Indian Contract Act.

vi) Issues raised and decided:

- a. Complainant's version that intimation was given to the insurance company on the second day of the theft had not been substantiated from the record.
- b. Hon'ble Supreme Court in *Oriental Insurance Co. Ltd. Vs. Parvesh Chander Chadha*, [Civil Appeal No.6739 of 2010 decided on 17.08.2010] had held that "in terms of the policy issued by the appellant, the respondent was duty bound to inform it about the

theft of the vehicle immediately after the incident. On account of delayed intimation, the appellant was deprived of its legitimate right to get an enquiry conducted into the alleged theft of the vehicle and make an endeavour to recover the same.”

- c. Orders passed by the National Commission in *New India Assurance Co. Ltd. Vs. Trilochan Jane [FA No.321/2005]*, *New India Assurance Co. Ltd. Vs. Ram Avtar [I (2014) CPJ 29(NC)]*, *Ramesh Chandra Vs. ICICI Lombard General Insurance Co. Ltd & Anr. [1 (2014) CPJ 321(NC)]* and *New India Assurance Co. Ltd. VS. Dharam Singh [III (2006) CPJ 240 (NC)]* are relevant.

vii) Citation:

I (2015) CPJ 206; 2015(1) CPR 383.

17. New India Assurance Co. Ltd. Vs. Nathmal Soni

i) Case in Brief:

Complainant/Respondent purchased a car and got it insured from the petitioner for the period 18.07.2011 to 17.07.2012. The car met with an accident on 18.09.2011, when it was being driven by the cousin of the Complainant. The claim was repudiated by the insurance company on the ground that the vehicle had been sold by the Complainant to his cousin on 16.09.2011. Aggrieved by that, the Complainant approached the District Forum which dismissed the complaint. An appeal was filed in the State Commission which decided the case in favour of the Complainant. This Revision petition has been filed challenging the orders of the State Commission. Petition allowed.

ii) Order appealed against:

From the order dated 06.05.2014 in First Appeal No.26 of 2013 of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench at Jodhpur.

iii) Parties:

New India Assurance Co. Ltd.	- Petitioner
Vs.	
Nathmal Soni	- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3146 of 2014 & Date of Judgement: 05-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 & 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Had the complainant not sold the vehicle in question, he would have immediately on receipt of the repudiation letter written to the Insurance Company disputing the averment to this effect made in the repudiation letter and also would have claimed at that very stage, that he suspected that they had prepared some forged affidavit on a blank document submitted by him. That, however, had not been done, which is clear indication that the affidavit of the complainant in question was actually sworn by him.
- b) It was held that the complainant would not have been naïve enough to sign a blank affidavit and send it to the insurance company without even a forwarding letter.
- c) Held that the Insurance Company was justified in rejecting the claim submitted by the Complainant, on the ground that he was left with no insurable interest left in the vehicle, on the date it met with the accident.

vii) Citation:

Not reported in CPJ and CPR.

18. Oriental Insurance Co. Ltd. Vs. Vidya Bai

i) Case in Brief:

Complainant/Respondent got her vehicle Mahindra Bolero insured from opposite party/petitioner for a period of one year from 05-06-2006 to 04.06.2007. Insured vehicle was stolen on 24-09-2006 when parked in front of complainant's house. The claim made by the complainant was repudiated by the Petitioner/OP on the ground that the vehicle was not registered which amounted to breach of terms and conditions of policy. Alleging deficiency on the part of the opposite party complainant filed

Deficiency in Service - Vehicle Insurance

complaint before District Forum which directed OP to pay Rs.4,70,250/- along with 8% p.a. interest and further pay Rs.5,000/- for deficiency in service and Rs.1,000/- as litigation charges. Appeal filed by opposite party was partly allowed and order directing payment of interest and Rs.5,000/- for deficiency in service was set aside and rest of the order was affirmed. This revision petition had been filed against the State Commission's order along with application for condonation of delay. Delay condoned. Revision Petition allowed.

ii) Order appealed against:

Against the order dated 11-07-2013 in First Appeal No. 1105/2012 of the State Commission, Madhya Pradesh.

iii) Parties:

Oriental Insurance Co. Ltd. - Petitioner

Vs.

Vidya Bai - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3937 of 2013 & Date of Judgement: 05-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 & 21(b) of the Consumer Protection Act, 1986 & Sections 39 & 192 of Motor Vehicles Act, 1988.

vi) Issues raised and decided:

- a) In Civil Appeal No.8463 of 2014, *Narinder Singh Vs. New Indian Assurance Co. Ltd. & Others*, Hon'ble Supreme Court had held that using a motor vehicle without valid registration amounted not only to offence punishable under Section 192 of the Motor Vehicles Act but also fundamental breach of terms and conditions of policy.
- b) Held that the Complainant had not placed any evidence on record that after getting vehicle insured she ever applied for extension of temporary registration or applied for permanent registration under Section 39 of the Motor Vehicle Act. The reasons given by the complainant for not applying for permanent registration were not accepted. There was no deficiency on the part of the petitioner in repudiating claim.

c) Revision Petition was allowed. Orders of the District Forum and the State Commission were set aside. Complaint stood dismissed.

vii) Citation:

Not reported in CPJ and CPR.

19. Ms. Saleena Rani Vs. United India Insurance Company Ltd. and another

i) Case in Brief:

Petitioner filed a consumer complaint before the District Forum stating that she had purchased Indigo Car and got it insured from 8.6.2011 to 7.6.2012 with OP1. Husband of the Petitioner went to Delhi in the car where it was stolen on 06-05-2012. The claim of the Petitioner for the insured value was repudiated by OP1 on the ground that the car in question was not registered with any registering authority on the date of theft since the temporary registration of the car was valid for only one month i.e. till 8.7.2011. The Petitioner filed complaint before the District Forum which directed the Respondent No.1 to pay the IDV of the vehicle i.e. Rs.4,99,235/- to the OP2 as the vehicle was under hypothecation with it and directed the OP1 to pay Rs.50,000/- as compensation to the Petitioner and Rs.7,000/- as costs of the complaint. OP1 filed appeal before the State Commission which accepted the same and set aside the order of the District Forum and consequently dismissed the complaint. Hence, the present revision petition is filed. Petition dismissed.

ii) Order appealed against:

Against order dated 13.10.2014 in Appeal No.305 of 2014 of State Consumer Disputes Redressal Commission, U.T, Chandigarh.

iii) Parties:

Ms. Saleena Rani

- Petitioner

Vs.

United India Insurance Company Ltd. and another - Respondent(s)

iv) Case No and Date of Judgement:

Revision Petition No.4235 of 2014 & Date of Judgement: 08-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 & 21(b) of The Consumer Protection Act, 1986 and Section 39 of the Motor Vehicles Act, 1988.

vi) Issues raised and decided:

- a) The issue raised in this case was whether the Insurance Company could legally and validly repudiate the claim of the complainant/insured, in toto, in respect of the car in question, merely on the ground that it was being used in violation of the mandatory provisions of Section 39 of the Motor Vehicles Act, 1988.
- b) Held that since the Petitioner herself in this case was at fault as after the expiry of the temporary registration of the car in question, she did not apply for registration with the concerned Authority. The present revision petition was dismissed and there was no deficiency in service.
- c) Hon'ble Supreme Court in the cases of *Narinder Singh, Kaushalendra Kumar Mishra and Bharti Axa General Insurance Co. Ltd.*, has laid down the principle of law, to the effect that if the vehicle was being used without valid registering certificate and damage to the same or loss thereof occurred, then the insurance company could legally and validly repudiate the claim of the insured in toto. This principle is fully applicable to the facts of this case.
- d) Since there was no jurisdictional or legal error in the order of the State Commission, the RP was dismissed as per guidelines given by Hon'ble Supreme Court in *Mrs. Rubi (Chandra) Dutta Vs. M/s. United India Insurance Co. Ltd., 2011(3) Scale 654.*

vii) Citation:

I (2015) CPJ 220.

20. National Insurance Co. Ltd. Vs. Vijay Kumar Jain

i) Case in Brief:

Complainant/Respondent got his vehicle insured from opposite party/petitioner w.e.f. 30.01.2008 to 29.01.2009 for a sum of Rs.12,33,100/- On 26.07.2008 vehicle was stolen and FIR was lodged on 31.07.2008. Complainant submitted claim to the opposite party, which

was not settled. Alleging deficiency on the part of opposite party, complainant filed complaint before District Forum. District Forum treated complaint as premature and opposite party was directed to settle complainant's claim within four weeks with liberty to the complainant to file fresh complaint. Opposite party did not settle claim within four months. Again alleging deficiency on the part of the opposite party, complainant filed complaint before District Forum. Opposite party resisted complaint and submitted that claim was rightly repudiated as there was inordinate delay in lodging FIR and giving intimation to opposite party and prayed for dismissal of complaint. District Forum allowed complaint and directed opposite party to pay Rs.12,33,100/- with 6% p.a. interest. Appeal filed by the opposite party was dismissed by State Commission against which this revision petition has been filed. Petition allowed.

ii) Order appealed against:

Against the order dated 12-09-2013 in First Appeal No.414/2013 of the State Commission, Haryana.

iii) Parties:

National Insurance Co. Ltd.

- Petitioner

Vs.

Vijay Kumar Jain

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4632 of 2013 & Date of Judgement: 09-12-2014.

v) Acts and Sections referred:

Sections 2(1)(g) and (o), 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

a. Hon'ble Supreme Court in Civil Appeal No.6739/2010 – *Oriental Insurance Co. Ltd., Vs. Parvesh Chander Chadha* observed as under

“in terms of the policy issued by the appellant, the respondent was duty bound to inform it about the theft of the vehicle immediately after the incident. On account of delayed intimation, the appellant was deprived of its legitimate right to get an inquiry conducted into the alleged theft of the vehicle and made an endeavour to recover the

same. Unfortunately, all the consumer fora omitted to consider this grave lapse on the part of the respondent and directed the appellant to settle his claim on non-standard basis. In our view, the appellant cannot be saddled with the liability to pay compensation to the respondent despite the fact that he had not complied with the terms of the policy”.

- b. Hon’ble Apex Court in JT (2004) 8 SC 8 – *United India Insurance Co. Ltd., Vs. Harchandrai* observed that delay in intimation to insurance company in theft cases is fatal.
- c. In the present case, there was inordinate delay of 5 days in lodging FIR and delay of six months in intimation to the opposite party. Therefore, it was held that OP had not committed any deficiency in repudiating claim.
- d. RP allowed. Orders of the District Forum and the State Commission were set aside. Complaint stood dismissed.

vii) Citation:

I (2015) CPJ 387; 2015(1) CPR 360.

21. New India Assurance Co. Ltd. Vs. Radhey Shyam

i) Case in brief:

Complainant/Respondent got his truck insured from OP/Petitioner from 19.04.2004 to 18.04.2005. On 24.11.2004 Jai Prakash, who was earlier driver of the Complainant/Respondent but not on the aforesaid date, had stolen truck and lodged false complaint on 27.11.2004 that it has been stolen by somebody else i.e after three days of theft. Complainant intimated to opposite party and demanded assured sum which was repudiated by OP. District Forum directed opposite party to pay Rs.6 lakhs with 8% p.a. interest and further allowed Rs.1,000/- as cost. Appeal filed by opposite party was dismissed by the State Commission against which this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

Against the order dated 24-02-2012 in First Appeal No.354/2010 of the State Commission, Uttar Pradesh.

iii) Parties:

New India Assurance Co. Ltd. - Petitioner

Vs.

Radhey Shyam - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1652 of 2012 & Date of Judgement: 11-12-2014.

v) Acts and Sections referred:

Section 2 (1) (g), (o), 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The vehicle was handed over by driver to some unauthorized persons who took away the vehicle. Compensation could not be given in violation of condition no.5 of the Policy which requires that the insured shall take all reasonable steps to safeguard vehicle from loss or damage.
- b) The respondent is not entitled to any claim even on sub-standard basis and the Judgement of Hon'ble Apex Court in IV (2008) CPJ 1 (SC) – *National Insurance Co Ltd Vs. Nithin Khandalwal* is not applicable to the facts of this case.
- c) The Judgement in *National Insurance Co Ltd Vs. Ishar Das Madan Lal* [II (2007) CPJ 5 (SC)] is also not applicable as the driver voluntarily gave the key to some unknown persons.
- d) On account of delayed FIR and delayed intimation to O.P, claim was rightly repudiated. Decision of National Commission in First Appeal No.321/2005 – *New India Insurance Co Ltd v. Trilochan Jane* decided on 09-12-2009 is relevant.
- e) Held that the District Forum and State Commission committed error. Order passed by the State Commission set aside and complaint dismissed. Petitioner is entitled to recover amount, if any, which has been received by respondent in pursuance to order of Fora below.

Vii) Citation

I (2015) CPJ 172; 2015(1) CPR.

22. Shriram General Insurance Co. Ltd. Vs. Mahender Jat

i) Case in Brief:

Respondent's vehicle was stolen on 17.12.2010 from his rented house by some unknown person. FIR lodged with the police station Kekri. Police submitted a final untraced report of the property. Respondent claimed insurance amount from the petitioner which was repudiated by the latter on the ground that there was undue delay in reporting the theft amounting to violation of policy terms and conditions. District Forum dismissed the complaint. Appeal filed by the respondent before the State Commission was allowed. Present Revision Petition filed by the Petitioner against the State Commission's order allowed. Order of the State Commission set aside and order of the District Forum confirmed.

ii) Order appealed against:

Order dated 01.10.2013 in First Appeal no.328 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

Shriram General Insurance Co. Ltd. - Petitioner

Vs.

Mahender Jat - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4749 of 2013 with I.A Nos, 7904 & 7905 of 2013 (For Stay, Exemption for filing translation documents) & Date of Judgement: 16.12.2014.

v) Acts and Sections referred:

Section 2(1) (g) & (o), 19 & 21(b) of the Consumer Protection Act,1986.

vi) Issues raised and decided:

- a) Respondent claimed to have intimated the Petitioner Company regarding the theft on its Toll free Number and intimated its agent on 18.12.2010 i.e. one day after the accident. But this had not been substantiated by declaring the name of the agent or the complaint number.

- b) Respondent could have intimated regarding the vehicle theft through telegram, notice or written report through post in compliance to policy conditions. He had intimated after a delay of 21 days on 07.01.2011 depriving the company of its legitimate right to get enquiry conducted into the alleged theft of the vehicle and make an endeavour to recover the same.
- c) The law on this matter is well settled by the Hon'ble Supreme Court in the case of *Oriental Insurance Co. Ltd. Vs. Parvesh Chander Chadha*, Civil Appeal No.6739 of 2010 decided on 17.08.2010 as also the judgement in the matter of *Dharambir Vs. The Oriental Insurance Co. Ltd.* In RP No.1542 of 2012 decided on 10.10.2013 and in the matter of *New India Assurance Co. Ltd. Vs. Trilochan Jane* in First Appeal No.321 of 2005 decided on 09.12.2009.
- d) Held that the State Commission had erred in holding that the onus of proving that no intimation regarding theft of the vehicle was given on Toll Free Number lay on the petitioner.

vii) Citation:

I (2015) CPJ 74; 2015(1) CPR 145.

23. M/s. MRH Associates Vs. National Insurance Co. Ltd. & Anr.

i) Case in Brief:

Complainant/Petitioner had insured his Truck with Respondent No.1/ OP No.1 for a value of Rs.8,88,800/- for the period from 01.06.2011 to 31.05.2012. The vehicle met with an accident on 05.07.2011 and was badly damaged. The cost of repair was estimated to be Rs.7.5 lakhs approximately. Petitioner made a claim with the respondent insurance company. This was repudiated by the latter on the ground that the person driving the vehicle at the relevant time did not have a valid and effective driving license. Alleging deficiency in service, petitioner filed a complaint before the District Forum which dismissed the complaint against OP No.2 but allowed the same against OP No.1. Appeal filed by the Insurance Company was allowed by the State Commission. Revision Petition filed by the Petitioner/Complainant before the National Commission dismissed.

ii) Order appealed against:

Order dated 01.04.2014 in F.A. No.39/2014 of State Consumer Disputes Redressal Commission, U.T.Chandigarh.

iii) Parties:

M/s. MRH Associates - Petitioner

Vs.

National Insurance Co. Ltd. & Anr. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2874 of 2014 & Date of Judgement: 17-12-2014.

v) Acts and Sections referred:

Section 2(1) (g) & (o), 19, 21(b) of The Consumer Protection Act, 1986 & Section 15 of the Motor Vehicles Act, 1988.

vi) Issues raised and decided:

- a. The Driving License produced by the Petitioner/Complainant bearing no.3678/R/97 of Sukhwinder Singh, Driver who was driving the vehicle was not originally issued in his name. It was issued in the name of Kulwant Singh for a period from 10.09.1997 to 09.09.2000. It was renewed in the name of Sukhwinder Singh on three occasions subsequently. Since the license was not renewed by the office of OP No.2/Respondent No.2, there was no deficiency of service on his part.
- b. The District Forum did not properly appreciate the evidence on record which showed that the original license was not issued in Sukhwinder Singh's name. Once the driving license was fake, further renewals of the same in the name of Sukhwinder Singh did not make it valid and effective. It amounted to violation of the provisions of Motor Vehicles Act,1988.The Apex Court in the case of *New India Assurance Co. Vs. Kamla and Ors*, [(2001) 4 SCC 342] has held that no licensing authority has the power to renew a fake license and transform a fake license as genuine.
- c. Petitioner did not cross examine the driver Sukhwinder Singh with reference to the testimony of the official of the office of Respondent No.2.

d. In the absence of valid and effective license by the driver, the District Forum should not have asked the OP Insurance Company to settle the claim even on non-standard basis.

vii) Citation:

I (2015) CPJ 177; 2015(1) CPR 137.

24. Smt. Kanta Mathur Vs. National Insurance Company Limited & Others

i) Case in brief:

Petitioner had insured the car for Rs.5,46,413/- with the Respondent Company (OPs.1-4). Vehicle met with accident on 11-03-2007. O.Ps did not settle the claim – District Forum before whom the case was filed on 23.10.2007 vide order 02-04-08 asked the OPs to settle the matter. During the pendency of the complaint before the forum, petitioner had accepted a sum of Rs.3,95,413/- in full and final settlement with the O.Ps. Despite this, the complainant filed another complaint before the District Forum which was dismissed. State Commission in appeal dismissed the appeal. Revision Petition filed before National Commission was also dismissed.

ii) Order appealed against:

From the order dated 08.06.2009 in First Appeal No.700/2009 of the State Consumer Disputes Redressal Commission, Haryana, Panchkula.

iii) Parties:

Smt. Kanta Mathur - Petitioner

Vs.

National Insurance Company Limited & Others - Respondent(s)

iv) Case No and Date of Judgment:

Revision Petition No.394 of 2010 & Date of Judgement: 17-12-2014.

v) Acts and Sections referred:

Section 2(1) (g), (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The complainant had accepted a sum of Rs.3,95,413/- on 19-05-2008 without any protest in full and final settlement. She cannot file another petition seeking direction to the opposite parties to pay the balance amount of Rs.1,51,000/- on the ground that the surveyor had assessed the loss to the extent Rs.5,46,430/-.
- b) Once the claim is accepted as full and final settlement, complainant cannot reopen her claim. Petitioner had used the car for one year keeping in view the facts and circumstances, the orders passed by the fora cannot be faulted.

vii) Citation:

I (2015) CPJ 151; 2015(1) CPR 135.

25. United India Insurance Co. Ltd. Vs. Mr. Michael Viegas

i) Case in brief:

Complaint/Respondent, Owner of Toyota Innova got it insured from O.Ps/Petitioner for sum of the Rs.6,00,000/- from 22-1-2010 to 21-01-2011 with the limitation that the vehicle could not be used for hire or reward. Vehicle met with an accident – passengers injured – vehicle damaged on 15-05-2010. Surveyor appointed by O.P assessed loss of Rs.4 lakhs after deducting 2 lakhs as wreck value. O.P did not settle claim. Instead obtained report from an investigator on 15-3-2011 and again from M/s Facts Finders who submitted that the vehicle was used for hire. By letter dated 11-07-2007, O.Ps repudiated claim as vehicle used for commercial purpose. District Commission before whom complainant filed case allowed complaint on non-standard basis i.e awarding Rs. 3 lakhs i.e 75% of RS 4 lakhs along with interest at 9% p.a and cost of Rs.5000. Appeal filed by the Complainant before the State Commission was allowed. O.Ps were asked to pay 6 lakhs along with compensation of Rs.50000 and cost of Rs.10000 and increased the rate of interest at 9 – 11 % p.a. Revision petition against the State Commission order filed by the petitioner. State Commission order upheld. Revision petition partly allowed – compensation restricted to Rs.4 lakhs plus Rs.25000 for mental agony. Rest of State Commission's order upheld.

ii) Order appealed against:

Against the order dated 15.11.2013 in F. Appeal No.75 of 2013 of State Commission, Panaji, Goa.

iii) Parties:

United India Insurance Co. Ltd. - Petitioner

Vs.

Mr. Michael Viegas - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1093 of 2014 & Date of Judgement: 17-12-14.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Surveyor appointed by O.Ps assessed loss of Rs. 4 lakhs after deducting Rs.2 lakhs as wreck value. When the State Commission had accepted the Surveyor's report, it should not have directed the O.Ps to pay 6 lakhs.
- b) Neither the surveyor nor the investigator Mr. K.B. Shellikeri had observed in his report that the vehicle was used for hire.
- c) State commission rightly disbelieved the report of M/s.Factfinders since no statement of passengers to substantiate the contention that the vehicle was on hire was produced.
- d) DC was not justified in awarding claim on non-standard basis by reducing 25% from the amount assessed by the Surveyor.
- e) Wreck of insured vehicle ordered to remain property of complainant.

vii) Citation:

I (2015) CPJ 68; 2015(1) CPR 125.

V. EX-PARTE DECREE

1. M/s. L. M.Premier Vs. J. Suresh and another

i) Case in Brief:

In this case, the Complainant/Respondent filed complaint before District Forum which proceeded ex parte against opposite parties. Appeals filed by both the opposite parties were dismissed by State Commission against which these revision petitions have been filed. Petitions allowed.

ii) Order appealed against:

Against the order dated 02.06.2011 in Appeal No.4776/2010 & 560/2011 of State Commission, Karnataka, Bangalore.

iii) Parties:

In Revision Petition No.2943 of 2011

M/s. L.M. Premier - Petitioner

Vs.

J. Suresh and another - Respondent(s)

In Revision Petition No.3019 of 2011

M/s. Premier Ltd. - Petitioner

Vs.

J. Suresh and another - Respondent(s)

iv) Case No and Date of Judgement:

a) Revision Petition No.2943 of 2011

b) Revision Petition No.3019 of 2011 &

Date of Judgement: 05-12-2014.

v) Acts and Sections referred:

Sections 13, 19, 21(b) & 22 of The Consumer Protection Act, 1986 & Regulation 10 of the Consumer Protection Regulations, 2005.

vi) Issues raised and decided:

a) Respondent contended that as Petitioner did not appear before the District Forum in spite of reasonable notice, District Forum rightly proceeded ex parte and allowed complaint.

- b) Held that notice was issued only for 15 days and no reason has been mentioned in the order sheet for giving shorter notice of 15 days only and the said notice issued was not in accordance with Regulation 10 of Consumer Protection Regulations. District Forum committed error in proceeding ex parte against Petitioners on the basis of service of 15 days notice. District Forum should have given at least 30 days so that Petitioners could have appeared before the District Forum and contested the complaint.
- c) Revision petitions filed by the Petitioners were allowed and impugned order dated 2.6.2011 passed by the State commission was set aside and the matter was remanded back to District Forum for giving an opportunity to the Petitioners to file written statement and evidence.

vii) Citation:

I (2015) CPJ 265; 2015(1) CPR 382.

VI. FRIVOLOUS AND VEXATIOUS LITIGATION

1. V.B. Ambedkar Vs. District Collector

i) Case in Brief:

The grievance of petitioner was that he approached the officers of respondent several times for measurement of the land which he bought, but they refused to do the measurement even though he had paid the necessary fees. Accordingly, consumer complaint was filed by him before the District Forum which allowed the complaint and directed the respondent to complete the work of measurement of the disputed land. It also awarded a sum of Rs.10,000/- as compensation to the petitioner in addition to Rs.2,000/- as cost. Being aggrieved, respondent filed appeal before the State Commission which allowed the same and dismissed the complaint. Hence, this revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

Against the order dated 31.3.2008 in F.A. No.1378 of 2007 of the State Consumer Disputes Redressal Commission, Maharashtra

iii) Parties:

V.B. Ambedkar

- Petitioner

Vs.

District Collector

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2780 of 2008 & Date of Judgement: 03-11-2014.

v) Acts and Sections referred:

Sections 2(1) (d) (g) & (o), 19, 21(b) and 24-A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The National Commission agreed with the State Commission's view that the District Forum applied ratio erroneously to the facts of present case since (i) the act of measurement of land is not a commercial activity and it is a statutory function under the Revenue Act and (ii) the Collector does not render service for consideration.

b) It was held that the present revision petition having no legal force has been filed just to waste the time of the Commission. It was dismissed being barred by limitation as well as on merits with cost of Rs.5000. Petitioner was directed to deposit the cost by way of demand draft in the name 'Consumer Legal Aid Account' of this Commission.

vii) Citation:

IV (2014) CPJ 601; 2014(4) CPR 740.

VII. INFRUCTUOUS COMPLAINT

**1. Madan Lal Sahu (since deceased represented by his legal heirs)
Vs. Shri Shrimal Plantation Ltd, Chhattisgarh & Anr.**

i) Case in Brief:

Two Complaints were made before the District Forum by the Complainants which were allowed. Opposite party filed appeal before the State Commission which modified the order of the District Forum to the extent of accepting the appeal of OP3 and dismissing the complaint against OP3 and reduced the compensation payable by OPs.1 & 2 to the complainant. Revision Petition filed by the complainant in both the cases before the National Commission dismissed as infructuous since the parties had come to a settlement by then.

ii) Order appealed against:

R.P.No.4682-4683 of 2009

Against the order dated 06.10.2009 in First Appeal No.232 & 264 of 2006 of Chhattisgarh State Commission, Raipur.

R.P.No.4684-4685 of 2009

Against the order dated 06.10.2009 in First Appeal No.233 & 265 of 2006 of Chhattisgarh State Commission, Raipur.

iii) Parties:

R.P.No.4682-4683 of 2009

Madan Lal Sahu
(since deceased represented by his legal heirs) - Petitioner

Vs.

Shri Shrimal Plantation Ltd, Chhattisgarh & Anr. - Respondents

R.P. No.4684-4685 of 2009

Madan Lal Sahu & Others - Petitioners

Vs.

Shri Shrimal Plantation Ltd. & Others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4682-4683 of 2009 & Revision Petition No.4684-4685 of 2009 & Date of Judgement : 10-12-2014.

v) Acts and Sections referred:

Section 2(1)(b), (c), 19 & 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Complainant filed execution petition before the District Forum and during pendency of execution proceedings both the parties filed application in both the cases containing similar contents.
- b) OP agreed to pay the amount upheld by the State Commission in five equal instalments and in Para 2 of the application, it has been stated that proceedings would terminate on receiving the whole amount.
- c) Again in Para 3 of the application, it has been specifically mentioned that after receipt of the whole amount, applicant or their legal heirs or representatives would have no subsisting legal claims/interests.
- d) Once complainant agreed to give up subsisting legal claims in the complaint after receiving the amount awarded by the State Commission, RPs filed by the petitioner become infructuous.

vii) Citation:

I (2015) CPJ 266; 2015(1) CPR 339.

VIII. JURISDICTION OF CONSUMER FORA

1. Jodhpur Vidhyut Vitran Nigam Ltd. and another Vs. Mohit Computer & Electronics

i) Case in Brief:

The case of the Complainant/Respondent was that electricity supply was discontinued in his shop and demand was raised on the basis of Lineman's Vigilance Check Report. So Complainant filed complaint for quashing demand and releasing connection before the District Forum which directed to give connection against the amount already deposited and gave the right to OP to initiate proceedings under Section 126 (3) of the Electricity Act for recovery. OP filed appeal before State Commission which was dismissed against which this revision petition has been filed along with application for condonation of delay of 23 days. Revision Petition allowed.

ii) Order appealed against:

From the order dated 04.01.2012 in Appeal No.173 of 2011 of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench Jodhpur.

iii) Parties:

Jodhpur Vidhyut Vitran Nigam Ltd. & Anr. - Petitioners/OPs

Vs.

Mohit Computer & Electronics - Respondent

iv) Case No and Date of Judgement:

Revision Petition No. 2291 of 2012 & Date of Judgement: 22-09-2014.

v) Acts and Sections referred:

Sections 11, 15, 17, 19 and 21(b) of Consumer Protection Act, 1986 & Section 126(3) of Indian Electricity Act.

vi) Issues raised and decided:

- a) It was pointed out by the National Commission that OP raised demand on the basis of checking report and apparently it was a case of theft and District Forum had no jurisdiction to entertain the complaint in the light of judgment of Hon'ble Apex Court in *U.P. Power Corporation Ltd. & Ors. Vs. Anis Ahmad* – (2013) 8 SCC 491.

- b) Consequently, revision petition was allowed and the orders of the fora below were set aside and the complainant was given liberty to approach the appropriate authority under the Indian Electricity Act for redressal of his grievance and the delay in filing the revision petition was condoned.

vii) Citation:

IV (2014) CPJ 382; 2014(4) CPR 9.

2. Saswati Roy and another Vs. Tata AIA Insurance Co. Ltd. and another

i) Case in Brief:

The Complainant approached the State Commission claiming the following relief from the OP:

- (i) a sum of Rs.21,75,162.75/- each from the OPs which includes the amounts of Rs.10,00,000/- deposited by him with OP.1
- (ii) interest on the amount of Rs.10,00,000/- at the rate of 18% p.a from 19.02.2008 to 31-08-2014
- (iii) further interest on the amount of Rs.10,00,000/- at the rate of 18% p.a with effect from 01-09-2014 and
- (iv) cost amounting to Rs.10,00,000/- towards damages and Rs.5,00,000/- towards cost of litigation.

The Complaint was dismissed by the State Commission as withdrawn vide order dated 13-08-2014 with liberty to approach the National Commission. On grounds of pecuniary jurisdiction, the National Commission directed that the complaint be returned to the complainant for being presented before the State Commission within four weeks from the date of the order.

ii) Order appealed against:

Original Complaint

iii) Parties:

Saswati Roy and another - Complainants

Vs.

Tata AIA Insurance Co. Ltd. and another - Opp. Parties

iv) Case No and Date of Judgement:

Original Complaint No:361 of 2014 & Date of Judgement: 23-09-2014.

v) Acts and Sections referred:

Section 17(1) (a) (i) and 21(a)(i) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was pointed out by the National Commission that the order of the State Commission, permitting withdrawal of the complaint on the ground that it did not have pecuniary jurisdiction in the matter and granting opportunity to approach this Commission by way of a fresh complaint was absolutely wrong, since the value of the services involved and the compensation claimed did not exceed Rs.1,00,00,000/-.The complaint was therefore, directed to be returned to the complainant, for being presented before the concerned State Commission, within four weeks from the date of order.

vii) Citation:

Not reported in CPJ and CPR.

3. UHBVNL through its SDO and others Vs. Shashi Chander

i) Case in Brief:

Complainant/Respondent had electricity connection from OP/Petitioner. Officers of OP checked meter of complainant on 12-08-2008 and found seals of meter body tampered. On the basis of suspected theft of electricity, a demand of Rs.4,12,212/- was raised on the complainant. Alleging deficiency, Complainant filed complaint before the District Forum which allowed the complaint and quashed the demand. Appeal filed by OP was dismissed by State Commission vide impugned order against which the present revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 12-01-2012 in F. Appeal No.26 of 2012 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

UHBVNL through its SDO and others	-	Petitioners
	Vs.	
Shashi Chander	-	Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1677 of 2012 & Date of Judgement: 08-10-2014.

v) Acts and Sections referred:

Sections 2(1) (c), 12, 13, 14, 18, 19 and 21(b) of The Consumer Protection Act, 1986 & Section 126 of Electricity Act, 2003. (36 of 2003)

vi) Issues raised and decided:

- a) Hon'ble Apex Court in *U.P Power Corporation Ltd and other v. Anis Ahmed* – III (2013) CPJ 1 (SC) had held that in case of allegations of theft of electricity, consumer forum has no jurisdiction to entertain the complaint. It was held that as per averments in the complaint itself, demand had been raised in this case on account of suspected theft of electricity and in such circumstances, Complaint was not maintainable before District Forum.
- b) It was also held that merely because there was concurrent finding to the effect that theft had not been established, consumer forum does not get jurisdiction to entertain the complaint.
- c) Consequently, revision petition was allowed and orders of the State Commission and the District Forum were set aside. The Complaint stood dismissed but the Complainant was given liberty to seek redressal of his grievance before appropriate authority under the Indian Electricity Act.

vii) Citation:

IV (2014) CPJ 477; 2014(4) CPR 134.

4. Chandrayan Toyota Vs. M/s. Jain Builders and another

i) Case in Brief:

Complainant/Respondent booked car on 18-09-2009 with the OP.1/ Petitioner by depositing Rs.2,00,000 through RTGS and OP.1 issued booking receipt and assured delivery of car manufactured by OP.2/ Respondent.2 within three months. But the car was not delivered. Alleging deficiency, Complainant approached the District Forum which dismissed the complaint for want of jurisdiction. Appeal filed by the Complainant was allowed by the State Commission vide impugned order against which this revision petition has been filed. Revision Petition allowed. Order passed by the State Commission was set aside and the order of the District Forum dismissing the complaint was affirmed.

ii) Order appealed against:

From the order dated 27-05-2013 in Appeal No.1114 of 2012 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

Chandrayan Toyota - Petitioner

Vs.

M/s. Jain Builders and another - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3072 of 2013 & Date of Judgement: 08-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 12, 13, 14, 18, 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was noted that the Complainant had nowhere mentioned in the complaint that the car was booked in a camp organized by OP.1 at Ajmer and in such circumstances it cannot be presumed that the car was booked at Ajmer. Receipt dated 18-09-2009 issued by OP.1 nowhere stated that the car was booked at Ajmer. Merely by sending money by RTGS from Ajmer, District Forum, Ajmer does not get jurisdiction and it was held that the State Commission committed error in holding that District Forum, Ajmer had jurisdiction.
- b) It was also held that no reliance can be placed on the statement of the complainant since he had given contradictory statement regarding assurance of period in which car was to be delivered.
- c) Consequently, revision petition was allowed and the order of the State Commission was set aside. The order of the District Forum dismissing the complaint was affirmed.
- d) Complainant was permitted to withdraw Rs.2,00,000/- deposited by opposite party with District Forum along with accrued interest only if he undertook not to file another complaint before the appropriate forum.

vii) Citation:

I (2015) CPJ 93; 2014(4) CPR 132.

5. Ram Mehar Singh Vs. Uttari Haryana Bijli Vitran Ltd. and another

i) Case in Brief:

Complainant/Petitioner was consumer of opposite party/respondent. Opposite party issued bill on 05-09-2006 and demanded Rs.1,20,000/- as penalty, which was claimed to be illegal by the Petitioner. It was further submitted that his connection has been disconnected wrongly. Alleging deficiency on the part of opposite party, complainant filed complaint before District Forum which dismissed complaint. Appeal filed by the complainant was dismissed by State Commission against which this revision petition has been filed. Revision Petition dismissed as not maintainable.

ii) Order appealed against:

From the order dated 12-01-2009 in First Appeal No.774/2008 of the State Consumer Disputes Redressal Commission, Haryana.

iii) Parties:

Ram Mehar Singh

- Petitioner

Vs.

Uttari Haryana Bijli Vitran Ltd. and another

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.1666 of 2009 & Date of Judgement: 09-10-2014.

v) Acts and Sections referred:

Sections 2(1) (c), 19 and 21(b) of the Consumer Protection Act, 1986 & Section 126 of the Electricity Act, 2003 (36 of 2003).

vi) Issues raised and decided:

Perusal of record revealed that demand was raised on account of alleged theft of electricity by the complainant. Complainant was found stealing energy by taking direct supply to his poultry farm. In the light of judgment of Hon'ble Supreme Court in the case of *U.P. Power Corporation Ltd. & Ors. Vs. Anis Ahmad*, AIR 2013 SC 2766 complaint pertaining to theft of electricity was not maintainable before Consumer

Forum and in such circumstances revision petition was dismissed with liberty to the petitioner to approach the appropriate authority under Indian Electricity Act for redressal of his grievance with no order as to costs.

vii) Citation:

IV 2014) CPJ 463; 2014(4) CPR 435.

6. Gurbax Singh Bains Vs. M/s. Omaxe Chandigarh Extension Developers Pvt. Ltd. and another

i) Case in Brief:

There was a dispute between the Petitioner and the Respondent regarding the construction and sale of a booth. The Petitioner filed a complaint before the District Consumer Forum seeking certain reliefs. The Complaint was resisted by the Respondents on the ground that the District Forum lacked pecuniary jurisdiction to entertain the complaint. However, the District Forum allowing the complaint issued directions to the OP. Aggrieved from the order of the District Forum, the Respondent appealed to the State Commission. The State Commission set aside the order of the District Forum and gave liberty to the complainant/Petitioner to file a new complaint on the same cause of action before the appropriate forum having pecuniary jurisdiction to entertain the complaint. This revision petition has been filed challenging the order of the State Commission. Revision petition dismissed.

ii) Order appealed against:

From the order dated 18-07-2014 in F.A.No.196 of 2014 of the State Consumer Disputes Redressal Commission, U.T, Chandigarh.

iii) Parties:

Gurbax Singh Bains

- Petitioner

Vs.

M/s. Omaxe Chandigarh Extension

Developers Pvt. Ltd. and another

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3224 of 2014 with IA/7417/2014 (Addl. Evidence) & Date of Judgement: 13-10-2014.

v) Acts and Sections referred:

Sections 12, 13, 14, 18, 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

The National Commission noted that the booth in question was sold to the Petitioner/Complainant for a sum of Rs.18 lakhs. Therefore, the valuation of the first relief sought by him was Rs.18 lakhs. The Petitioner had also prayed for quashing of interest and other charges, payment of penalty for delay in handing over the possession of the booth, compensation for mental agony etc. The total amount of relief claimed exceeded Rs.21 lakhs. Since the pecuniary jurisdiction of the District Forum was limited to Rs.20 lakhs, it was held that the State Commission took the correct view that the District Forum lacked jurisdiction. The Revision petition was therefore dismissed as devoid of merit.

vii) Citation:

Not reported in CPJ and CPR.

7. Gurnam Singh Vs. Dr. G.S. Gill and others

i) Case in Brief:

The Complainant, Gurnam Singh, filed a complaint under Section 12 of the CPA, 1986 against Dr. G.S. Gill, OP1, Dr. Sushant Srivastava, OP2, Dr. Sohan Lal Arora, OP3 and United India Insurance Co. Ltd., OP4, before the District Forum, Mansa. The District Forum, Mansa, accepted the complaint against OPs 1, 2 & 3 and gave various directions against them in its order. Aggrieved by that order, First Appeal was preferred before the State Commission, Chandigarh. The State Commission, Chandigarh came to the conclusion that no cause of action had arisen at Mansa, except for a sum of Rs.1,50,000/- which was paid to OP3, at Sardulgarh, which falls within the territorial jurisdiction of District Forum, Mansa but OP3 has denied this fact in his reply. The cause of action had arisen at Bhatinda. The State Commission accepted both the appeals and set aside the order passed by the District forum and remanded the matter to the District Forum, Bhatinda to be decided afresh. Against the decision of the State

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Commission, the present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From order dated 29.05.2014 in First Appeal Nos. 909/2011 & 1140/2011 of the State Consumer Disputes Redressal Commission, Punjab, Chandigarh.

iii) Parties:

Gurnam Singh - Petitioner

Vs.

Dr. G.S. Gill and others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3183-3184 of 2014 with IA/6906/2014 (For early hearing) & Date of Judgement: 15-10-2014.

v) Acts and Sections referred:

Sections 11, 17, 19 & 21(b) of the Consumer Protection Act, 1986 & Section 21, 86 of the Civil Procedure Code, 1908.

vi) Issues raised and decided:

- a) The issue involved in this case was where the cause of action had arisen and which forum was having jurisdiction to entertain the suit.
- b) It was pointed out by the National Commission that the parallels cannot be drawn between the provisions regarding jurisdiction in Section 21 CPC and Section 11 of CP Act. In *Ethiopian Airlines Vs. Ganesh Narain Saboo* (2011) 8 SCC 539, in para 65, the Hon'ble Supreme Court observed that the Consumer Protection Act, 1986 sets forth an exhaustive list of procedures distinguishable from those required under CPC that the consumer redressal fora must follow and that since the CPA, 1986, does not state that Section 86 applies to the Consumer Fora's proceedings, that Section of CPC should be held to be not applicable. Similar view was taken in *Malay Kumar Ganguly Vs. Dr.Sukumar Mukherjee & Ors.*, (2009) 9 SCC 221, *ECIM Exports Vs. South Indian Corporation Agencies Ltd. & Anr.* 2009-14 SCC 412 (para 7) and *Rajeev Hitendra Pathak & Ors. Vs. Achyut Kashinath Karekar & Anr.* (2011) 9 SCC 541.

c) Held that in the present case, since the cause of action arose at Ambala, the State Consumer Disputes Redressal Commission, Haryana, alone will have jurisdiction to entertain the complaint. Reference was made to the decision of the Hon'ble Supreme Court in *Sonie Surgical Vs. National Insurance Co Ltd*, 2010 CTJ 2 (Supreme Court) (CP) wherein it was held that 'branch office', in the amended Section 17(2) would mean the branch office where the cause of action has arisen. Therefore, the present revision petition was dismissed and the orders of the State Commission were upheld.

vii) Citation:

2014(4) CPR 588.

8. UHBVNL Vs. Jagbir Singh

i) Case in Brief:

Complainant/Respondent had domestic electricity connection from OP/Petitioner. It is the complainant's case that on 30-11-2010, in the absence of complainant and his family members, his premises were checked by OP and based on a wrong report a demand was raised for Rs.1,22,727/- on account of alleged electricity theft. Alleging deficiency on the part of OP, he filed complaint before the District Forum. The Forum allowed the complaint and quashed the demand. Appeal filed by the OP was dismissed by the State Commission vide impugned order against which this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 01-06-2012 in Appeal No.1037/2011 of the Haryana State Consumer Disputes Redressal Forum, Panchkula.

iii) Parties:

UHBVNL

- Petitioner/Opp.Party

Vs.

Jagbir Singh

- Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.3426 of 2012 & Date of Judgement: 27-10-2014.

v) Acts and Sections referred:

Sections 2(1) (c), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was noted that as per complainant himself, on the basis of checking report and on account of theft, penalty and compounding fee was levied and demand was raised. Apparently, it was a case of theft. Hon'ble Supreme Court in Civil Appeal No.5466 of 2012 in *U.P. Power Corporation Ltd and others v. Anis Ahmad* had held that complaint pertaining to theft of electricity is not maintainable before Consumer Fora. Consequently, orders passed by the Fora below were set aside and the complaint stood dismissed.

vii) Citation:

IV (2014) CPJ 755; 2014(4) CPR 566.

9. Kalyanpur Cold Storage Vs. The New India Assurance Company and others

i) Case in Brief:

The Complainant is a partnership firm which had insured its refrigeration plant, machinery, equipment, building etc., meant for running a cold storage, with the OPs. Between 12-04-1996, and 08-05-1996, a series of incidents/accidents took place which severely damaged the stock and equipment of the Complainant. The OP was informed as and when the incidents occurred but responded only to the letter on 09-05-1996 by deputing a surveyor. Since the complainant's claim was neither accepted nor repudiated, this complaint has been filed before the National Commission seeking a total relief of more than Rs.2 Crore. Complaint was dismissed on the ground that the Commission had no jurisdiction to try the case since the Complainant had simultaneously filed and claimed the same relief in a civil suit.

ii) Order appealed against:

Original Complaint

iii) Parties:

Kalyanpur Cold Storage - Complainant

Vs.

The New India Assurance Company and others - Opp. Parties

iv) Case No and Date of Judgement:

Original Petition No.348 of 2002 & Date of Judgement: 03-11-2014.

v) Acts and Sections referred:

Section 3 & 21(a) (i) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was noted by the Commission that the Complainant had also filed a civil suit O.S.No.802 of 1999, before the Civil Judge (Senior Division), Kanpur Nagar and was unwilling to withdraw any of the two remedies.
- b) In *Hanuman Prasad v. The New India Assurance Co Ltd*, I (1994) CPJ 1 (NC), it was held that “when a case is pending in a court in which full evidence is to be recorded, the forums constituted under the Consumer Protection Act, 1986 should not entertain the complaint with respect to the same cause of action”.
- c) In *V.P.Somashekar v. The Secretary, APMC Yard*, 2000 (1) CLT 124 and in *Haryana State Electricity Board v. Jai Dev Aggarwal*, 1999 (1) M CLT 111 (Haryana), it was held that “ proceedings before the forum under the Act cannot be equated to proceedings before regular Civil Court and litigants cannot take a chance by initiating parallel proceedings.”
- d) In *Oswal Fine Arts v. H.M.T*, 1991 CPC 43;(1991) 1 CPJ 330: 1991 (1) CPR 386 (NC), the National Commission upheld the important principle that when a matter is sub judice before the ordinary civil courts of the land, the Consumer Commission cannot and will not entertain any claim for compensation in respect of the same subject matter. This decision has been upheld by the Hon’ble Supreme Court in Special Leave to Civil Appeal No.7380 of 2013 and Review Petition (C) No.266 of 2014.
- e) In the circumstances, the Commission held that it had no jurisdiction to try this case and dismissed the complaint.

vii) Citation:

II (2015) CPJ 117.

10. Kumari Lama Vs. The General Manager, ICICI Bank Ltd and others

i) Case in Brief:

Petitioner/Complainant's ATM card got deactivated in August, 2011. On her request, Respondent Bank issued a new card but the same was not activated. However, the complainant learned that a third card was issued by the bank and from the statement of account, she came to know that Rs.11,33,914 had been fraudulently withdrawn from her Savings A/c. Complainant approached the District Forum which allowed the complaint and directed the bank to refund the sum of Rs.11,33,914 to the complainant along with interest at 9% p.a. However, the State Commission on appeal by the Respondent set aside the order of the District Forum on the ground that the Forum did not have pecuniary jurisdiction to deal with the issue as the amount claimed was more than Rs.20 lakhs. The present revision petition has been filed challenging the order of the State Commission. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 21.07.14 in First Appeal No.81/2013 of West Bengal State Consumer Disputes Redressal Commission, Kolkata.

iii) Parties:

Kumari Lama - Petitioner

Vs.

The General Manager, ICICI Bank Ltd & Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3755 of 2014 & Date of Judgement: 05-11-2014.

v) Acts and Sections referred:

Sections 2(1)(g), (o), 11, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that the District Forum did not have pecuniary jurisdiction to deal with the matter as the total amount claimed by the complainant including refund, compensation etc. exceeded Rs.20 Lakhs. The State Commission therefore, rightly set aside the order and gave liberty to

the Petitioner/Complainant to file complaint before the appropriate forum. State Commission's order was therefore upheld and the revision petition dismissed.

vii) Citation:

IV (2014) CPJ 696; 2014(4) CPR 701.

11. Indrani Chatterjee and another Vs. AMRI Hospitals

i) Case in Brief:

All the sixteen complaints u/s 21 (a) (i) of the Consumer Protection Act, 1986 against AMRI Hospital, Kolkata, arose out of the same incident of fire, in which a large number of human lives were lost and perhaps equal number of the patients had suffered grievous injuries. Therefore, all these complaints were disposed of by a common order. However, in order to appreciate the controversy, the facts were taken from CC No. 383 of 2013.

As per the averments in the complaints, filed by the Legal Heirs/ Authorized Representatives of some of the patients, who perished in the fire, on 09.12.2011, at around 02.00 a.m, there was fire in the basement of the Annexe Building of the Hospital, meant for car parking. Alleging gross negligence and deficiency in service on the part of the Hospital, these complaints were filed. Complaints were dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Consumer Complaint No.383 of 2013

Indrani Chatterjee and another - Complainants

Vs.

AMRI Hospitals - Opp.Party

Consumer Complaint No.384 of 2013

Jhumar Pal - Complainant

Vs.

AMRI Hospitals - Opp.Party

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Consumer Complaint No.385 of 2013

Samarendra Mallick - Complainant

Vs.

AMRI Hospitals - Opp.Party

Consumer Complaint No.386 of 2013

Kashinath Pandit - Complainant

Vs.

AMRI Hospitals - Opp.Party

Consumer Complaint No.387 of 2013

Dhananujoy Paul - Complainant

Vs.

AMRI Hospitals - Opp.Party

Consumer Complaint No.388 of 2013

Pradip Sen - Complainant

Vs.

AMRI Hospitals - Opp.Party

Consumer Complaint No.389 of 2013

Subhasish Chakraborty - Complainant

Vs.

AMRI Hospitals - Opp.Party

Consumer Complaint No.390 of 2013

Sujit Chatterjee and another - Complainants

Vs.

AMRI Hospitals - Opp.Party

Consumer Complaint No.391 of 2013

Uttam Agarwala - Complainant

Vs.

AMRI Hospitals - Opp.Party

Consumer Complaint No.398 of 2013

Paromita Guha Thakurta and another - Complainants
Vs.

AMRI Hospitals - Opp.Party

Consumer Complaint No.399 of 2013

Swapan Kumar Paik - Complainant
Vs.

AMRI Hospitals - Opp.Party

Consumer Complaint No.400 of 2013

Krishna Mahanta - Complainant
Vs.

AMRI Hospitals - Opp.Party

Consumer Complaint No.401 of 2013

Chandana Sarkar - Complainant
Vs.

AMRI Hospitals - Opp.Party

Consumer Complaint No.402 of 2013

Tapas Roy Choudhury - Complainant
Vs.

AMRI Hospitals - Opp.Party

Consumer Complaint No.412 of 2013

Sri Nilabja Haldar - Complainant
Vs.

AMRI Hospitals - Opp.Party

Consumer Complaint No.415 of 2013

Istiyak Ahamed Khan - Complainant
Vs.

AMRI Hospitals - Opp.Party

iv) Case No and Date of Judgement:

Consumer Complaint No.383 of 2013 with I.A.No.1746 of 2014 (for stay);
Consumer Complaint No.384 of 2013 with I.A.No.1747 of 2014 (for stay);
Consumer Complaint No.385 of 2013 with I.A.No.1748 of 2014 (for stay);
Consumer Complaint No.386 of 2013 with I.A.No.1749 of 2014 (for stay);
Consumer Complaint No.387 of 2013 with I.A.No.1750 of 2014 (for stay);
Consumer Complaint No.388 of 2013 with I.A.No.1751 of 2014 (for stay);
Consumer Complaint No.389 of 2013 with I.A.No.1752 of 2014 (for stay);
Consumer Complaint No.390 of 2013 with I.A.No.1753 of 2014 (for stay);
Consumer Complaint No.391 of 2013 with I.A.No.1754 of 2014 (for stay);
Consumer Complaint No.398 of 2013 with I.A.No.1755 of 2014 (for stay);
Consumer Complaint No.399 of 2013 with I.A.No.1756 of 2014 (for stay);
Consumer Complaint No.400 of 2013 with I.A.No.1757 of 2014 (for stay);
Consumer Complaint No.401 of 2013 with I.A.No.1758 of 2014 (for stay);
Consumer Complaint No.402 of 2013 with I.A.No.1759 of 2014 (for stay);
Consumer Complaint No.412 of 2013 with I.A.No.1760 of 2014 (for stay);
Consumer Complaint No.415 of 2013 with I.A.No.1761 of 2014 (for stay)
& Date of Judgement: 07-11-2014.

v) Acts and Sections referred:

Sections 2(1)(g), (o), 13, 21(a)(i), 22 and 24A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Opposite Party raised the question of the maintainability of the Complaints before the National Commission on the grounds that:
 - (i) various other proceedings, civil and criminal in nature, arising out of the same set of facts were under adjudication before other courts of law and therefore, disclosure of its defence in the Complaints would cause serious prejudice to the rights of the Hospital and
 - (ii) the claims made are highly exaggerated, fanciful, without any basis, vague and artificially jacked up so as to bring the Complaints within the pecuniary jurisdiction of the National Commission.

- b) Held that the trial in criminal cases against the Opposite Party, is no ground for stay of proceedings before the Consumer Fora. As a matter of fact, having regard to the object and intent of the Act, summary trial of Consumer Complaint has to be given precedence over other cases, be it civil or criminal in nature. The question of double jeopardy, self-incrimination or the binding effect of the findings in summary proceedings under the Act, did not arise on facts, at hand. Accordingly, the first preliminary objection failed.
- c) Regarding the second issue, it was held where *ex-facie* the claim made appears to be unusually high without any basis, the Consumer Fora would be justified in declining to admit the complaint. Therefore, the present complaint was dismissed with a direction to the complainants to suitably amend their complaints and file the same before an appropriate Consumer Forum. It was also held that if the Complainants choose to file fresh complaints, their applications for condonation of delay shall be considered by excluding the time spent before the Commission and keeping in view the observations of the Hon'ble Supreme Court in *Laxmi Engineering Works Vs. PSG Industrial Institute* (1995) 3 SCC 583.

vii) Citation:

2014(4)CPR 681.

12. Deputy Housing Commissioner, Rajasthan Housing Board & Others Vs. Raju Sen

i) Case in Brief:

The Respondents in all the three revision petitions won the bids for purchase of three different residential plots through auction in the year 2007. Their bids were accepted by the Petitioner board and their names were put in the auction. On 28-09-2012, the Petitioner-board rejected the bids through sealed proposals for plots of all the complainants and three months later sent cheques to all the Complainants/Respondents. Complaints were filed before the District Forum which directed OPs/ Petitioners to allot auction residential plots without any additional charges and interest on the rate and Complainants were to deposit balance amount as per rules. Compensation of Rs.5000 and cost in the sum of Rs.3000 each was

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imposed upon the Petitioners. The State Commission dismissed the appeals and cost of Rs.25,000 was imposed on the Petitioner. These Revision Petitions have been filed by the Petitioner board challenging the order of the State Commission. Revision Petitions accepted. Complaints dismissed on the ground that any complaint by the auction purchaser/lessee against the owner holding the auction of sites cannot be heard by the consumer fora.

ii) Order appealed against:

From the order dated 04.02.2014 in First Appeal No.9 of 2014, 360 of 2013 and 361 of 2013 of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench, Jodhpur.

iii) Parties:

Revision Petition No.1754 of 2014

Deputy Housing Commissioner,
Rajasthan Housing Board & Others - Petitioners

Vs.

Raju Sen - Respondent

Revision Petition No.1817 of 2014

Deputy Housing Commissioner,
Rajasthan Housing Board & Others - Petitioners

Vs.

Sawarmal & Anr - Respondents

Revision Petition No.1818 of 2014

Deputy Housing Commissioner,
Rajasthan Housing Board & Others - Petitioners

Vs.

Suresh Kumar Sharma - Respondent

iv) Case No and Date of Judgement:

- i. Revision Petition No.1754 of 2014
- ii. Revision Petition No.1817 of 2014 with I.A.No.2539 of 2014 (Exemption from filing the certified copy)
- iii. Revision Petition No.1818 of 2014 with I.A.No.2541 of 2014 (Exemption from filing the certified copy) &
Date of Judgement: 10-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Held that the case is fully covered within the observations made by the Apex Court in *U.T Chandigarh Administration and Anr. V. Amarjeet Singh and others* (2009) 4 SCC 660 in which it was observed as follows: “With reference to a public auction of existing sites (as contrasted from sites to be formed), the purchaser/lessee is not a consumer, the owner is not a trader or service provider and the grievance does not relate to any matter in regard to which a complaint can be filed. Therefore, any grievance by the purchaser/lessee will not give rise to a complaint or consumer dispute and the fora under the Act will not have jurisdiction to entertain or decide any complaint by the auction purchaser/lessee against the owner holding the auction of sites.”
- b) Reference was also made to the Office order dated 14-08-2007 which put a condition that the Petitioner/Board will reserve its right to accept and cancel the bid at any time without pointing out any reason.
- c) Consequently, the revision petitions were accepted and complaints dismissed. The orders of the fora below were set aside. Complainants were informed that they could get redressal for their grievances before the appropriate court.

vii) Citation:

1 (2015) CPJ 432; 2014(4) CPR 671.

13. Charanjeet Kaur Vs. State Bank of Patiala

i) Case in Brief:

The Complainant took two housing loans by mortgaging two separate floors of the same property with the Respondent Bank. The husband of the Complainant/Petitioner had also availed credit facility from the Bank and the Complainant had stood as a guarantor for repayment of the aforesaid housing loan. The Complainant on repayment of the housing loan taken by her wanted the Bank to settle the housing loan

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account and release the title deeds which she had deposited with the Bank. The Bank settled the housing loan taken in one account but did not settle the housing loan taken in the other account, on the ground that being guarantor of the credit facility taken by her husband, she was under an obligation to pay the aforesaid loan before the title deed of her property could be returned to her. Being aggrieved, the Complainant approached the District Forum which directed the complainant to pay a sum of Rs.3,73,062/- as one time settlement amount to the Bank in housing loan account no. 55048407614, within one month and also directed the Bank to issue No Dues Certificate to her. The Bank was also directed to pay Rs.20,000/- as damages for mental agony and financial loss and Rs.5,000/-, as compensation to the complainant. Being aggrieved from the order of the District Forum, the Bank approached the State Commission by way of an appeal. State Commission allowed the appeal filed by the Bank, thereby setting aside the order passed by the District Forum and also simultaneously dismissed the appeal filed by the complainant. Being aggrieved from the dismissal of appeal filed by her, the present Revision Petition was filed by the Complainant/Petitioner. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 31.07.2014 in First Appeal Nos. 264/2013 & 273/2013 of the Uttarakhand State Consumer Disputes Redressal Commission, Dehradun.

iii) Parties:

Charanjeet Kaur

- Petitioner

Vs.

State Bank of Patiala

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3988 to 3989 of 2014 with IA/7686/2014, IA/7687/2014 (Stay, Exemption for filing Translation of documents) &

Date of Judgement: 11-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19, 21(b) of the Consumer Protection Act, 1986 & Section 171 of the Indian Contract Act, 1872.

vi) Issues raised and decided:

- a) Section 171 of the Indian Contract Act, 1872 provides that the bankers may, in the absence of contract to the contrary, retain as security for a general balance of account, any goods bailed to them.
- b) In *Syndicate Bank v. Vijay Kumar and Others* AIR 1992 SC 1066, Hon'ble Supreme Court, *inter alia*, held that the Bank has a general lien over all forms of securities or negotiable instruments, deposited by or on behalf of the customers in the ordinary course of banking business and such general lien is a valuable right of the banker, judicially recognized.
- c) Held that it is for the Bank to decide whether to enter into a onetime settlement or not and the Consumer Forum cannot give such a direction to the bank. If the complainant claims any discrimination by the Bank in this regard, his remedy would be before some other forum and not before a Consumer Forum.

vii) Citation:

I (2015) CPJ 8; 2014(4) CPR 656.

14. Neerad Panday Vs. Maruti Suzuki India Ltd.

i) Case in Brief:

Complainant/Appellant went for service to the authorized dealer Fair Deal Cars Pvt. Ltd. from where vehicle was purchased. It was alleged that dealer did not give satisfactory reply regarding problem of rusting on the internal and external part of the body of the car. Alleging deficiency on the part of OP, complainant filed complaint for recovery of Rs.50,00,000/- and Rs.25,000/- as litigation charges before the State Commission which dismissed the complaint *in limine* as barred by pecuniary jurisdiction against which the present appeal has been filed. Appeal dismissed.

ii) Order appealed against:

From the order dated 4.8.2014 in Consumer Complaint No.C-295/2014/4852 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

Neerad Panday

- Appellant/Complainant

Vs.

Maruti Suzuki India Ltd.

- Respondent/Opp. Party (OP)

iv) Case No and Date of Judgement:

First Appeal No.1144 of 2014 & Date of Judgement: 11-11-2014.

v) Acts and Sections referred:

Sections 2(1)(g) & (o),19 and 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that the complainant claimed compensation of Rs.50,00,000/- for a vehicle of about Rs.4,00,000/- and no reason had been given in the complaint for claiming compensation of Rs.50,00,000/-. Not only this, copy of legal notice given by the complainant to OP revealed that complainant asked OP to replace new car within 10 days meaning thereby, at the most he was entitled to replacement of new car which was around Rs.4,00,000/- and in such circumstances, there was no justification for invoking jurisdiction of State Commission which rightly dismissed complaint *in limine* for want of pecuniary jurisdiction. Hence, the present appeal was also dismissed.

vii) Citation:

1 (2015) CPJ 20; 2014(4) CPR 636.

15. Times Guarantee Financials Ltd. Vs. Mrs. Snehal P. Gavankar

i) Case in Brief:

The Complainant Mrs. Snehal Gavankar entered into an agreement with the Opposite Party, Times Guarantee Financials Ltd., for the management of her shares investment portfolio. Some issues arose between them regarding the amount to be paid by the OP to the complainant. She took the matter to the District Forum which dismissed the complaint. The State Commission, however partly allowed the appeal and directed the OP to pay certain amount with interest and also awarded Rs.25,000/- as costs to the complainant. Aggrieved by the

order of the State Commission, both the parties filed the revision petitions before the National Commission. RP 1757 of 2012 filed by the complainant was dismissed while RP 2537 of 2011 filed by the OP was accepted. It was held that sale-purchase of shares are commercial transactions and so the complainant is not a consumer. Order of the State Commission was set aside and the complaint dismissed.

ii) Order appealed against:

From the order dated 16.03.2001 in First Appeal No. A/99/2170 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

iii) Parties:

Revision Petition No.2537 of 2011

Times Guarantee Financials Ltd. - Petitioner

Vs.

Mrs. Snehal P. Gavankar - Respondent

Revision Petition No.1757 of 2012

Mrs. Snehal P. Gavankar - Petitioner

Vs.

Times Guarantee Financials Ltd. - Respondent

iv) Case No and Date of Judgement:

1. Revision Petition No.2537 of 2011;
2. Revision Petition No.1757 of 2012 with IA/1/2012(For condonation of delay) &

Date of Judgement: 13-11-2014.

v) Acts and Sections referred:

Sections 2(1) (d) (i) & 2(1) (i), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was held that this is a case of shares and settlement of accounts for which the commission cannot arrogate to itself the powers of a Civil Court. The Commission was of the considered view that the complainant is not a Consumer.
- b) Reliance was placed on the following judgements,

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- a. *Morgan Stanley Mutual Funds Vs. Kartick Das, (1994) 4 SCC 225 para Nos. 26, 27 & 33, 34 and 35.*
- b. *A.Asaithambi Vs. Company Secretary Satyam Computer Services Ltd. & Ors. decided by National Commission and confirmed by Hon'ble Supreme Court in Appeal (Civil) No.36840 of 2012.*
- c. *Ganapathi Parmeshwar Kashi & Anr. Vs. Bank of India & Anr First Appeal No.362 of 2011 decided by the National Commission.*
- d. *Vijay Kumar Vs. IndusInd Bank, II 2012 CPJ 181 (NC).*
- e. *Ramendra Nath Basu Vs. Sanjeev Kapoor & Anr 1 (2009) CPJ 316.*
- f. *Anand Prakash Vs. A.M.Johri & Others III (2000) CPJ 291.*

vii) Citation:

Not reported in CPJ and CPR.

16. Reliance Communications Ltd. and another Vs. Beena Menon

i) Case in Brief:

In this case, Complainants/Respondents, having grievance over excess telephone billing, filed complaint before the Consumer fora. Opposite parties raised the plea that the Consumer Forum did not have jurisdiction over this issue when there is a special remedy under Section 7-B of the Telegraph Act. These Revision Petitions have been filed challenging the order of the Maharashtra State Commission. Revision Petitions dismissed.

ii) Order appealed against:

Revision Petition No.865 of 2013

From order dated 13.12.2012 in First Appeal No.CC/12/154 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

Revision Petition No.3750 of 2013

From order dated 06.11.2012 in First Appeal No.162 of 2012 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

Revision Petition No.2992-3000 of 2013

From order dated 06.11.2012 in First Appeal No.185 of 1999 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

Revision Petition No.1466 of 2014

From order dated 25.11.2013 in Revision Petition No.12/13 of the Delhi State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

Revision Petition No.865 of 2013

Reliance Communications Ltd. & Anr. - Petitioners/OPs

Vs.

Beena Menon - Complainant/Respondent

Revision Petition No.3750 of 2013

Maharashtra Telecom Circle & Anr. - Petitioners/OPs

Vs.

Vasant B. Ambekar - Respondent/Complainant

Revision Petition No.2992-3000 of 2013

Maharashtra Telephone Nigam Ltd. - Petitioner/OP

Vs.

Sandeep Dattatray Uddhao & Anr. - Respondents/Complainants

Revision Petition No.1466 of 2014

Bharti Airtel Ltd. - Petitioner

Vs.

Bhupender Kumar Kashyap - Respondent

iv) Case No and Date of Judgement:

- a) Revision Petition 865 of 2013 with I.A. No.1558 of 2013, I.A. No.5818 of 2013, I.A. No.487 of 2014, I.A. No.852 of 2014 (Stay, Impleading, Directions, Appointment of Commissioner)
- b) Revision Petition No.3750 of 2013 with I.A. No.6654 of 2013, I.A. No.7411 of 2013, I.A. No.7412 of 2013 for stay, directions.
- c) Revision Petition No.2992-3000 of 2013 with I.A. No.5164 of 2013 for stay.
- d) Revision Petition No.1466 of 2014 with I.A.No.1853 of 2014, I.A. No.1854 of 2014 (for Setting aside of ex-parte, Condonation of delay) & Date of Judgement: 19-11-2014.

v) Acts and Sections referred:

Section 19, 21 and 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue was whether the consumer fora have the jurisdiction to try and decide disputes relating to excess telephone billing and whether, there was difficulty in exercising its jurisdiction in view of Section 7-B of the Indian Telegraph Act, 1885.
- b) Opposite Parties contended that when there is a special remedy provided in Section 7-B of the Indian Telegraph Act regarding disputes in respect of telephone bills, then the remedy under the Consumer Protection Act is by implication barred.
- c) The National Commission pointed out that Section 7-B of the Indian Telegraph Act, 1948, under any of the circumstances, could not have been invoked, as it provides that any dispute concerning any telegraph line, appliance or apparatus arising between Telegraph Authority and the person for whose benefit the line, appliance or apparatus is provided shall be determined by an Arbitrator to be appointed by the Central Government. The OPs do not come within the definition of "Telegraph Authority" within the meaning of Indian Telegraph Act, 1885. Merely because OPs are licensees under Section 4 of the Indian Telegraph Act, it does not confer on them the status of a Telegraph Authority. (*Delhi High Court in J.K.Mittal Vs. UOI & Ors WP(C) 8285/2010 & CM No.21319/2010 decided on 06.02.2012*).
- d) It was also observed that Consumer Protection Act, 1986 creates a framework for speedy disposal of consumer disputes and an attempt has been made to remove the existing evils of the ordinary court system. The Act being a beneficial legislation should receive a liberal construction so as to bring many cases under it for their speedy disposal by relying on the SC judgements in *Fair Air Engineers (P) Ltd. Vs Modi (1996) 6 SCC 385*, *Kishore Lal v. Chairman, Employees State Insurance Corporation (Appeal (civil) 4965 of 2000)* & *M/s. Spring Meadows Hospital and Another v. Harjol Ahluwalia and Another (AIR 1998 SC 1801)*. Therefore, the National Commission held that there was nothing wrong in filing the complaint, before the consumer fora. All the Revision Petitions were dismissed.

vii) Citation:

Not reported in CPJ and CPR.

17. Smt. Rajshree Aggarwal and another Vs. Idyllic Resorts Private Limited and others

i) Case in Brief:

The complainants purchased flat measuring 270 sq.yds @ Rs.23,000/- per sq. yd in Panchkula Extension City, which belongs to Idyllic Resorts Pvt. Ltd., OP. The complainants paid Rs.6,21,000/- as 10% initial payment on 10.01.2012 and Rs.3,10,500/- on 09.01.2012, to OP1. The complainants were assured that they would get the flat within two years, i.e. by February, 2014. On 23.06.2012, the complainants selected a flat measuring 184.74 sq.yds, instead of 270 sq. yds and intimated to OP about this. The OPs, vide letter dated 03.08.2012, confirmed the reduced size measuring 185 sq.yds and acknowledged the receipt of Rs. 6,21,000/-. They fixed the price of the flat at Rs.19,000/- per sq. yds. + Rs.3,412/- towards EDC, PLC and IFMS. Sharply worded letters were exchanged between the two parties with regard to payment of subsequent installments. On 28.12.2013, notice for refund of the total amount of Rs.11,35,044/- was sent by the complainants. On failure from the Opposite Parties, Complaint was filed before the National Commission seeking direction to refund the amount with penal interest and award of compensation of Rs.1.3 crores. Complaint dismissed.

ii) Order appealed against:

Original Complaint

iii) Parties:

Smt. Rajshree Aggarwal and another - Complainants

Vs.

Idyllic Resorts Private Limited and others - Respondents

iv) Case No and Date of Judgement:

Consumer Complaint No.316 of 2014 with I.A.No.5611 of 2014 (Exemption from dim documents) & Date of Judgement: 03-12-14.

v) Acts and Sections referred:

Sections 2 (1) (g) & (o), 19 & 21(a)(i) of the Consumer Protection Act,1986.

vi) Issues raised and decided:

- a) The issue was whether the claim made by the complainant was within permissible limits. One cannot be allowed to approach the

National Commission by demanding a compensation which is never known to law.

- b) The complainant has not disclosed the basis on which a huge amount exceeding Rs.1 crore has been claimed as compensation. This much huge amount cannot be adjudicated by a Consumer Court which has to dispose of the case in a summary fashion. This case will require investigation. The Hon'ble Supreme Court in *Pesi Dady Shrofff Vs. Boehringer Ingetheim Denmark & Anr. Civil Appeal No.9453 of 2013* had observed that "such a claim can be adjudicated only after the assessment of evidence etc, before the civil court and therefore, it is a fit case where, even if the Consumer Protection Act, 1986 is applicable, the appellant must approach the Civil court for appropriate relief". A similar view has been taken in *Synco Industries Vs. State Bank of Bikaner & Jaipur and Others, (2002) 2 SCC 1*.
- c) The Complaint was dismissed but liberty was granted to the complainants to approach the appropriate forum.

vii) Citation:

I (2015) CPJ 564.

18. Mr. Somendar Gautam Vs. Ansa Housing & Construction Ltd. and others

i) Case in Brief:

OP1 allotted a plot admeasuring 359 sq. yards to the complainant for a consideration of Rs.1,800.05/- per sq. yard. The total consideration on the aforesaid basic sale price came to Rs.6,46,217.95/-. The grievance of the complainant is that although he had paid Rs.5,95,350.83/-, the possession of the aforesaid plot has not been given to him by the opposite party, which amounts to deficiency in the services rendered as well as adoption of unfair trade practices. The complainant approached the National Commission claiming a total loss of Rs.1,50,00,000/-. Complaint returned on the ground that the market value plus the amount claimed towards mental harassment would not exceed Rs.89 lakhs. Complainant advised to present the complaint before the State Commission.

ii) Order appealed against:

Original Complaint

iii) Parties:

Mr. Somendar Gautam

- Petitioner

Vs.

Ansa Housing & Construction Ltd. and others

- Respondent(s)

iv) Case No and Date of Judgement:

Consumer Complaint No.111 of 2007 & Date of Judgement:16-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) (o), 17(a) & 21(a)(i) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The complaint has been opposed by the opposite parties inter alia on the ground that the Commission lacks pecuniary jurisdiction to entertain the complaint. The complaint contains no specific averment as regards the market value of the plot in question as on the date of the filing of the complaint though it has been vaguely alleged in the jurisdiction clause that the loss of the complainant was to the extent of Rs.1,50,00,000/-. (Apparent Loss is Rs.1,25,00,000/- and Compensation Rs.25,00,000/-).
- b) The opposite party filed a copy of the sale deed executed on 17.11.2007, whereby the plot measuring 300 sq. mtrs. in Golf Link-I was sold for a consideration of Rs.46,50,000/-.
- c) In the absence of sale deeds evidencing transactions of sale in Golf Link-I around the time the complaint came to be filed, the circle rates would be the best indicator of the market value of the plot in question. Therefore, the market value of the plot allotted to the complainant was not more than Rs.54,00,000/- on the date this complaint was filed. Even if the entire amount of compensation claimed by the complainant is added to the market value determined on the basis of the circle rate the aggregate comes to Rs.89,00,000/- only. Therefore, National Commission does not have pecuniary jurisdiction to entertain this complaint.
- d) The National Commission directed the complaint to be returned to the complainant to be presented before the concerned State Commission.

vii) Citation:

Not reported in CPJ and CPR.

IX. LIMITATION

1. United Bank of India Vs. M/s. Janata Paradise Hotel & Restaurant

i) Case in Brief:

Complainant/Respondent, a registered partnership firm took term loan from OP/petitioner in 1986, which was cleared through a compromise in 1995. His grievance was that OP debited complainant's term account for Rs.98,894.05 on account of DICGCL guarantee fee which was to be refunded to the complainant. In spite of repeated letters written to the OP by the Complainant for refund of aforesaid amount, the said amount was not refunded. OP by letter dated 26.5.2008 in reference to complainant's letters dated 18.11.2007 and 18.1.2008 informed that the matter had been referred to higher authorities, but the amount was not refunded. Alleging deficiency on the part of OP, Complainant filed complaint before District Forum which directed OP to refund the aforesaid amount with compensation of Rs.10,000/-. Appeal filed by OP was dismissed by the State Commission vide impugned order against which, this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

From the order dated 24.05.2013 in Appeal No.52 of 2011 of the Assam State Consumer Disputes Redressal Commission, Guwahati.

iii) Parties:

United Bank of India

- Petitioner/Opp. Party

Vs.

M/s. Janata Paradise Hotel & Restaurant - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.3425 of 2013 & Date of Judgement: 22-09-2014.

v) Acts and Sections referred:

Sections 2(1) (d), (g), (o), 19, 21(b) & 24-A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) It was pointed out by the National Commission that from the cross-examination of the complainant, it was clearly evident that statements of accounts were regularly obtained from the Bank by their firm. He also admitted that last deduction of guarantee fee

was on 11.5.1992. As matter was settled in the year 1995, the question of guarantee fee too must have been finalized at the time of settlement and in such circumstances, no grievance remained pending for refund of aforesaid amount.

- b) As far limitation is concerned, admittedly, last deduction was made in the year 1992 and the matter was settled in the year 1995. The first letter submitted by complainant was dated 18.11.2007 and next letters dated 18.1.2008 and 24.5.2008, which were replied by OP by letter dated 26.5.2008. Complainant had not placed any correspondence on record from 1995 to 2007. In such circumstances, the claim was clearly time barred.
- c) The National Commission further held that the complainant was a registered partnership firm that took term loan in the year 1986 from the OP. Nowhere it has been pleaded by complainant that loan was taken for earning livelihood by means of self-employment and in such circumstances, complainant did not fall within purview of consumer. Therefore, the revision petition was allowed and the orders of the fora below were set aside.

vii) Citation:

IV (2014) CPJ 383; 2014(4) CPR 12.

2. Mr. Ankur Sood Vs. M/s. Omaxe Ltd. and another

i) Case in Brief:

Petitioner booked a residential plot in a project known as 'Omaxe Parkwoods' which the Respondent was to develop in Himachal Pradesh. Complainant made initial deposit of Rs.1,00,500/- vide cheque dated 21-11-2007 followed by a deposit of Rs.2,00,196/- vide cheque dated 20-08-2008. Respondent vide letter dated 17-05-2010 cancelled the allotment made to the Petitioner and forfeited a sum of Rs.1,00,232/- due to non-payment of installments. Aggrieved by cancellation, the Petitioner approached the District Forum which directed the OP to refund Rs.2,00,464/- to the Complainant after deducting the earnest money of Rs.1,00,232 from the amount deposited by him and also pay Rs.10,000 as cost of litigation. Complainant's appeal to the State Commission was dismissed vide impugned order against which the present revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 03-06-2014 in F.A.No.202 of 2014 of State Consumer Disputes Redressal Commission, UT at Chandigarh.

iii) Parties:

Mr. Ankur Sood

- Petitioner

Vs.

M/s. Omaxe Ltd. and another

- Respondents

iv) Case No and Date of Judgement:

Revision Petition No: 3574 of 2014 & Date of Judgement: 29-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19, 21(b) and 24A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The National Commission noted that the allotment came to be cancelled vide letter dated 17-05-2010 but the complaint was filed on 14-09-2012. Section 24-A of the Consumer Protection Act, 1986 mandates that the District Forum shall not admit a complaint unless it is filed within two years from the date on which the cause of action had arisen. It was also noted that no application under sub-section (2) of Section 24-A of the Act was filed by the Petitioner/Complainant. It was therefore held that the District Forum could not have entertained the complaint filed by him.
- b) The Commission also held that since the complaint was barred by limitation as far as the relief of refund is concerned and he has been awarded cost of litigation despite the complaint being time-barred, there is absolutely no ground to interfere with the order of District Forum and maintained by the State Commission. It was also seen from the records that the complainant was a defaulter in making payment to the opposite parties.
- c) Revision Petition was accordingly dismissed.

vii) Citation:

Not reported in CPJ and CPR.

3. Smt. Rita Mehra and another Vs. State of Punjab and others

i) Case in Brief:

Appellant No.1 had applied to Punjab Urban Planning and Development Authority (PUDA), predecessor in interest of the Respondent, Greater Mohali Area Development Authority (GMADA) for allotment of residential plot vide application dated 25-08-1969 and deposited earnest money amounting to Rs.975/-. Her application was registered. In June 1994, she applied for transfer of the said registration in favour of Appellant No.2, Smt. Kuljit Kaur and deposited Rs.500/- as transfer fee. Two bank drafts one dated 17-06-1994 for Rs.50,000/- and other dated 21-06-1994 for Rs.9,500/- were also enclosed to the said application towards enhanced earnest money. The Appellants' grievance is that in the draw of lots held on 01-08-1995 and 07-06-2000, for allotment of vacant residential plots, their names were not included. They filed complaint before the State Commission which dismissed the same. Aggrieved by the order, the present appeal has been filed. Appeal dismissed on the ground of limitation.

ii) Order appealed against:

From the order dated 02-04-2009 in Consumer Complaint No.3 of 2007 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Smt. Rita Mehra and another - Appellants

Vs.

State of Punjab and others - Respondents

iv) Case No and Date of Judgement:

First Appeal No.206 of 2009 & Date of Judgement: 29-09-2014.

v) Acts and Sections referred:

Sections 19, 21(a)(ii) and 24A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The State Commission was of the view that the appellant was not interested in the allotment of plot since she had slept over the matter

Limitation

for nearly 15 years after filing her application in August, 1969. The Commission had held that the amounts of Rs.50,000/- and Rs.9,500/- were not deposited by Smt. Rita Mehra and as far as appellant No.2, Smt. Kuljit Kaur was concerned, she had no legal status to remit the afore said amount since registration had not been transferred in her name (During the intervening period, the registration had been wrongly transferred in the name of one Smt. Mohinder Kaur which was subsequently cancelled on 10-07-2000). The State Commission also took the view that the appellant No.1 did not pursue her application for transfer of registration in favour of Smt. Kuljit Kaur till the year 2000 and had not responded to the Respondent's letter for depositing the earnest money. The National Commission while upholding the order of dismissal of the complaint observed that when the complaint was filed before the State Commission it was hopelessly barred by limitation prescribed under Section 24A of the Consumer Protection Act and the application was required to be dismissed at the very threshold. The Commission relied on the decisions of the Hon'ble Supreme Court in *Haryana Urban Development Authority v. B.K. Sood* IV (2005) CPJ 1 (SC), *State Bank of India v. B.S. Agricultural Industries* II (2009) CPJ 29 (SC) and *V.N. Shrikhande (Dr.) v. Anita Sena Fernandes* IV (2010) CPJ 27 (SC). The Apex Court had held that if the complaint is *per se* barred by time and the complainant does not seek condonation of delay under sub-Section 24A(2), the consumer forums will have no option but to dismiss the same. The appeal was accordingly dismissed.

vii) Citation:

2014(4) CPR 160.

4. Mr. Vandan Pareshkumar Manghita Vs. The Divisional Manager, National Insurance Co. Ltd.

i) Case in Brief:

Complainant/Appellant's goods in various godowns were insured by OP Respondent by Fire and Peril Policy from 28-02-2008 to 27-02-2009. On 05.04.2008, a fire broke down in the godown and Complainant suffered damages. OP who has intimated appointed a surveyor. According to the Complainant, neither surveyor submitted report nor OP granted the claim. On 21-03-2012, OP intimated complainant that the case has

been closed. Alleging deficiency on the part of OP, Complainant filed complaint along with application for condonation of delay before the State Commission. The State Commission after hearing the parties dismissed the application for condonation of delay against which the present appeal has been filed. Appeal dismissed.

ii) Order appealed against:

From the order dated 31-10-2013 in Misc.Appl.No.MA/12/394 in Consumer Complaint No.12 of 322 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

iii) Parties:

Mr. Vandan Pareshkumar Manghita - Appellant/Complainant

Vs.

The Divisional Manager,
National Insurance Co. Ltd. - Respondent/Opp. Party

iv) Case No and Date of Judgement:

First Appeal No.854 of 2013 & Date of Judgement: 08-10-2014.

v) Acts and Sections referred:

Sections 19, 21(a) (ii) and 24A of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was held that the State Commission had rightly observed that in the first application dated 21-11-2012, number of days of delay to be condoned had not been mentioned and in subsequent application, delay of 394 days had been mentioned but the reasons for condonation of delay were not given. Perusal of correspondence between the Complainant and the Respondent showed that the Respondent had closed the claim of the Appellant vide letter dated 08-09-2009. As Complaint was not filed within two years from 08-09-2009 and Complainant had not given any reasons for condonation of delay, it was held that the State Commission rightly dismissed the application for condonation of delay and consequently, the appeal as well.

vii) Citation:

2014(4) CPR 123.

5. Dr. Richard Raja Singh and others Vs. Ford Motor Co. Ltd. and another

i) Case in Brief:

Manuben Joshua Raj and Backiyaraj Vinuben, sons of the first and second Complainants, and their wives Mrs. Jacinth and Mrs. Santra were killed in a road accident on 31-05-2004 when they are travelling from Chennai to Tirunelveli in their Ford Mondeo Car purchased on 19-03-2004 for a consideration of Rs.17,41,642/-. The accident occurred when a Tata 407 vehicle rammed sideways on the left side of the Ford Mondeo Car. The Complainants' case was that a faulty product had been supplied to them since the air bag deployment system of the vehicle was defective. Alleging deceptive trade practices, they filed the complaint claiming not only the price of the car but also compensation of Rs.2 Crore and another Rs.80 Lakhs towards punitive damages. Complaint dismissed being barred by limitation.

ii) Order appealed against:

Original Complaint

iii) Parties:

Dr. Richard Raja Singh and others - Complainants

Vs.

Ford Motor Co. Ltd. and another - Opposite Parties

iv) Case No and Date of Judgement:

Original Complaint No.219 of 2006 & Date of Judgement:10-10-2014.

v) Acts and Sections referred:

Sections 2(1) (f), 21(a) (i) and 24A of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) On the question whether the air bag got deployed or not when Tata vehicle hit the side of the Ford Mondeo Car, it was held that no technical evidence had been produced by the Complainants to prove the allegation. The Commission accepted the contention of the Opposite Parties that the air bag did deploy though partially and its full deployment was prevented on account of B pillar on the left side of the vehicle jamming with the front passenger seat and thereby inhibiting the inflation of the air bag.

- b) The Commission held that it was not in a position to say that the side air bags were installed at a wrong place or they could have been installed in a better place to provide higher protection and cushioning to the passengers. It was held that the complainants had not led any evidence to prove the alleged fault in the designing of the car.
- c) The Commission however held that the manufacturer and the seller adopted an unfair and deceptive practice by not disclosing to the prospective buyer that in certain events the side air bags provided in the car may not inflate completely though they could have reasonably foreseen such a possibility while designing the vehicle.
- d) The Commission held since the complaint was filed only on 4-12-2006, while the accident took place 31-5-2004, i.e more than two years after accrual of the cause of action, it was liable to be dismissed on this ground alone. Relying on the decisions of the Hon'ble Supreme Court in *Haryana Urban Development Authority v. B.K. Sood*, IV (2005) CPJ 1 (SC), *State Bank of India v. B.S.Agricultural Industries*, II (2009) CPJ 29 (SC), *V.N.Shrikhande (Dr.) Vs. Anita Sena Fernandes* IV (2010) CPJ 27 (SC), the Commission dismissed complaint as barred by limitation since the Complainant did not choose to file an application under Sub Section (2) of Section 24A seeking condonation of delay in filing the complaint.
- e) The Complainants were given liberty to seek remedy as may be available to them in law in any other appropriate forum.

vii) Citation:

IV (2014) CPJ 509; 2014(4) CPR 423.

6. Sukhvir Singh Vs. Muni Lal Chopra Hospital and others

i) Case in Brief:

Complainant's mother was shifted to the OP.1 Hospital on 04-01-2002 and was kept in ICU for a few days and later shifted to a normal home. It is the complainant's case that on 15-01-2002, his mother complained of breathlessness but the doctor did not attend and she went in coma on 16.01.2002 and ultimately died on 22-01-2002. Alleging negligence,

Limitation

complainant filed writ in the Delhi High Court and later filed a complaint before the National Commission. The complaint was dismissed as withdrawn with liberty to approach to appropriate forum. Complainant filed complaint before State Commission which was dismissed as barred by limitation. The present appeal has been filed challenging the order of the State Commission. Appeal dismissed.

ii) Order appealed against:

From the order dated 21.01.2014 in Consumer Complaint No.82 of 2009 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Sukhvir Singh - Appellant/Complainant

Vs.

Muni Lal Chopra Hospital and others - Respondents/Opp. Parties

iv) Case No and Date of Judgement:

First Appeal No.241 of 2014 with IA/2568/2014, IA/7486/2014 &

Date of Judgement: 31-10-2014.

v) Acts and Sections referred:

Sections 19, 21(i) (a) and 24A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Perusal of records showed that though the complainant's mother died on 22.01.2002, the complaint was filed for the first time before the National Commission on 06-11-2008 which was barred by limitation. When the complaint was dismissed as withdrawn with liberty to approach the appropriate forum, the complainant filed his complaint before the State Commission on 25-11-2009 i.e after more than one year from the date of withdrawal of the complaint. It was noted that complainant had not filed any application for condonation of delay before the State Commission. It was therefore held that the State Commission had not committed any error in dismissing complaint as barred by limitation. The appeal was therefore dismissed.

vii) Citation:

2014(4) CPR 502.

7. M/s. Rugs India Vs. The Oriental Insurance Co. Ltd

i) Case in Brief:

Complainant / Petitioner had taken an insurance policy from OP for his business premises including stock, building, machinery, go down etc. During the currency of the policy, fire took place. OP was informed. The Surveyor appointed by OP assessed loss of Rs.34,31,558 on depreciating value and Rs.38,85,675 on reinstatement basis. OP paid Rs.34,31,558 after deducting an amount of Rs.2,41,056 on account of short premium and premium for reinstatement and rest of the loss was not paid. Alleging deficiency in service, Complainant approached District Forum. The Forum allowed the complaint and directed OP to pay Rs.2,20,000 with interest at 12% p.a. It further awarded Rs.4,500 for negligent services and sum of Rs.3,300 as litigation expenses. Appeal filed by the OP was allowed by the State Commission and complaint was dismissed being barred by limitation against which this revision petition was filed. Revision Petition dismissed.

ii) Order appealed against:

Against the order dated 01.06.2011 in First Appeal No.2297 of 2002 of the Haryana State Commission, Panchkula.

iii) Parties:

M/s. Rugs India	-	Petitioner
	Vs.	
The Oriental Insurance Co. Ltd.	-	Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3245 of 2011 & Date of Judgement:10-11-2014.

v) Acts and Sections referred:

Sections 2(1)(g) & (o),19, 21(b) and 24A of the Consumer Protection Act,1986

vi) Issues raised and decided:

- a) As per Clause 4 (iii) of the Insurance Policy, the Insurance Company was not liable for any loss or damage after expiration of 12 months from the happening of loss or damage unless the claim is the subject of pending action or arbitration. In the present case, fire took place on 13-11-1998 and complaint was filed on 15-02-2002 i.e after almost 3 years and 3 months whereas

Limitation

complaint should have been filed within 12 months from the date of the loss. Therefore, the complaint was time-barred.

- b) Held that no claim was payable under the policy on reinstatement basis also since reinstatement was permissible only within one year from the date of incident whereas in the present case reinstatement has been done after more than 18 months.
- c) The Revision Petition was dismissed as no illegality, irregularity or jurisdictional error was found in the impugned order of the State Commission.

vii) Citation:

2014 (4) CPR 668.

8. Dr. L. Nagaraja Vs. The Vishwabharathi House Building Co-operative Society & Anr.

i) Case in Brief:

The Appellants were informed about the site numbers, its area and the phase number of the Layout Plan. Before and after the said intimation, substantial amounts were paid to the Housing Society in installments on different dates in cash. Despite several requests and reminders, possession of the allotted sites was not delivered. Having failed in their aspirations to own a house and to elicit any response to the request for refund from the Respondents, the Appellants filed the complaints before the State Commission which dismissed the complaints on the ground that the Appellants had failed to satisfactorily explain the day-to-day delay of 525 days in filing the Complaints as barred by limitation. Hence, the present appeals were filed. Appeals were allowed.

ii) Order appealed against:

First Appeal No.791 of 2013

From the order dated 22.10.2013 in Complaint No.31/2012 of the Karnataka State Consumer Disputes Redressal Commission.

First Appeal No.792 of 2013

From the order dated 22.10.2013 in Complaint No.32/2012 of the Karnataka State Consumer Disputes Redressal Commission.

First Appeal No.793 of 2013

From the order dated 22.10.2013 in Complaint No. 33/2012 of the Karnataka State Consumer Disputes Redressal Commission.

iii) Parties:

First Appeal No.791 of 2013

Dr. L. Nagaraja - Appellant

Vs.

The Vishwabharathi House Building
Co-opertative Society and another - Respondents

First Appeal No.792 of 2013

Smt. Shobha.R - Appellant

Vs.

The Vishwabharathi House Building
Co-opertative Society and another - Respondents

First Appeal No.793 of 2013

Chandrashekhar B.J - Appellant

Vs.

The Vishwabharathi House Building
Co-opertative Society and another - Respondents

iv) Case No and Date of Judgement:

- a) First Appeal No.791 of 2013;
- b) First Appeal No.792 of 2013;
- c) First Appeal No.793 of 2013 &
Date of Judgement: 14-11-2014.

v) Acts and Sections referred:

Sections 19, 21(a) (ii) and 24A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue is as to when the “cause of action” in terms of section 24A of the Act, on facts at hand, accrued for invoking the jurisdiction of the Consumer Forum? It was pleaded in the present case that the period of limitation has to be reckoned from the date of demand of refund of the amounts deposited by Appellants

Limitation

with the Respondents and not from the very date of deposit of the said amounts.

- b) Held that Complaints filed by the Appellants were within time as prescribed in Section 24A of the Act and should not have been dismissed as barred by limitation. In the instant case, “cause of action” to file the Complaints accrued on 15.03.2012, when the judgment in WP No.31846 of 2011 was delivered by the Hon’ble High Court. In any case, deposits in question, at the relevant times, could not provide foundation for accrual of “cause of action” to resort to legal action for refund. Therefore, order passed by State Commission was set aside and the complaints were restored to the State Commission for fresh adjudication in accordance with law.

vii) Citation:

Not reported in CPJ and CPR.

9. M/s. Anjanisut Marbles Vs. Dr. Manjit Singh

i) Case in Brief:

In this case, the Petitioner was proceeded exparte before the District Forum since the process sent to him by post was received back with the endorsement “unclaimed”. The Petitioner failed to explain the abnormal delay of more than five years in filing the appeal against the order of the District Forum. Therefore, appeal was dismissed against which this Revision Petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 22.07.2014 in Misc. App. No.803/2014 in First Appeal No.444 of 2014 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

M/s. Anjanisut Marbles	- Petitioner
Vs.	
Dr. Manjit Singh	- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4091 of 2014 With IA/7948/2014, IA/7949/2014
(Exemption from filing the Certified Copy, Stay) &

Date of Judgement: 19-11-2014

v) Acts and Sections referred:

Sections 19, 21(b) and 24A of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Whether the delay in filing appeal before the State Commission can be condoned or not?
- b) Held that the addressee had either refused or deliberately avoided to accept the service, despite being available at the time the envelope was sought to be delivered to him. This by itself may constitute sufficient service upon the petitioner. Moreover, the petitioner was also served by publication in Dainik Bhaskar, which is a national Daily. Therefore, it could not be accepted that the petitioner was not aware of the filing of the complaint before the District Forum.
- c) Further held that the Petitioner had not approached the State Commission with full facts and clean hands. He had not given correct information as to how he had come to know of the exparte order passed against him. The aforesaid stand is yet another indicator that in fact he was fully aware of the proceedings before the District Forum and was avoiding to put appearance till the time he came to know of the issuance of non-bailable warrants of his arrest against him.
- d) Held that the Petitioner was fully aware of the complaint and he deliberately either avoided or declined to accept the notice when sent to him by post. The order of the State Commission was confirmed and the Revision Petition was dismissed.

vii) Citation:

2015(1) CPR 74.

**X. MISLEADING THE CONSUMER FORA / MAKING FALSE
AVERMENTS**

1. Noor Islam Mondal Vs. Anklist Exim Inc and others

i) Case in Brief:

Petitioner purchased a gold testing machine from Respondent/Opposite Parties for Rs.13,72,750/-. Since purchase, the machine was not giving correct reading regarding clarity of the gold. Therefore, he informed Respondent No.3 for removing the defects in the said machine. But, Respondent No.3 did not respond. According to the Petitioner, he served an Advocate's letter dated 18.05.2011 upon Respondent No.3 requesting him to supply one gold testing machine of same description within seven days but that too remained unheeded. Having no other alternative, Petitioner filed a consumer complaint before the District Forum which directed to replace the old machine by a new one with same model and same specification. Being aggrieved, Respondents filed appeal before the State Commission, which partly allowed the appeal and directed the respondents to pay Rs.50,000/- towards compensation and Rs.5,000/- towards litigation cost to the Petitioner. Aggrieved by the order of the State Commission, Petitioner has filed this revision petition. Petition dismissed.

ii) Order appealed against:

Against the order dated 19.3.2014 in Appeal No.FA/434/2013 West Bengal State Consumer Disputes Redressal Commission, Kolkata.

iii) Parties:

Noor Islam Mondal - Petitioner

Vs.

Anklist Exim Inc and others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2201 of 2014 & Date of Judgement: 11-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission noted that in the complaint by the Petitioner, he has claimed that he has already received the gold testing machine but it is not working properly, whereas in the legal notice dated 18.5.2011 sent by the counsel for the petitioner, it has been pleaded that respondent has not supplied the gold testing machine after having received the full amount of consideration money. Thus, either the averments made in the complaint filed by the petitioner are false or legal notice dated 18-05-2011 sent by the petitioner's counsel is wrong.
- b) The Commission observed that if any litigant approaches any Judicial Forum by making false assertions in its complaint and tries to mislead the Judicial Forum, then such litigant is not entitled to any relief in equity.
- c) Held that since complaint filed by the petitioner itself was based on falsehood and wrong averments, the present revision petition was dismissed with punitive damages of Rs.50,000/- (Rupees Fifty Thousand only) for making false averments in the complaint and also for casting uncalled aspersions on the State Commission. Petitioner was directed to deposit the cost by way of demand draft in the name 'Consumer Legal Aid Account' of this Commission.

vii) Citation:

IV (2014) CPJ 728; 2014(4) CPR 652.

XI. PARALLEL PROCEEDINGS BEFORE CIVIL COURT AND CONSUMER FORA

1. M/s. Ankur Exports Pvt. Ltd. Vs. Bank of Baroda, International Business Branch

i) Case in Brief:

The Complainant had maintained, inter alia, a Packing Credit Account with the Bank of Baroda, the O.P, for a long time. The complainant deposited 21 foreign bills aggregating Rs.55,87,489.15 for credit in their above mentioned account, which the O.P duly acknowledged through their credit advices at the time of purchase/realization. OP bank duly sent the credit advices in relation to the above said bills, from time to time, to the complainant, drawing complainant to believe that due crediting had been given to it. It transpired that in late 1998, from scrutiny of certain documents that the credit for the above said 21 foreign bills had not been given as also certain wrong and unauthorized debits had been made in the account of the complainant. Alleging defalcation and fraud by the staff of OP and deficiency in service, this original complaint has been filed before the National Commission. OP contended that since a case was already pending in Debt Recovery Tribunal (DRT), Jaipur on this and other connected issues, the jurisdiction of the Commission stands barred. Complaint is dismissed with liberty to seek relief from the appropriate forum as per law.

ii) Order appealed against:

Original Petition

iii) Parties:

M/s. Ankur Exports Pvt. Ltd.

- Petitioner

Vs.

Bank of Baroda, International Business Branch

- Opposite Party

iv) Case No and Date of Judgement:

Original Petition No.132 of 2000 & Date of Judgement: 10-12-2014.

v) Acts and Sections referred:

Sections 2(1) (g) (o), 3, 12, 14, 18 & 21(a)(i) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The key question which fell for consideration in this 14 years' old case was, "Whether, this Commission has got the jurisdiction to try this case, when proceedings on the same subject matter are pending before the DRT, Jaipur?". It was also contended that the DRT did not have the competent jurisdiction to return a finding and to make directions in terms of Section 14 of the C.P. Act, 1986. The other question was, "Whether, the Court/ Commission can arrogate to itself the powers, which it does not enjoy?" It was also contended that the complainant is a private limited company and is not a consumer.
- b) It was contended by the Complainant that the proceedings before the Commission are in addition to and not in derogation of any other law, as per the law enshrined in Section 3 of the Consumer Protection Act, 1986. The claim of the Bank before the DRT, Jaipur, related to transactions, included in accounts of which the last date was May, 1996, whereas, the present complaint is for the transaction relating to the period 1990-91. It was contended that the DRT did not have the competent jurisdiction to return a finding and to make directions in terms of Section 14 of the C.P. Act, 1986.
- c) Held that Commission has no jurisdiction to try this case as per law laid down in (1) *Traxpo Trading Co. Vs. The Federal Bank Ltd*, 1 (2002) CPJ 31(NC), (Original Petition No.116 of 2001, decided on 15.10.2001) and (2) *Shri Yashwant G.Ghaisas & ors. Vs. Bank of Maharashtra* decided on 06.12.2012, in Consumer Complaint No.302 of 2012 (which was upheld by the Hon'able Supreme Court on 01.03.2013). The case was dismissed with liberty to seek relief from the appropriate forum, as per law.

vii) Citation:

I (2015) CPJ 216; 2015(1) CPR 350.

2. SVM Engineers Pvt. Ltd. Vs. M/s. Royal Palms (I) Pvt. Ltd. and others

i) Case in Brief:

The complainant and the O.Ps had an agreement according to which the complainant agreed to do the construction work of the O.Ps for which payment would be made 42.5% by barter (transfer of plot or other premises amounting to Rs.67 lakhs) and 57.5% amounting to Rs.91 lakhs by issue of post-dated cheques. Both the complainant and O.Ps accused each other of cheating and committing default and irregularities in the construction of buildings respectively. After filing the original petition in the NC, Complainant also filed a civil suit for a larger claim before the Hon'ble High Court. The Complaint was dismissed on two grounds:

- i) The qualifications of the consumer are missing in the complaint
- ii) When a Civil Suit is pending on the same subject matter, the Commission cannot entertain any complaint.

ii) Order appealed against:

Original Petition

iii) Parties:

SVM Engineers Pvt. Ltd.

- Petitioner

Vs.

M/s. Royal Palms (I) Pvt. Ltd. and others

- Respondent(s)

iv) Case No and Date of Judgement:

Original Petition No.454 of 2002 & Date of Judgement: 16-12-2014.

v) Acts and Sections referred:

Sections 2(1) (d), 3 & 21(a) (i) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Civil suit for the same cause of action for a larger claim was filed in the Bombay High Court. It is well settled that proceedings before the Commission under the Consumer Protection Act, 1986 cannot be equated to proceedings before the regular civil court and the litigants cannot take a chance by initiating parallel

proceedings. The judgement in *Malti Construction Vs. Arun K.Hirukar and Others* (2014) CPJ 590 (NC) cited by the Complainant is not applicable to this case. On the other hand, the judgement by Five Judges Bench of the National Commission in *Dr.Dinesh Vs. Swastic Builders and others*, Consumer Complaint No.188 of 1995 decided on 14-08-2001 is relevant.

- b) The Complainant does not qualify to be a Consumer as per the Consumer Protection Act, 1986 even prior to the amendment of 2003.
- c) It is an *inter se* dispute between two business persons. It is a commercial transaction not covered by the authority of *Laxmi Engineering Works Vs. P.S.G Industrial Institute* (1995) 3 SCC 583.

vii) Citation:

I (2015) CPJ 392; 2015(1) CPR 289.

XII. PROCEDURE ADOPTED/FOLLOWED BY THE FORA

1. Chairman Shivdan Singh Vs. Vivek Kumar

i) Case in Brief:

Complainant/Respondent filed complaint before District Forum which allowed complaint and directed Opposite Party- Petitioner to pay to the Complainant/Respondent, Rs.60,000/- with interest and further awarded Rs.1,000/- as litigation cost. Appeal filed by the Opposite Party was dismissed by State Commission against which this Revision Petition has been filed. Revision Petition allowed.

ii) Order appealed against:

Against the order dated 16.4.2013 in Appeal No.307 of 2010 of U.P. State Commission, Lucknow.

iii) Parties:

Chairman Shivdan Singh - Petitioner

Vs.

Vivek Kumar - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.764 of 2014 & Date of Judgement: 22-09-2014.

v) Acts and Sections referred:

Sections 2(1)(g), (o), 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986 & Order 9 Rule 8 of Civil Procedure Code, 1908.

vi) Issues raised and decided:

- a) It was pointed out by the National Commission that perusal of impugned order revealed that appeal had been dismissed on account of non-appearance of Petitioner before State Commission in spite of up-loading cause-list on web-site of State Commission. The order issued by the State Commission nowhere said that notice was given to the Petitioner. It was observed by the National Commission that merely because cause-list had been uploaded, notice to the Petitioner could not be presumed and it also held that the State Commission should not have dismissed appeals on the basis of up-loading cause-list on the web-site.

b) Consequently, Revision Petition filed by the Petitioner was allowed and impugned order was set aside and appeal was restored to its original number and the State Commission was directed to decide the appeal by giving an opportunity of being heard to both the parties as appeal had been dismissed without proper intimation to the Petitioner.

vii) Citation:

IV (2014) CPJ 365; 2014(4) CPR 17.

2. Dr. S. Pandu Vs. M. Subba Rao

i) Case in Brief:

Complainant filed complaint before District Forum alleging medical negligence on the part of the opposite party/petitioner while conducting operation of his left eye. District Forum allowed complaint and directed opposite party No.1/Petitioner to pay Rs.2 lakhs and opposite Party No.2 to pay Rs.50,000/- with interest. Appeal filed by the petitioner was dismissed by State Commission against which this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

Against the order dated 6.6.2008 in Appeal No.2441/2007 & 2465/2007 of Karnataka State Commission, Bangalore.

iii) Parties:

Dr. S. Pandu	-	Petitioner
Vs.		
M. Subba Rao	-	Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2736 of 2008 & Date of Judgement: 23-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 12, 14, 17, 18, 19, and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Revision petition filed by the petitioner was allowed and the orders of the fora below were set aside and matter was remanded back to

District Forum to take on record, consider documents and decide complaint after giving an opportunity of being heard to both the parties, subject to payment of cost of Rs.10,000/- by petitioner to the respondent.

vii) Citation:

Not reported in CPJ and CPR.

3. Ferrous Infrastructure Pvt. Ltd. and another Vs. Raj Bala

i) Case in Brief:

Complainant/Respondent booked luxury flat No.903 with OP/petitioner and made time to time payment. At the time of execution of agreement, OP intimated to the complainant that flat No. 903 stands allotted to someone else and was asked to opt for some ordinary flat which the complainant refused. Then, OP returned two cheques for Rs.1,64,145/- and Rs.1,91,250/- given by complainant. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which directed OP to allot flat No. L-1301 after accepting balance amount without interest. Appeal filed by OP was dismissed by State Commission against which, this revision petition has been filed. Petition allowed.

ii) Order appealed against:

From the order dated 06.07.2012 in Appeal No.765 of 2012 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Ferrous Infrastructure Pvt. Ltd. & Anr. - Petitioners/OPs

Vs.

Raj Bala - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.3927 of 2012 & Date of Judgement: 24-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that the State Commission had dealt only with interest aspects and had not considered rate of flat to be charged. Therefore, the revision petition filed by the petitioners was allowed and the impugned order passed by State Commission was set aside and the matter was remanded back to the State Commission to decide appeal after giving an opportunity of being heard to the parties relying on the decision of Hon'ble Supreme Court in *HVPNL Vs. Mahavir*, (2001) 10 SCC 659.

vii) Citation:

2014(4) CPR 197.

4. M/s. Amar Tractors Pvt. Ltd. Vs. Smt. Promila Sharma and another

i) Case in Brief:

Complainant/Respondent No.1 purchased tractor with trolley from OP No.1/Respondent No.2 on 14-05-2007 for a sum of Rs.1,56,000/-. After 22 days, the tractor developed some snag and despite repair the problem persisted and it stopped functioning on 20-10-2007. Complainant asked OP to refund the cost of tractor and trolley with interest since he suspected manufacturing defect. He filed complaint before District Forum which allowed the complaint and directed OP.1 & 2 to refund sale consideration of tractor with interest and further awarded damages of Rs.50,000/- and cost of Rs.2,000/-. Appeal filed by OPs.1 & 2 was dismissed by the State Commission vide impugned order against which the present revision petition had been filed. Revision Petition allowed and the matter was remanded back to the State Commission to decide the case afresh after considering all documents filed along with application under Order 41 Rule 27 of CPC, 1908.

ii) Order appealed against:

From the order dated 05.09.2012 in Appeal No.140/2012 of the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla.

iii) Parties:

M/s. Amar Tractors Pvt. Ltd.	-	Petitioner/Opp. Party
	Vs.	
Smt. Promila Sharma and another	-	Respondents/Complainants

iv) Case No and Date of Judgement:

Revision Petition No:4292 of 2012 & Date of Judgement: 30-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The National Commission considered the question of rejection of application under Order 41 Rule 27 of CPC and observed that when the Petitioner was proceeded ex-parte on the basis of deemed service, there was no occasion for the petitioner to file reply along with documents before District Forum. He had filed application before the State Commission for taking documents on record which are material for disposition of the appeal. The National Commission held that the documents were necessary for disposal of appeal and the State commission erred in not considering the documents and rejecting the application. In these circumstances, the impugned order of the State Commission was set aside, the application under Order 41 Rule 27 of CPC filed by the Petitioner was allowed and the documents taken on record and the matter remanded back to the State Commission to decide the appeal afresh after giving opportunity of being heard to both the parties and considering the documents.

vii) Citation:

IV (2014) CPJ 732; 2014(4) CPR 152.

5. M/s. Matrix Buildwell Pvt. Ltd. Vs. Shobit Elhance and others

i) Case in Brief:

Complainants/Respondents purchased flats for a sale consideration from OP/Petitioner. It is their grievance that OP failed to deliver possession of flats in time and illegally charged ECD charges, infrastructure development charges, stamp duty, registration charges etc. It was further alleged that OP delivered possession of flats without providing basic facilities like club and ground parking. Alleging deficiency in service on the part of OP, they filed complaint before the District Forum which allowed the complaint partly and directed OP to

refund money for covered parking space with interest and further awarded litigation charges. Appeal filed by OP was dismissed by the State Commission vide impugned order against which these revision petitions have been filed. Revision petitions allowed and the cases remanded back to the State Commission for deciding the matter afresh and passing a speaking order.

ii) Order appealed against:

Revision Petition No.1319 of 2014

From the order dated 07-11-2013 in F. Appeal No.785 of 2013 of Haryana State Consumer Disputes Redressal Commission, Panchkula.

Revision Petition No.1320 of 2014

From the order dated 07-11-2013 in F. Appeal No.787 of 2013 of Haryana State Consumer Disputes Redressal Commission, Panchkula.

Revision Petition No.1321 of 2014

From the order dated 07-11-2013 in F. Appeal No.789 of 2013 of Haryana State Consumer Disputes Redressal Commission, Panchkula.

Revision Petition No.1322 of 2014

From the order dated 07-11-2013 in F. Appeal No.790 of 2013 of Haryana State Consumer Disputes Redressal Commission, Panchkula.

Revision Petition No.1408 of 2014

From the order dated 07-11-2013 in F. Appeal No.783 of 2013 of Haryana State Consumer Disputes Redressal Commission, Panchkula.

Revision Petition No.1409 of 2014

From the order dated 07-11-2013 in F. Appeal No.784 of 2013 of Haryana State Consumer Disputes Redressal Commission, Panchkula.

Revision Petition No.1410 of 2014

From the order dated 07-11-2013 in F. Appeal No.786 of 2013 of Haryana State Consumer Disputes Redressal Commission, Panchkula.

Revision Petition No.1411 of 2014

From the order dated 07-11-2013 in F. Appeal No.788 of 2013 of Haryana State Consumer Disputes Redressal Commission, Panchkula.

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iii) Parties:

Revision Petition No.1319 of 2014

M/s. Matrix Buildwell Pvt. Ltd. - Petitioner/Opp. Party
Vs.
Shobit Elhance and others - Respondents/Complainants

Revision Petition No.1320 of 2014

M/s. Matrix Buildwell Pvt. Ltd. - Petitioner/Opp. Party
Vs.
Mahesh Kumar Haribhau Patil
and others - Respondents/Complainants

Revision Petition No.1321 of 2014

M/s. Matrix Buildwell Pvt. Ltd. - Petitioner/Opp. Party
Vs.
Ashish Kumar Gupta and others - Respondents/Complainants

Revision Petition No.1322 of 2014

M/s. Matrix Buildwell Pvt. Ltd. - Petitioner/Opp. Party
Vs.
Subir Majumdar and others - Respondents/Complainants

Revision Petition No.1408 of 2014

M/s. Matrix Buildwell Pvt. Ltd. - Petitioner/Opp. Party
Vs.
Sanjeev Dhawan and others - Respondents/Complainants

Revision Petition No.1409 of 2014

M/s. Matrix Buildwell Pvt. Ltd. - Petitioner / Opp. Party
Vs.
Sanjay Kumar Singh and others - Respondents/Complainants

Revision Petition No.1410 of 2014

M/s. Matrix Buildwell Pvt. Ltd. - Petitioner / Opp. Party
Vs.
Inder Kumar Parimoo and others - Respondents/Complainants

Revision Petition No.1411 of 2014

M/s.Matrix Buildwell Pvt. Ltd. - Petitioner / Opp. Party

Vs.

Vinod Bala Chadha and others - Respondents/Complainants

iv) Case No and Date of Judgement:

Revision Petition Nos.1319 with IA/1888/2014 (For Stay); 1320-1322 of 2014 and Revision Petition Nos.1408-1411 of 2014 &

Date of Judgement: 07-10-2014

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Perusal of State Commission's order revealed that the State Commission had merely relied on the judgment of *Nahalchand Laloochand Pvt. Ltd. Vs. Panchali Co-operative Housing Society Ltd* AIR 2010 SC 3607 on which District Forum's order was based and dismissed appeal *in limine* without assigning any reason. It was held that it was obligatory on the part of the Appellate Court to deal with all the objections raised in memo of appeal as observed by the Hon'ble Apex Court in (2001) 10 SCC 659-*HVPNL Vs. Mahavir*. Consequently the revision petitions were allowed and the cases remanded back to the State Commission for deciding the matter afresh and passing a speaking order after giving an opportunity of being heard to the parties.

vii) Citation:

2014(4) CPR 142.

6. Shri Sibaji Sen Vs. The Oriental Insurance Co. Ltd.

i) Case in Brief:

Complainant took medi-claim insurance from OP No.1/Respondent No.1 for Rs.2,00,000/. He underwent treatment as in-patient in OP.No.3/ Respondent No.3 hospital for three weeks in March 2011. OP2/ Respondent No.2 provided cashless facility. OP.3 raised bill for

Procedure Adopted/Followed by the Fora

Rs.1,84,104/- but OP Nos.1& 2 paid only Rs.88,240/- and refused to pay balance amount as not reasonable or customary and suggested to claim it from OP.3/Respondent-3. Alleging deficiency in service on the part of OPs, appellant filed complaint before State Commission. OP.No.3 moved an application for deletion of his name and the State Commission vide impugned order, deleted his name from roll of complaint against which the present appeal has been filed. Appeal allowed and the impugned order set aside.

ii) Order appealed against:

From the order dated 06-01-2014 in Consumer Complaint No.70 of 2013 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

iii) Parties:

Shri Sibaji Sen - Appellant/Complainant

Vs.

The Oriental Insurance Co. Ltd.
and others - Respondent/Opp. Party

iv) Case No and Date of Judgement:

First Appeal No.101 of 2014 & Date of Judgement: 07-10-2014.

v) Acts and Sections referred:

Sections 2(1)(g) & (o), 12, 13, 14, 18, 19 & 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

As complainant had alleged deficiency on the part of all the OPs, it was held that there was no occasion for the State Commission to delete the name of OP.No.3. OP No.3 is not only the proper party but also a necessary party as complainant was claiming compensation from OP.No.3 also. It was further held that whether complainant would be able to prove his case against OP.No.3 or not cannot be seen at this stage of the complaint. Consequently, the appeal was allowed and the impugned order of the State Commission was set aside.

vii) Citation:

I (2015) CPJ 99; 2014(4) CPR 141.

7. National Insurance Co. Ltd. Vs. Smt. Surinder Kaur

i) Case in Brief:

Complainant/Respondent's husband, Avtar Singh had obtained personal accident insurance policy for Rs.5 lakhs on 06-04-1997 from OP/Petitioner for a period from 08-04-1997 to 07-04-2009. On 22-07-2006, Avtar Singh while driving scooter collided with Motor Cycle and ultimately died. Intimation of death was given to the OP on 18-10-2006. OP sought explanation as to why FIR was not lodged and post-mortem report obtained. Complainant's claim was repudiated by the OP. Alleging deficiency in service, Complainant filed complaint before District Forum. The Forum after hearing both the parties observed that the case needs proper investigation and inquiry and detailed recording of evidence and directed complainant to approach Civil Court. Appeal filed by Complainant was allowed by State Commission directing OP/Petitioner to pay Rs.5 Lakhs along with 6% interest p.a against which this revision petition has been filed. Revision Petition allowed and the orders of the fora below were set aside. The matter was remanded back to the District Forum to decide the case on merits on the basis of the material available on record.

ii) Order appealed against:

From the order dated 29-11-2012 in First Appeal No.1243 of 2008 of State Consumer Disputes Redressal Commission, Punjab.

iii) Parties:

National Insurance Co. Ltd.	-	Petitioner
Vs.		
Smt. Surinder Kaur	-	Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1249 of 2013 with IA/6076/2014, IA/6127/2014, IA/6516/2014 (For Stay, Placing record, Directions) &

Date of Judgement: 08-10-2014.

v) Acts and Sections referred:

Sections 12, 13, 14, 18, 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

The Commission held that when the District Forum had held that the Complainant should approach the Civil Court, the State Commission should not have decided the appeal on merits and instead should have remanded the matter to the District Forum for deciding it on merits as consumer forum had sufficient material for final decision on complaint. Consequently, the revision petition was allowed, the impugned order of the State Commission was partly set aside, order of the District Forum directing the complainant to approach the Civil Court was also set aside and the matter was remanded back to the District Forum to decide it on merits.

vii) Citation:

2014(4) CPR 130.

8. M/s. Shankar Enterprise and others Vs. Bank of India and another

i) Case in Brief:

The Revision Petition No.2366 of 2010 was directed against the order in an appeal against the order of the District Forum while the First Appeal Nos.182 of 2010, 183 of 2010 and 184 of 2010 were directed against three separate orders passed by the State Commission on 26-05-2010. All the impugned orders of the State Commission as well as the orders of the District Forum were set aside. The First Appeal Nos. 182, 183, 184 of 2010 were remanded back to the State Commission whereas the Complaint in Revision No.2366 of 2010 was remanded back to the District Forum for a fresh decision in accordance with law.

ii) Order appealed against:

Revision Petition No.2366 of 2010

From the order dated 26-05-2010 in F. Appeal No.238 of 2009 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

First Appeal No.182 of 2010

From the order dated 26-05-2010 in C.C.No/08/27 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

First Appeal No.183 of 2010

From the order dated 26-05-2010 in C.C.No/08/28 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

First Appeal No.184 of 2010

From the order dated 26-05-2010 in C.C.No/08/37 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

iii) Parties:

Revision Petition No.2366 of 2010

M/s. Shankar Enterprise and others - Petitioners
Vs.

Bank of India and another - Respondents

First Appeal No.182 of 2010

M/s. Amrit Floor Mills and another - Appellants
Vs.

Bank of India and another - Respondents

First Appeal No.183 of 2010

M/s. Sumitra Enterprise and others - Appellants
Vs.

Bank of India and another - Respondents

First Appeal No.184 of 2010

Mr. Shankar Agarwal and another - Appellants
Vs.

Bank of India and another - Respondents

iv) Case No and Date of Judgement:

- i. Revision Petition No.2366 of 2010;
- ii. First Appeal No.182 of 2010;
- iii. First Appeal No.183 of 2010;
- iv. First Appeal No.184 of 2010 & Date of Judgement: 09-10-2014.

v) Acts and Sections referred:

Sections 2(1) (d), 12, 13, 14, 18, 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Commission found that the State Commission had proceeded on the assumption that the decision of the Commission in *Harsolia Motors Vs. National Insurance Co. Ltd* as reported in (1) (2005) CPJ 27 was rendered before amendment of Section 2(1) (d) of the Act w.e.f 15-03-2003 whereas the afore said decision of the Commission had been rendered after the amendment had already been carried out. In view of the aforesaid decision of the National Commission, it was held that it was not open to the State Commission to take a contrary view and hold that the complaint against the insurance company was not maintainable. Accordingly, the orders of the fora below were set aside and the cases were remanded back to the State Commission/District Forum for a fresh direction in accordance with law.
- b) The Commission made clear that no relief in the complaints can be granted to the complainants against the Bank of India. However, it was held that it was open to the complainants to avail such other remedy against Bank of India, if any, as may be available to them in law.

vii) Citation:

Not reported in CPJ and CPR.

9. Shriram General Insurance Co. Ltd. and another Vs. Jaisaram

i) Case in Brief:

Complainant/Respondent's vehicle was insured by OP/petitioner for a period of one year from 25.5.2011 to 24.05.2012. Vehicle met with an accident on 7.1.2012 and Rs.5,56,973/- was spent on repairs. OP released Rs.2,98,000/- on 5.3.2012 in favour of the complainant who accepted the aforesaid amount under protest. Rest of the amount was not released by OP. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which directed OP to pay Rs.52,190/- with 9% p.a. interest and further allowed Rs.2500/- as litigation expenses. Appeal filed by OP was dismissed by State Commission against which, this revision petition has been filed. Revision Petition allowed and the matter was remanded back to the State Commission.

ii) Order appealed against:

Against the order dated 30.10.2013 in F. Appeal No.703 of 2013 of Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

Shriram General Insurance Co. Ltd.
and another

- Petitioners/OPs

Vs.

Jaisaram

- Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.4667 of 2013 & Date of Judgement: 09-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Revision petition filed by the petitioner was allowed and order passed by the State Commission was set aside and matter was remanded back to the State Commission for deciding it by speaking order after giving an opportunity of being heard to the parties relying on the decision of Hon'ble Apex Court decision in *HVPNL Vs. Mahavir*, (2001) 10 SCC 659.

vii) Citation:

2014(4) CPR 121.

10. Shriram General Insurance Co. Ltd. Vs. M/s. Ambuja Cement Ltd.

i) Case in Brief:

Complainant/Respondent's motorcycle was insured by OP/petitioner for a period of one year from 28.3.2012 to 27.3.2013. Vehicle was stolen on 21.4.2012 and complainant reported to the police control room. FIR was lodged, but vehicle could not be traced. Complainant also intimated to OP, but OP repudiated claim for violation of conditions of policy. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which allowed complaint and directed OP to pay Rs.21,188/- along with Rs.3,000/- as litigation charges. Appeal filed

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by OP was dismissed by State Commission against which, this revision petition has been filed. Revision Petition allowed and the matter remanded back to the State Commission.

ii) Order appealed against:

Against the order dated 17.05.2013 in F. Appeal No.378 of 2013 of Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

Shriram General Insurance Co. Ltd. - Petitioner

Vs.

M/s. Ambuja Cement Ltd. - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2662 of 2013 & Date of Judgement: 09-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Revision petition filed by the petitioner was allowed and order passed by the State Commission was set aside and matter was remanded back to the State Commission for deciding it by speaking order after giving an opportunity of being heard to the parties relying on the decision of Honble Apex Court decision in *HVPNL Vs. Mahavir*, (2001) 10 SCC 659.

vii) Citation:

IV (2014) CPJ 484; 2014(4) CPR 119.

11. Mr. D.N. Maitra and others Vs. M/s. K.S. Holidays Pvt. Ltd. and another

i) Case in Brief:

Complainants/Petitioners booked a tour package to Kashmir with OP/ respondent at a cost of Rs.1,10,000/-. Complainant alleged deficiency on the part of OP regarding hotel accommodation, vehicle provided to them and claimed compensation. District Forum allowed compensation of Rs.1,00,000/- along with 10% p.a. interest and further allowed Rs.5,000/- as litigation cost. Complainant filed appeal for enhancement

before State Commission which dismissed appeal *in limine* against which, this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

Against the order dated 4.7.2014 in F. Appeal No.113 of 2014 of State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

Mr. D.N. Maitra and others - Petitioners/Complainants

Vs.

M/s. K.S. Holidays Pvt. Ltd. & Anr. - Respondents/Opp. Parties

iv) Case No and Date of Judgement:

Revision Petition No.3588 of 2014 & Date of Judgement: 09-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Revision petition filed by the petitioner was allowed and order passed by the State Commission was set aside and matter was remanded back to the State Commission for deciding it by speaking order after giving an opportunity of being heard to the parties relying on the decision of the Hon'ble Apex Court in *HVPNL Vs. Mahavir*, (2001) 10 SCC 659.

vii) Citation:

2014(4) CPR 118.

12. Gilda Finance and Investment Ltd. Vs. Smt. Basamma

i) Case in Brief:

Complainant/Respondent got his vehicle financed from OP/Petitioner to the tune of Rs.3,70,000/- on 10-02-2010. The Complainant himself contributed Rs.1,77,600/-. Loan amount was to be paid in 36 installments. It is the Complainant's case that OP got his signatures on blank papers, obtained blank cheques and without intimation to him seized the vehicle and sold it and further demanded Rs.5,000/- from him. Alleging deficiency in service, he filed the complaint before the

Procedure Adopted/Followed by the Fora

District Forum. The Forum allowed the complaint and directed OP to pay Rs.1,77,600/- with 6% interest to the Complainant and further awarded Rs.50,000/- towards mental agony and Rs.2,000/- as cost. Appeal filed by the OP was dismissed by the State Commission as barred by limitation as well as on merits, against which this revision petition has been filed. Revision petition allowed and the matter was remanded back to the State Commission for deciding the case afresh after giving opportunity to both the parties.

ii) Order appealed against:

From the order dated 16-09-2013 in Appeal No.1123 of 2013 of the Karnataka State Consumer Disputes Redressal Commission, Bangalore.

iii) Parties:

Gilda Finance and Investment Ltd. - Petitioner/Opp. Party

Vs.

Smt. Basamma - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.4574 of 2013 with IA/7527/2013 (For Stay) &
Date of Judgement: 10-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 12, 13, 14, 18, 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Perusal of District Forum's order revealed that free copy was not sent to the petitioner and that he applied for certified copy on 13-06-2013 and got it on 14-06-2013. It was held that the State Commission committed error in believing that the Petitioner had received the free copy of the forum's order. It was further held that the appeal had to be treated within limitation.
- b) On merits, it was found that the State Commission had not dealt with the grounds taken in memo of appeal and simply upheld order of the District Forum whereas apparently there was delay in payment of 1st, 2nd and 3rd instalments and as per hypothecation agreement, the petitioner was entitled to repossess the vehicle and sell it after due notice.

c) Relying on the decision of the Hon'ble Supreme Court in *HVPNL v. Mahavir*, in (2001) 10 SCC 659, the revision petition was allowed, the impugned order of the State Commission was set aside and the matter was remanded back to the State Commission for deciding the case by a speaking order after giving opportunity of being heard to both the parties.

vii) Citation:

IV (2014) CPJ 620; 2014(4) CPR 409.

13. Nitin D. Patel (HUF) Vs. Mrs. Tillottama and another

i) Case in Brief:

In this case, the petitioner was granted 15 days time by the State Commission to file his written statement and the complaint was adjourned 19-06-2014. On the said date, the matter was taken up before lunch and an order was passed proceeding ex parte against the Petitioner by the State Commission. Aggrieved by the order, the present revision petition has been filed. Revision petition allowed and the matter remanded back to the State Commission for fresh hearing and disposal.

ii) Order appealed against:

From the order dated 19-06-2014 in C.C.No.14/129 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

iii) Parties:

Nitin D. Patel (HUF)	-	Petitioner
	Vs.	
Mrs. Tillottama and another	-	Respondents

iv) Case No and Date of Judgement:

Revision Petition No.2844 of 2014 & Date of Judgement: 13-10-2014.

v) Acts and Sections referred:

Sections 12, 13, 14, 18, 19 and 21(b) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was stated by the Petitioner that the presiding Judge at the State Commission had verbally indicated that the matter would be taken up at 2 P.M on 19-06-2014. However, the matter was taken up before lunch as conceded by Counsel for the Complainant. Therefore, the impugned order of the State Commission was set aside subject to payment of Rs.10,000/- as cost to be paid to the complainant and the parties were directed to appear before the State Commission on 19-11-2014. The State Commission was directed to dispose of the complaint within 6 months.

vii) Citation:

Not reported in CPJ and CPR.

14. Baba Farid Ji Marble House and others Vs. Manjit Kaur

i) Case in Brief:

Complainant/Respondent placed order for Marble/Kota stone worth Rs.75,000/- with OP/petitioner and paid Rs.5,000/- as advance. OP despatched Marble/Kota stone on 28.1.1997 in two trucks and complainant also paid money for freight and unloading and spent total Rs.79,800/-. It was alleged that Marble/Kota stone was not of standard quality as per sample and had different colours and papri and at the time of fixing some stone got broken. In spite of repeated calls and notice, OP neither visited site of the complainant, nor replaced the goods. Alleging deficiency on the part of OPs, complainant filed complaint before District forum which observed that parties are required to lead the detail and comprehensive evidence including the oral and expert witnesses, which cannot be lead in the Forum and thus, directed complainant to approach Civil Court. Appeal filed by complainant was allowed by State Commission against which, this revision petition has been filed. Revision petition partly allowed.

ii) Order appealed against:

From the order dated 25.07.2011 in Appeal No.393 of 2006 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

Baba Farid Ji Marble House and others - Petitioners/Opp. Parties
Vs.

Manjit Kaur - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.3860 of 2011 & Date of Judgement: 13-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 12, 13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Held that once the State Commission had come to the conclusion that District Forum should not have relegated complainant to approach Civil Court, State Commission should have remanded the matter back to District forum for deciding complaint on merits and State Commission ought not to have decided complaint on merits that too practically by non-speaking order. It was further held that as the complaint was not decided on merits by the District forum, it was obligatory on the part of State Commission to remand the matter back to District Forum for deciding it on merits.
- b) Revision petition filed by the petitioner was partly allowed and impugned order passed by the State Commission was partly set aside and order deciding complaint on merits and awarding compensation was also set aside, but order holding that District Forum was competent to decide complaint on merits was upheld. Matter was remanded back to District forum to decide it afresh on merits after giving an opportunity of being heard to both the parties preferably within 6 months from the date of the order.

vii) Citation:

Not reported in CPJ and CPR.

15. State Bank of Bikaner & Jaipur Vs. Shri Bhanwar Singh and another

i) Case in Brief:

Complainant/Respondent availed loan of Rs.2,30,000/- from the OP/petitioner and purchased a tractor. Complainant could not repay loan in time. In 2008, Central Government introduced Prime Minister Debt Waiver Scheme and under that scheme, OP asked complainant to deposit amount under waiver scheme to get substantial relief. Complainant claims that he deposited the amount with the OP and asked OP to issue waiver certificate, but that was not issued and illegal demand of Rs.20,000/- was made from him. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which directed OP-1 to issue 'no due certificate' to the complainant within one month in reference to closed loan account along with litigation expenses. Appeal filed by the petitioner was dismissed by State Commission vide order dated 3.8.2012 and the National Commission vide order dated 26.8.2013 in R.P. No.65 of 2013 remanded the matter back to the State Commission to decide appeal by speaking order. State Commission vide impugned order again dismissed appeal against which this revision petition has been filed. Revision petition disposed of by remanding the matter again to the State Commission for deciding the matter after giving an opportunity to both the parties and issuing a speaking order.

ii) Order appealed against:

From the order dated 09.10.2013 in Appeal No.1100 of 2011 of the Rajasthan State Consumer Disputes Redressal Commission, Bench No.1, Jaipur.

iii) Parties:

State Bank of Bikaner & Jaipur - Petitioner/Opp. Party

Vs.

Shri Bhanwar Singh and another - Respondents/Complainants

iv) Case No and Date of Judgement:

Revision Petition No.4849 of 2013 with IA/8082/2013 &

Date of Judgement: 13-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was noted that the State Commission instead of deciding appeal by speaking order, again repeated earlier order and dismissed appeal without a speaking order. The revision petition filed by the petitioner was therefore allowed and the impugned order passed by State Commission was set aside and the matter was remanded back to the State Commission for deciding it by speaking order after giving an opportunity of being heard to the parties relying upon the Supreme Court decision in *HVPNL Vs. Mahavir* (2001) 10 SCC 659.

vii) Citation:

2014(4) CPR 404.

16. M/s. Rajgad Sahakari Sakhar Vs. The New India Assurance Co. Ltd and another

i) Case in Brief:

Complainant/Appellant's stock of sugar was insured by OP/Respondent for a period of one year. When the policy was in currency, in the month of July-August, 2005, due to heavy rains, stock of sugar was badly damaged. Complainant lodged claim for Rs.99,99,728/- with the OP but OP surveyor assessed loss of Rs.16,39,507/-. OP neither accepted nor rejected the claim. Alleging deficiency in service, complainant approached the State Commission which allowed the complaint partly and directed OP to pay Rs.16,39.507/-. Aggrieved by the order, the present appeal has been filed. Appeal allowed and the matter remanded back to the State Commission to decide the case after giving an opportunity of being heard to both the parties.

ii) Order appealed against:

From the order dated 23-09-2013 in C.C.No.06/108 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai.

iii) Parties:

M/s. Rajgad Sahakari Sakhar - Appellant/Complainant

Vs.

The New India Assurance Co. Ltd & Anr. - Respondents/OPs.

iv) Case No and Date of Judgement:

First Appeal No.800 of 2013 & Date of Judgement: 14-10-2014.

v) Acts and Sections referred:

Sections 12, 13, 14, 17, 18, 19 and 21(a) (ii) of The Consumer Protection Act, 1986.

vi) Issues raised and decided:

Perusal of the State Commission's order revealed that none appeared for the complainant and the impugned order was passed without giving an opportunity of being heard to the complainant. Though the State Commission had ordered that the amount assessed by the surveyor should be paid, since there was a huge difference between the claim made by the complainant and the amount allowed by the State Commission, it was held that the Complainant had every right to be heard before a final decision was taken. Consequently, the appeal filed by the appellant was allowed, the impugned order of the State Commission was set aside and the matter was remanded back to the State Commission to decide the case after giving an opportunity of being heard to both the parties.

vii) Citation:

2014(4) CPR 389.

17. Jet Lite (India) Ltd and another Vs. State Consumer Disputes Redressal Commission and others

i) Case in Brief:

The Respondent No.2/complainant filed a consumer complaint against the petitioners/opposite parties as also Respondents No.3 & 4, before the District Forum alleging deficiency in service on their part. The consumer complaint was allowed by the District Forum and directions were issued to the OPs. An appeal was filed before the State

Commission wherein appellant was permitted to cause paper publication in respect of respondent No.1 & 3 in a widely circulated daily English newspaper after getting it approved from the State Commission fixing 22.08.2013 for filing paper publication”. The petitioner, however, failed to take steps for service on respondent No.1 & 3 by publication. Thus on 22.08.2013 on the request of counsel for the appellant petitioner, the matter was adjourned for substituted service by publication. The Appellant/Petitioner instead of complying the above noted orders of the State Commission moved Miscellaneous Application seeking modification of said orders on the plea that there was no provision in the Consumer Protection Act authorizing the consumer fora to effect service by way of publication. Miscellaneous Application preferred by the petitioner appellant was dismissed vide impugned order. This has led to filing of this revision petition. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 12.6.2014 in Appeal No.885/2012 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata.

iii) Parties:

Jet Lite (India) Ltd and another - Petitioners/OPs

Vs.

State Consumer Disputes Redressal Commission and others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3474 of 2014 with IA No.6157 of 2014 (For Stay) & Date of Judgement: 15-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 12,13, 14, 18, 19 and 21(b) of the Consumer Protection Act, 1986 & Order V Rule 20(1) of the Civil Procedure Code, 1908.

vi) Issues raised and decided:

- a) It was observed that the State Commission is a quasi judicial authority and it is therefore expected to follow the principles of natural justice. *Audi alteram partem* is a basic component of natural justice which means no party should be condemned unheard. It was held that by directing service of notice by publication the State Commission was adhering to principles of natural justice.

- b) Secondly, both the District forum and the State Commission have the same powers of a Civil Court under the Code of Civil Procedure while trying a civil suit in respect of summoning and enforcing attendance of any defendant. Order V Rule 20 of CPC provides for a situation in which substituted service can be effected on a party.
- c) In the present case, perusal of the records clearly revealed that State Commission had directed substituted service for publication only after summons sent by ordinary process received back with the remarks that Respondent No.1 & 3 were not available at the given address and that too on the request of the petitioner/opposite party. There was no illegality or infirmity in the impugned order passed by the State Commission. Hence, the present Revision petition was dismissed.

vii) Citation:

IV (2014) CPJ 598; 2014(4) CPR 380.

18. Mata Prasad Verma Vs. Ashok Aggarwal

i) Case in Brief:

Complainant/Respondent purchased Plot No.16, measuring 2450 sq. ft. from OP/respondent. As per site plan, there should have been gali in the East, 35 ft. road in south side and park of 40 x 50 ft. was to be provided surrounded by 20 ft. road. There was also temple in front of Plot No.6 & 7. It is the complainant's case that OP from time to time changed maps and cheated complainant. OP also wanted to sell Plot No.17 and close down doors and windows of south side of complainant's plot. Alleging deficiency on the part of OP, complainant filed two complaints before District Forum which directed OP to provide 12 ft. way towards complainant's south side of plot and further allowed compensation of Rs.7,500/- on account of non-availability of land in east side and Rs.5,000/- for mental agony and Rs.3,000/- as litigation cost. Appeals filed by the complainant were dismissed by learned State Commission against which, these revision petitions have been filed. Revision petitions allowed and the matter remanded back to the State Commission for disposal by a speaking order after giving opportunity of being heard to both the parties.

ii) Order appealed against:

Revision Petition No.3299 of 2013

From the order dated 09.07.2013 in Appeal No.1092 of 2009 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

Revision Petition No.3489 of 2013

From the order dated 09.07.2013 in Appeal No.1092 of 2009 of the U.P. State Consumer Disputes Redressal Commission, Lucknow.

iii) Parties:

Revision Petition No.3299 of 2013

Mata Prasad Verma - Petitioner/Complainant

Vs.

Ashok Aggarwal - Respondent/Opp. Party

Revision Petition No. 3489 of 2013

Mata Prasad Verma - Petitioner/Complainant

Vs.

Ashok Aggarwal - Respondent/Opp. Party

iv) Case No and Date of Judgement:

a) Revision Petition No.3299 of 2013

b) Revision Petition No. 3489 of 2013 &

Date of Judgement: 15-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

a) Held that the State Commission while deciding an appeal is required to deal with all the aspects and arguments raised by the appellant and as State Commission has not dealt with any facts of the case and arguments of the appellant, it would be appropriate to remand the matters back to the learned State Commission for disposal by speaking order after dealing with all the contentions and arguments raised by the petitioner by relying on the decision of (2001) 10 SCC 659 – *HVPNL Vs. Mahavir*.

b) Consequently, revision petitions filed by the petitioner were allowed and the orders passed by the State Commission were set aside and matters were remanded back to the State Commission for deciding them by speaking orders after giving an opportunity of being heard to the parties.

vii) Citation:

IV (2014) CPJ 653; 2014(4) CPR 573.

19. Cholamandalam MS General Insurance Co Ltd Vs. Ms. Shalini Gupta

i) Case in Brief:

In this case, the National Commission after going through the orders of the District Forum and State Commission, found that there was no evidence either from the complainant or from the Petitioner/ Insurance Company as to where the dead body of the deceased was found and whether he was struck by a train or not. It was considered necessary to summon the concerned Station Master and Head Constable who first reported about the incident/accident and examine them to find out the truth. Accordingly, the matter was remanded back to the District Forum for deciding the matter afresh.

ii) Order appealed against:

Against the order dated 01-04-2014 in First Appeal No.A/12/923 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai

iii) Parties:

Cholamandalam MS General Insurance Co Ltd. - Petitioner

Vs.

Ms. Shalini Gupta - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3017 of 2014 with IA/4836/2014 (for stay) &

Date of Judgement: 17-10-2014

v) Acts and Sections referred:

Sections 12, 13, 14,15,17,18, 19 and 21(b) of the Consumer Protection Act, 1986

vi) Issues raised and decided:

In this case, the Head Constable on night duty at Chembur Railway Station was informed by the Station Master that an unknown person was knocked down by an unknown train while using railway track. However, neither the Station Master nor the Head Constable who made arrangements to take the injured/dead person to the Hospital was examined. Therefore, the matter was remanded back to the District Forum to consider the case afresh and decide within 3 months. Petitioner Company was directed to pay a sum of Rs.20,000 to the Complainant as the cost of litigation to pursue the complaint before the District Forum.

vii) Citation:

Not reported in CPJ & CPR.

20. LIC of India Vs. Shri Gian Singh

i) Case in Brief:

Late Rakesh Kumar, S/o of the Complainant purchased an insurance policy from the Petitioner Corporation on 05-06-2003 for an amount of Rs.10 Lakhs. Rakesh Kumar died during the currency of the policy. The claim lodged with the Petitioner Corporation by the Complainant was repudiated by the former on the ground that the insured had produced some other person for the medical examination instead of appearing himself and thereby played a fraud upon the corporation. The District Forum before whom a complaint was filed allowed the complaint which was upheld by the State Commission on appeal by the Petitioner. Aggrieved by the order of the State Commission, the present revision petition has been filed. Revision petition was disposed of by remanding the matter back to the District Forum to consider the deposition of handwriting experts produced before it and their report.

ii) Order appealed against:

From the order dated 29-03-2010 in F.A.No. 220 of 2010 of the Haryana State Consumer Disputes Redressal Commission at Panchkula.

iii) Parties:

LIC of India

- Petitioner

Vs.

Shri Gian Singh

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2423 of 2010 & Date of Judgment: 17-10-2014.

v) Acts and Sections referred:

Sections 13, 14, 15,17,18, 19 and 21(b) of the Consumer Protection Act, 1986

vi) Issues raised and decided:

The Petitioner's contention was that the signatures of the person who was medically examined did not tally with the signatures of Rakesh Kumar on the proposal form. The Petitioner Corporation obtained the opinion of the handwriting expert from the Forensic Science Laboratory, Karnal. However, the said expert was not produced before the District Forum as a witness. It was held by the National Commission that the District Forum should give an opportunity to both the parties to examine their respective handwriting experts and provide an opportunity to the OP for cross examination. Accordingly, the revision petition was disposed of directing the District Forum to decide the complaint within 3 months.

vii) Citation:

Not reported in CPJ and CPR.

21. Tata Motors Ltd Vs. Gurunanak Logistics Pvt Ltd

i) Case in Brief:

Respondent filed a complaint against the Petitioner Company in the District Forum. Since no one appeared on behalf of the Petitioner Company, Petitioner was proceeded ex parte before the District Forum. Aggrieved by the order of the District Forum, Petitioner Company preferred a revision petition before the State Commission which was dismissed on 15-05-2014. This revision petition has been filed challenging the order of the State Commission. Revision Petition allowed subject to payment of cost of Rs.10,000 to be deposited with the Consumer Legal Aid A/c of the National Commission.

ii) Order appealed against:

From the order dated 15-05-2014 of the Maharashtra State Consumer Disputes Redressal Commission Circuit Bench at Aurangabad

iii) Parties:

Tata Motors Ltd - Petitioner

Vs.

Gurunanak Logistics Pvt Ltd - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3449 of 2014 with IA No.6060 of 2014 &

Date of Judgement: 17-10-2014.

v) Acts and Sections referred:

Sections 13, 14, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

The National Commission considered the reasons for non-appearance of the counsel of the Petitioner Company before the District Forum and found them acceptable. Accordingly, revision petition was allowed subject to payment of cost of Rs.10,000 to be paid to the Consumer Legal Aid A/c of the National Commission. The Petitioner company was permitted to contest the complaint before the concerned District Forum with a direction to appear on 03-11-2014.

vii) Citation:

Not reported in CPJ and CPR.

22. M/s. New India Assurance Co Ltd Vs. Neelam Kumar Jain

i) Case in Brief:

Respondent/Complainant filed consumer complaint against the Petitioner's repudiation of his claim of Rs.15,70,498/- in respect of damage caused to his goods due to heavy rains. The District Forum allowed the complaint and directed the Petitioner to pay a sum of Rs.14,60,640/- towards loss as assessed by Surveyor with interest at 9% p.a. It also awarded compensation of Rs.2,00,000/- for mental agony

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and harassment and Rs.50,000/- for legal expenses. The appeal filed by the Petitioner was dismissed by the State Commission for non-prosecution. This revision petition had been filed challenging the order of the State Commission. Revision Petition was allowed and the appeal before the State Commission was restored subject to payment of Rs.50,000 to the Respondent.

ii) Order appealed against:

Against the order dated 28-07-2014 in F.A.No.264/2013 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

M/s. New India Assurance Co Ltd - Petitioner

Vs.

Neelam Kumar Jain - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3145 of 2014 with IA.No.5223 of 2014 (For Stay) & Date of Judgement:17-10-2014.

v) Acts and Sections referred:

Sections 13, 15, 17, 18, 19 and 21(b) of the Consumer Protection Act,1986.

vi) Issues raised and decided:

It was held that the Petitioner had not placed on record any document in support of his claim for restoration of the appeal before the State Commission. However, it was held that in the interest of justice the revision petition may be allowed by imposing heavy cost of Rs.50,000 on the Petitioner to be paid to the Respondent. Accordingly, the revision petition was allowed and the impugned order was set aside. The appeal before the State Commission was restored subject to payment of Rs.50,000 by the Petitioner to the Respondent.

vii) Citation:

IV (2014) CPJ 646; 2014(4) CPR 447.

23. The Chairman, Rajasthan Housing Board and others Vs. Jaidayal Sharma

i) Case in Brief:

Complainant/Respondent filed application for allotment of MIG-B category house on hire purchase system and deposited Rs.4,600/-. OP allotted seniority to the complainant but house was not allotted for many years. Later on, OP issued self financing scheme 2005 for previously registered applicants. Complainant submitted application for HIG house and deposited Rs.1 Lakh. But applicants of later years were given seniority. Subsequently, OP cancelled the application of Complainant and returned the registration amount Rs.3,04,800/- with interest but deducted Rs.20,000/-. Alleging deficiency in service, Complainant approached District Forum. The Forum allowed the complaint and directed OP to allot an independent house in MIG-B category at a cost allotted to two others and further allowed compensation of Rs.1 Lakh and directed to refund Rs.20,000/- with interest. Appeal filed by OP was dismissed by the State Commission by impugned order against which this revision petition has been filed. Petition allowed and the matter remanded back to the State Commission for deciding the issue by a speaking order.

ii) Order appealed against:

Against the order dated 25-09-2013 in F. Appeal No.1419/2012 of Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

The Chairman,
Rajasthan Housing Board and others - Petitioners/Opp. Parties
Vs.
Jaidayal Sharma - Respondent/ Complainant

iv) Case No and Date of Judgement:

Revision Petition No.688 of 2014 with IA/357/2014(Stay), IA/358/2014 (Condonation of Delay) & Date of Judgement: 17-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 13,15,17,18,19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was observed by the Commission that Appellate Court while deciding an appeal is required to deal with all aspects and arguments raised by the appellant and that the State Commission in this case has not done so. It was therefore considered appropriate to remand the matter back to the State Commission for disposal by a speaking order after dealing with all the contentions and arguments raised by the Petitioner. In this context the judgement of Hon'ble Supreme Court in *HVPNL v. Mahavir* (2001) 10 SCC 659, was cited.

vii) Citation:

2014(4) CPR 442.

24. M/s. JTPL Township (P) Ltd. and another Vs. Mr. Rana Ranjit Singh Dhillon

i) Case in Brief:

Complainant/Respondent booked flat with OP/Petitioner and paid Rs.3 Lakh by cheque on 07-04-2006. Construction was to be completed within 6 months failing which complaint was entitled to interest at 10% p.a. It is the complainant's case that OP didn't start construction and his request for refund of the amount was not considered. He filed complaint before the District Forum which allowed the complaint and directed OPs to refund Rs.3 Lakhs with 10% interest from 08-04-2006 till realization and further allowed Rs.5,000/- for expenses incurred in personal visits and Rs.4000 as litigation costs. On appeal filed by the Complainant, State Commission further allowed Rs.50,000 as compensation for harassment and mental agony against which revision petition was filed by OP/Petitioner. Revision Petition allowed.

ii) Order appealed against:

From the order dated 20-02-2013 in Appeal No.1237 of 2009 of the Punjab State Consumer Disputes Redressal Commission, Chandigarh.

iii) Parties:

M/s. JTPL Township (P) Ltd. & Anr. - Petitioners/OPs

Vs.

Mr. Rana Ranjit Singh Dhillon - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.2063 of 2013 & Date of Judgement: 17-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 12, 13,14,18,19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Perusal of the Complaint revealed that Complainant claimed refund of Rs.3 Lakhs with interest at 10% p.a and further claimed Rs.20,000/- as litigation expenses. Complainant had not claimed any amount for mental agony and harassment. It was noted that State Commission wrongly observed that Respondent did not offer refund of Rs.3 Lakhs whereas he had refunded the amount in October, 2009 in compliance to the order of the District Forum dated 27-07-2009. It was also noted that the State Commission allowed compensation of Rs.50,000/- without any prayer in the complaint. It was held that unless any amount is claimed in the complaint for mental agony and harassment, the State Commission ought not to have allowed compensation of Rs.50,000/- and on this ground revision petition was liable to be allowed. The commission therefore allowed the revision petition, set aside the order of the State Commission and confirmed the order passed by the District Forum.

vii) Citation:

I (2015) CPJ 54; 2014(4) CPR 441.

25. Emmar MGF Land Ltd Vs. Akash Rathke

i) Case in Brief:

Complainant/Respondent booked 1-2 flats with OP/Appellant and made part payment. OP was to handover possession of the flats within 36 months from the date of allotment. It is the complainant's case that OP did not start construction and demanded some more money which was paid and even after receipt of payment no construction took place at site. Alleging deficiency, the Respondent filed complaint before the State Commission which allowed the complaint and directed OP to refund deposited amount with interest at 12% p.a and further awarded compensation and litigation costs. The present appeals have been filed

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by the Appellant challenging the State Commission's order. Appeals allowed and the matter remanded back to the State Commission to decide the complaints afresh.

ii) Order appealed against:

First Appeal No.194 of 2014

From the order dated 10-12-2013 in Complaint Case No.CC/14/2011 of the Punjab State Consumer Disputes Redressal Forum, Chandigarh.

First Appeal No.243 of 2014

From the order dated 10-12-2013 in Complaint Case No.CC/103/2011 of the Punjab State Consumer Disputes Redressal Forum, Chandigarh.

First Appeal No.244 of 2014

From the order dated 10-12-2013 in Complaint Case No.CC/104/2011 of the Punjab State Consumer Disputes Redressal Forum, Chandigarh.

First Appeal No.245 of 2014

From the order dated 10-12-2013 in Complaint Case No.CC/105/2011 of the Punjab State Consumer Disputes Redressal Forum, Chandigarh.

First Appeal No.246 of 2014

From the order dated 10-12-2013 in Complaint Case No.CC/106/2011 of the Punjab State Consumer Disputes Redressal Forum, Chandigarh.

iii) Parties:

First Appeal No.194 of 2014

EMMAR MGF LAND LTD

- Appellant/Opp.Party

Vs.

Akash Rathke

- Respondent/Complainant

First Appeal No.243 of 2014

EMMAR MGF LAND LTD

- Appellant/Opp.Party

Vs.

Suharsh Mittal

- Respondent/Complainant

First Appeal No.244 of 2014

EMMAR MGF LAND LTD

- Appellant/Opp.Party

Vs.

Raj Garg

- Respondent/Complainant

First Appeal No.245 of 2014

EMMAR MGF LAND LTD

- Appellant/Opp.Party

Vs.

Surendra Kumar Mittal

- Respondent/Complainant

First Appeal No.246 of 2014

EMMAR MGF LAND LTD

- Appellant/Opp.Party

Vs.

Suharsh Mittal and another

- Respondent/Complainant

iv) Case No and Date of Judgement:

- a) First Appeal No.194 of 2014
- b) First Appeal No.243 of 2014 with IA/2584/2014, IA/2585/2014, IA/3164/2014
- c) First Appeal No.244 of 2014
- d) First Appeal No.245 of 2014
- e) First Appeal No.246 of 2014 &

Date of Judgement: 27-10-2014.

v) Acts and Sections referred:

Sections 2(1) (c), (d), 12, 13, 14, 18, 19 and 21(a) (ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was argued by the OP before the State Commission that the complainants booked two units in the project and therefore, they were mere speculators and not consumers within the definition of the Act. The National Commission took the view that though the State Commission had referred to this objection, it had not considered the objection. It was held that this objection goes to the root of the complaint and without deciding the objection, the State Commission should not have proceeded further and therefore, the impugned orders were liable to be set aside. Accordingly, the State Commission's orders were set aside and the matters remanded back to the State Commission to decide the complaints afresh after considering all the objections and giving an opportunity of being heard to the parties.

vii) Citation:

2014(4) CPR 568.

26. M/s.Ved Prakash & Sons and others Vs. Om Prakash

i) Case in Brief:

Complainant/Respondent purchased cotton seeds from OP.No.1/ Petitioner No.1 and had sown seeds in his field but seeds did not germinate properly. Since Complainant's representation to the OP did not evoke any response, he moved application to Deputy Director, Agriculture who constituted a committee. According to this committee, the Complainant suffered loss to the extent of 80-90%. Alleging deficiency in service on the part of OPs, Complainant moved the District Forum. District Forum allowed the complaint which was also upheld by the State Commission on appeal by the Petitioners. Aggrieved by the State Commission's order, present revision petition has been filed. Revision petition allowed and the matter remanded back to the State Commission for deciding the matter afresh and issuing a speaking order.

ii) Order appealed against:

From the order dated 26-07-2012 in F.Appeal No.1201 of 2011 of the Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

M/s.Ved Prakash & Sons and others - Petitioners (Opp.Parties)

Vs.

Om Prakash - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.4285 of 2012 & Date of Judgement: 05-11-2014.

v) Acts and Sections referred:

Sections 2(1)(g) & (o), 13, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was held that the State Commission's order neither contained facts of the case nor grounds taken by the Petitioner in memo of appeal nor contained any decision on those points and in such circumstances it cannot be considered as a speaking order. In the light of Hon'ble Apex Court judgement in *HVPNL v. Mahavir*, (2001) 10 SCC 659, the Appellate Court while deciding an appeal is required to deal with all aspects and

arguments raised by the appellant. Since the State Commission had not done so in the present case, the revision petition was allowed, the State Commission's orders were set aside and the matter remanded back to the State Commission for deciding it afresh by a speaking order after giving opportunity of being heard to both the parties.

vii) Citation:

2014(4) CPR 709.

27. M/s. Media Video Ltd. Vs. Mr. Sanjeet Kumar

i) Case in Brief:

Complainants/Respondents in the four revision petitions booked flats with OP/Petitioner and made payment of Rs.1,86,000/-. OP assured to hand over possession of the flats within one and half to two years. Since the promise was not kept, Complainant filed complaint before the District Forum seeking refund of the deposited amount from OP with interest. District Forum allowed complaint and directed OP to refund the deposited amount with 6% p.a and awarded Rs.5,000/- as costs. Appeals filed by the Petitioner were dismissed by the State Commission vide order dated 26-08-2013 against which revision petitions were filed by the Petitioner before the National Commission. The Commission remanded the matter back to the State Commission to decide appeals by speaking order. State Commission again dismissed appeals against which these revision petitions have been filed. Revision Petitions were allowed and the matter was remanded back again to the State Commission for passing speaking order.

ii) Order appealed against:

From the order dated 21.03.2014 in First Appeal No.1499/2012, 99/2013, 103/2013 & 104/2013 of the Rajasthan State Consumer Disputes Redressal Commission, Bench No.1, Jaipur.

iii) Parties:

Revision Petition No.1826 of 2014

M/s. Media Video Ltd.

- Petitioner/Opp. Party

Vs.

Mr. Sanjeet Kumar

- Respondent/Complainant

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Revision Petition No.1827 of 2014

M/s. Media Video Ltd. - Petitioner/Opp. Party

Vs.

Mrs. Asha - Respondent/Complainant

Revision Petition No.1829 of 2014

M/s. Media Video Ltd. - Petitioner/Opp. Party

Vs.

Mr. K.S. Saini - Respondent/Complainant

Revision Petition No.1830 of 2014

M/s. Media Video Ltd. - Petitioner/Opp. Party

Vs.

Mr. Karam Singh - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.1826, 1827, 1829 & 1830 of 2014 & Date of Judgement: 10-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 13, 14, 15, 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Held that until and unless appeals are decided on merits by a speaking order by Appellate Court, the National Commission should not act as Appellate Court. The National Commission should not decide revision petitions on merits, but should remand the matters back to the State Commission for deciding appeals by speaking order.
- b) Consequently, the four revision petitions filed by the Petitioners were allowed and the impugned orders dated 21-03-2014 passed by the State Commission in the four appeals were set aside and the matter remanded back to the State Commission to decide them afresh after giving opportunity of being heard to the parties.

vii) Citation:

I (2015) CPJ 13; 2014(4) CPR 662.

28. M/s. Ashoka Fibers Vs. National Insurance Co Ltd. & Anr.

i) Case in Brief:

The Complainant/Petitioner's factory was insured by OP/Respondent for a period of one year from 14.12.1999 to 13.12.2000. During the intervening night of 26.27/6/2000, fire took place in the factory and loss was caused. Complainant intimated to the OP and surveyor was appointed. Complainant came to know that surveyor has assessed loss of only Rs.4,25,000/-, but OP has not allowed claim. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which dismissed the complaint. Appeal filed before the State Commission was also dismissed against which this revision petition has been filed along with application for condonation of delay. Revision Petition was allowed.

ii) Order appealed against:

Against the order dated 21.10.2011 in F. Appeal No. 1632 of 2004 of Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

M/s. Ashoka Fibers - Petitioner/Complainant
Vs.
National Insurance Co Ltd. & Anr. - Respondent/Opp. Parties

iv) Case No and Date of Judgement:

Revision Petition No.2511 of 2012 & Date of Judgement:11-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o),19 and 21(b)of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that perusal of order passed by State Commission revealed that State Commission except quoting facts of the case and observations of District Forum had not discussed any grounds raised in memo of appeal and had simply dismissed appeal without considering any issues raised. Therefore, revision petition filed by the petitioner was allowed and orders of the fora below were set aside and matter was sent back to the State Commission for deciding it by speaking order after giving an opportunity of being heard to the parties. Hon'ble SC judgement of

(2001) 10 SCC 659 – *HVPNL v. Mahavir* has been quoted in this context. Delay of 138 days was condoned subject to deposit of Rs.10,000/-.

vii) Citation:

I (2015) CPJ 4; 2014(4) CPR 644.

29. Sheela R. Ohri Vs. Bajaj Allianz General Insurance Co. Ltd.

i) Case in Brief:

Complainant/Appellant, doing business of manufacture and export of readymade garments, got its workshop/factory insured from opposite party for a period of one year from 22-02-2006. On 23-04-2006, on account of fire due to short circuit, Complainant sustained heavy loss. His claim for making good the loss was rejected by the OP/Respondent on the ground that the Complainant did not substantiate the claim by filing necessary documents. Complainant approached the State Commission which dismissed the complaint. Aggrieved by the order of the State Commission, this appeal has been filed. Appeal allowed and the matter remanded back to the State Commission.

ii) Order appealed against:

Against the order dated 13.06.2013 in Complaint Case No.CC/09/119 of the Maharashtra State Commission, Mumbai.

iii) Parties:

Sheela R.Ohri - Appellant

Vs.

Bajaj Allianz General Insurance Co. Ltd. - Respondent

iv) Case No and Date of Judgement:

First Appeal No.512 of 2013 & Date of Judgement: 11-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(a) (ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The State Commission had dismissed the complaint on technical grounds viz. in the affidavit of the Complainant, the seal of the notary was there in every page but not his signatures. In the

same way, Complainant filed a number of documents before the State Commission along with his affidavit and all the documents contained seal of notary but not his signatures.

- b) Held that instead of dismissing complaint, the State Commission should have afforded opportunity to the Complainant, subject to cost, for filing another set of affidavit along with documents duly signed by notary. In this connection, the following judgements were cited: i) Criminal Appeal Nos.1191-1194 of 2005 *Malay Kumar Ganguly Vs. Dr.Sukumar Mukherjee and others* with Civil Appeal No.1727 of 2007 – *Dr.Kunal Saha Vs.Dr.Sukumar Mukherjee and others* ii) FA No.478 of 2005 – *S.P.Agarwal Vs. The Sanjay Gandhi Post Graduate Institute* decided on 31-03-2010.
- c) Consequently, appeal was allowed and the order of the State Commission was set aside. The matter was remanded back to the State Commission to give an opportunity to the Complainant to file duly notarized affidavit along with documents subject to depositing Rs.10,000/- as cost with the Legal-Aid Account of the State Commission.

vii) Citation:

2014(4) CPR 632.

30. State Bank of India Vs. Daulat Raisinghani & Anr.

i) Case in Brief:

Complainant No.1/Respondent No.1 was appointed in OP/Petitioner Bank as officer on 7.6.1979 and Complainant No.2/Respondent No.2 is wife of Complainant No.1. Complainants hired locker jointly at OP's Branch. In the year 2002, locker's rent was increased but complainants claimed that they were not intimated. Complainant No.1 retired on 30.11.1997. In November, 2001, Complainant No.1 suffered paralysis in his right leg and could not make movement up to December, 2005. Complainant No.2 approached OP in May, 2002 for depositing locker's rent and for operation of locker, but she was not allowed to operate. She deposited locker's rent and was asked to come with Complainant No.1. Complainants went to OP Bank on 5.1.2006 and they were apprised that on 23.3.2005 locker of complainants was broken down and allotted to another person and in spite of their request OP refused to give list

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of articles in the locker and refused to return items kept in the locker. Alleging deficiency on the part of OP, complainant filed complaint before District forum which directed OP to pay Rs.90,000/- for his gold and silver ornaments and Rs.2,00,000/- for mental agony and Rs.11,000/- towards legal expenses. Appeal filed by OP was dismissed by State Commission against which this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

Against the order dated 31.07.2014 in F. Appeal No. 217 of 2009 of Rajasthan State Consumer Disputes Redressal Commission, Bench No.1 Jaipur.

iii) Parties:

State Bank of India

- Petitioner/Opp. Party

Vs.

Daulat Raisinghani & Anr.

- Respondents/Complainants

iv) Case No and Date of Judgement:

Revision Petition No.3947 of 2014 with IA/7614/2014 for stay &

Date of Judgement: 13-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19, 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- 1) The issue raised was that none of the parties were heard before State Commission. In such circumstances, whether the order passed by the State Commission is a valid one or not.
- 2) National Commission directed that the Appellate Court while deciding an appeal is required to deal with all the aspects raised by the appellant in memo of appeal and as State Commission has not dealt with the facts of the case and the grounds in the memo of appeal, the National Commission remanded the matter back to the State Commission for disposal by speaking order. In the context, the observation of Hon' ble Supreme Court in *HVPNL v. Mahavir* (2001) 10 SCC 659 were cited and the order passed by the State Commission was set aside.

vii) Citation:

2014(4) CPR 615.

31. Urban Improvement Trust Alwar & Anr. Vs. Phool Singh Vijay

i) Case in Brief:

Complainant/Respondent purchased plot No. 108 for a sum of Rs.3,77,837/- from OP/petitioner on 10.3.2003 and allotment letter was issued in his favour on 1.4.2003. Possession of plot was not given to the complainant for long time. Complainant requested OP to execute lease deed, but it was not executed and OP demanded Rs.17,274/- as penalty for non-construction of the house for long time. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which directed OP to refund Rs.17,274/- penalty amount deposited by the complainant and further allowed Rs.3,000/- as compensation for mental agony. Appeal filed by OP was dismissed by State Commission vide order dated 6.2.2012. Revision petition filed by OP was allowed by the National Commission vide order dated 25.4.2013 and matter was remanded back with directions to the State Commission for deciding appeal by speaking order. The State Commission vide order dated 28.5.2013 again decided appeal without any speaking order and the National Commission vide order dated 9.12.2013 in R.P. No. 3091 of 2013 – *UIT Vs. Phool Singh Vijay* again set aside order of State Commission and remanded the matter back to the State Commission to decide appeal by speaking order. The State Commission vide impugned order again dismissed appeal against which this revision petition is filed. Revision Petition allowed.

ii) Order appealed against:

Against the order dated 28.7.2014 in F. Appeal No. 1062 of 2011 of Rajasthan State Consumer Disputes Redressal Commission, Jaipur.

iii) Parties:

Urban Improvement Trust Alwar & Anr. - Petitioners/Opp. Parties

Vs.

Phool Singh Vijay - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.3951 of 2014 with IA/7621/2014 for stay &

Date of Judgement: 13-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- 1) The issue was that the State Commission has time and again decided the appeal in the absence of parties and that too by non-speaking order.
- 2) Held that revision petition filed by the petitioner should be allowed. The impugned order dated 28.7.2014 passed by the State Commission in Appeal No.1062/2011 – *Urban Improvement Trust & Anr. Vs. Phool Singh Vijay* was set aside and the matter remanded back to the State Commission to decide appeal by speaking order after giving an opportunity of being heard to the parties.

vii) Citation:

2014(4) CPR 613.

32. Sri Abdul Vs. The Divisional Manager, National Insurance Co. Ltd.

i) Case in Brief:

Complainant/Petitioner got his vehicle insured for a period of one year from 23.1.2005 to 22.1.2006. On 20.3.2005, vehicle met with an accident and FIR was lodged. Opposite Party was also intimated who appointed surveyor. Complainant submitted claim along with FIR, copy of RC, Driving License and original bills of Rs.1,61,800/-. Opposite Party did not settle claim. Alleging deficiency on the part of Opposite Party, Complainant filed complaint before District Forum which dismissed complaint. Appeal filed by Complainant was dismissed by State Commission against which this Revision Petition has been filed. Petition allowed and the matter was remanded back to the State Commission.

ii) Order appealed against:

Against the order dated 28.5.2008 in F. Appeal No.2580 of 2007 of Karnataka State Commission, Bangalore.

iii) Parties:

Sri Abdul

- Petitioner

Vs.

The Divisional Manager,
National Insurance Co. Ltd.

- Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3125 of 2008 & Date of Judgement: 19-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 18, 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Held that in spite of having all the documents on record, State Commission passed this order under the assumption that documents have not been filed by the parties and dismissed appeal without any cogent reason. Therefore, the present Revision Petition is allowed and impugned order is set aside and matter was remanded back to the State Commission to decide appeal after considering all documents filed along with the appeal and giving opportunity of being heard to both parties.

vii) Citation:

2015(1) CPR 69.

33. Taneja Developers & Infrastructure Ltd. Vs. Rakesh Kumar

i) Case in Brief:

In this case, Plot No.L-83 was allotted by OP/petitioner to one Ashok Kumar, from whom complainant/respondent purchased plot. Complainant paid instalments along with entire EDC charges of Rs.1,57,000/- to the OP. Complainant approached OP to handover possession, but OP illegally demanded interest and additional EDC charges Rs.3,99,662/-. Alleging deficiency on the part of OP, complainant filed complaint before District Forum which directed OP not to charge EDC charges and interest on EDC and further allowed interest @ 9% p.a. and further directed to handover possession of plot. Appeal filed by OP was dismissed by State Commission vide impugned order against which this revision petition has been filed along with application for condonation of delay. Revision Petition allowed remanding the matter back to the State Commission.

ii) Order appealed against:

Against the order dated 26.03.2013 in F. Appeal No.108 of 2013 of Haryana State Consumer Disputes Redressal Commission, Panchkula.

iii) Parties:

Taneja Developers & Infrastructure Ltd. - Petitioner/Opp. Party

Vs.

Rakesh Kumar - Respondent/Complainant

iv) Case No and Date of Judgement:

Revision Petition No.4613 of 2013 with IA/7602/2013 (for Stay) & Date of Judgement: 25-11-2014.

v) Acts and Sections referred:

Sections 2(1)(g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Delay in filing revision petition condoned subject to costs as impugned order is a non-speaking order.
- b) Held that State Commission while deciding an appeal is required to deal with all the aspects raised by the appellant in memo of appeal and as State Commission has not dealt with grounds taken in the memo of appeal, it would be appropriate to remand the matter back to the State Commission for disposal by speaking order after dealing with all the contentions and arguments raised by the petitioner.
- c) The National Commission also pointed out that District Forum has rightly accepted the complaint and issued directions to the opposite parties. The State Commission was directed to apply its mind whenever a case is coming for appeal before it by quoting the following from the Supreme Judgement *HVPNL v. Mahavir (2001) 10 SCC 659*.

“The appellate forum is bound to refer to the pleadings of the case, the submissions of the counsel, necessary points for consideration, discuss the evidence and dispose of the matter by giving valid reasons”

d) Consequently, revision petition filed by the petitioner was allowed, the order passed by the State Commission was set aside and the matter remanded back to the State Commission for deciding it by speaking order after giving an opportunity of being heard to the parties.

vii) Citation:

II (2015) CPJ 147; 2014(4) CPR 826.

XIII. POWER OF REVIEW/RECALL/RESTORATION

1. Manager, Hinduja Leyland Finance Ltd. Vs. Motilal Swain

i) Case in Brief:

Complainant/Respondent filed complaint before District Forum which directed Opposite Party-Petitioner to release vehicle No.OR-09-N-4079 on payment of outstanding dues of Rs.31,838/-. Opposite Party filed revision before State Commission and State Commission vide order dated 26.9.2012 while deciding Revision Petition finally directed Complainant to deposit additional Rs.23,162/- for release of the vehicle and it was further observed that Complainant shall make payment of monthly EMIs on the stipulated dates and shall also make good outstanding EMI dues within a period of six months from October, 2012. Later on, vide order dated 16.10.2012, State Commission, on application of Complainant, modified order dated 26.9.2012 and directed Opposite Party to receive Rs.50,000/- including Rs.23,162. Opposite Party filed another Misc. Application to modify order dated 16.10.2012 which was dismissed by State Commission vide order dated 30.10.2012 against which this revision petition has been filed. Revision Petition allowed.

ii) Order appealed against:

Against the order dated 16.10.2012 in Misc. Case No.1341 of 2012 in RP No.88/2012 of Orissa State Commission, Cuttack.

iii) Parties:

Manager, Hinduja Leyland Finance Ltd. - Petitioner

Vs.

Motilal Swain - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.4300 of 2012 & Date of Judgement: 24-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 18, 19, 21(b) and 22(2) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that the State Commission had no power to review its order in the light of Hon'ble Supreme Court's Judgement in *Rajeev Hitendra*

Pathak v. Achyut Kashinath Karekar, 2011 STPL (Web) 717 SC. Consequently, Revision Petitioned filed by the Petitioner was allowed and impugned order passed by State Commission was set aside.

vii) Citation:

2014(4) CPR 199.

2. M/s. Specialist Hospital and others Vs. Jesus John

i) Case in Brief:

Respondent filed a consumer complaint against the petitioners alleging medical negligence in his treatment. The complaint was dismissed by the District Forum vide order dated 25.01.2011. Being aggrieved of the order of the District Forum, the respondent preferred an appeal. The said appeal came up for hearing on 13.01.2014 and it was dismissed by the State Commission for non-prosecution on account of failure of the respondent or his counsel to put in appearance. Respondent, therefore, moved an application for restoration of appeal which was allowed by the State Commission vide impugned order against which this revision petition has been filed. Petition allowed and appeal to the State Commission restored to its original number.

ii) Order appealed against:

From the order dated 9.6.2014 in First Appeal No.385/2011 of the Kerala State Commission Andhra Pradesh Thiruvananthapuram.

iii) Parties:

M/s. Specialist Hospital and others - Petitioners

Vs.

Jesus John - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.3303 of 2014 with IA/5670/2014 (Stay) & Date of Judgement: 29-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The National agreed with the Petitioner's contention that in view of the decision of the Hon'ble Supreme Court in *Rajeev Hitendra Pathak and others v. Achyut Kashinath Karkar & Anr.* 2011 (9) SCC 541, the District Forum and the State Commission do not have the powers to review their own order. It was therefore held that the impugned order of State Commission was liable to be set aside.
- b) However, it was pointed out by the National Commission that the Respondent/complainant could not appear in the appellate court on hearing dated 18.11.2013 because of a country wide bandh. It was stated in the affidavit that on 18.11.2013 the State Commission adjourned the matter to 13.01.2014 but counsel for the respondent complainant due to inadvertence wrongly noted the adjourned date as 23.01.2014 and for that reason, the respondent as well as his counsel could not appear before the State Commission on 13.01.2014, the date on which the appeal was dismissed for non-prosecution. For the inadvertent mistake of the counsel, the respondent/complainant could not be made to suffer injustice. Therefore, the explanation for non-appearance was held justified. The National Commission took *suo moto* notice of the explanation for non appearance given by the respondent and in exercise of revisional jurisdiction under section 21 (b), the National Commission set aside the order dated 13.01.2014 and restored the appeal to its original number. Matter was remanded back to the State Commission with the direction to decide the appeal on merits.

vii) Citation:

2014(4) CPR 545.

3. M/s. Competent Dye Stuff & Allied Products Pvt. Ltd Vs. M/s. ICICI Lombard General Insurance Co. Ltd & Ors.

i) Case in Brief:

The complainant company got a car financed from opposite party No.2-ICICI Bank Ltd. The said car was got insured by the complainant with

opposite party No.1-ICICI Lombard General Insurance Co. Ltd. The car met with an accident on 04-08-2011 and got extensively damaged. The claim lodged by the complainant with opposite party No.1 was repudiated by the said company. Being aggrieved from repudiation of the claim, the complainant preferred a complaint which is pending before the State Commission. In the said complaint, the complainant also impleaded ICICI Bank Ltd. as opposite party No.2. By an interim order dated 21.01.2013, the State Commission restrained the bank from realizing the equated monthly installments from the complainant. However, on an application made by the bank this interim order was vacated. Being aggrieved from the State Commission vacating the interim order dated 21-01-2013, this revision petition has been filed. Revision Petition dismissed.

ii) Order appealed against:

From the order dated 01-10-2014 in C-93/12 of the Delhi State Consumer Disputes Redressal Commission at New Delhi.

iii) Parties:

M/s. Competent Dye Stuff &
Allied Products Pvt. Ltd. - Petitioner

Vs.

M/s. ICICI Lombard General Insurance Co. Ltd
& Ors. - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.4052 of 2014 with I.A.No.7854 of 2014 & I.A.No.7855 of 2014 (For stay, exemption from filing the certified copy) &

Date of Judgement: 14-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 13(3B), 19 and 21 (b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Two issues arose (i) whether the State Commission has the power to review its own order by vacating an interim order and (ii) whether the claim will also be maintainable against the ICICI Bank Ltd?

- b) The Petitioner, citing the Hon'ble Supreme Court's order in *Rajeev Hitendra Pathak & ors. Vs. Achyut Kashinath Karkar & Anr. 2011 (9) SCC 541* contended that the State Commission does not have the power to review its own orders. However, the State Commission was of the view that the interim order had been vacated by it with the exercise of the powers conferred on it by Section 13(3B) of the Consumer Protection Act which empowers the commission to pass interim order as it may deem just and appropriate in the facts and circumstances of the case. The power to pass an interim order has implicit in it the power to modify or vacate the order. The National Commission held that if a consumer forum passes an interim order against the party to the complaint in the absence of such a party and later on the party against whom the interim order is made appears and brings such facts to the knowledge of the Forum which would persuade the forum to hold that the interim order was not justified, it would be open to the concerned forum to vacate or modify the order and that would not amount to review of the interim order passed by it.
- c) It was held that complaint filed in this case would be maintainable only in the case against ICICI Lombard General Insurance Co. and not against ICICI Bank Ltd. It was pointed out by the National Commission that merely on account of ICICI Bank Ltd. having been appointed as its agent by ICICI Lombard General Insurance Co. Ltd. for the purpose of collecting the insurance premium, the said bank does not lose its independent identity and the insurance company and the bank continue to remain two separate legal entities capable of suing and being sued. Therefore, it was held that the State Commission had clearly exceeded its jurisdiction or at least has acted illegally in passing the interim order dated 21-01-2013. The present revision was dismissed and the interim order dated 21-01-2013 was vacated in exercise of the powers conferred by Section 21(1)(b) of the Consumer Protection Act. The State Commission was directed to dispose of the complaint within three months of the next date fixed before it.

vii) Citation:

Not reported in CPJ and CPR.

4. Dr. Brahma Nand Prasad Vs. National Insurance Co. Ltd.

i) Case in Brief:

Complainant/Petitioner filed complaint before the District Forum which was allowed. OP/Respondent filed appeal before the State Commission which vide order dated 17.02.2014 was dismissed for non-prosecution. Respondent filed restoration application which was allowed and appeal was restored by impugned order. The Present Revision Petition challenging the State Commission's order is allowed and the order of the State Commission was set aside as being without jurisdiction.

ii) Order appealed against:

Against the order dated 26.2.2014 in Misc. Restoration No.06/14 of State Commission, Bihar.

iii) Parties:

Dr. Brahma Nand Prasad	-	Petitioner
	Vs.	
National Insurance Co. Ltd.	-	Respondent

iv) Case No and Date of Judgement:

Revision Petition No.1762 of 2014 & Date of Judgement: 25-11-2014.

v) Acts and Sections referred:

Sections 18, 19, 21(b) and 22(2) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) Admittedly, State Commission had no power to review its order and in such circumstance was not competent to restore appeal dismissed in default. Appellant was required to challenge the order of dismissal in default before the National Commission only in terms of Section 22(2) of the Consumer Protection Act.
- b) Consequently, Revision Petition was allowed and the impugned order dated 26.06.2014 passed by the State Commission was set aside.
- c) OP was given liberty to file revision petition against the order dated 17.02.2014 passed by the State Commission.

vii) Citation:

I (2015) CPJ 527; 2015 (1) CPR 23.

5. Ajay Enterprises Pvt. Ltd. and others Vs. Shobha Arora and another

i) Case in brief:

This revision petition has been filed by the petitioner against order dated 10.10.2014 passed by the Delhi State Commission in Complaint No.113/2011 - *Shobha Arora & Anr. Vs. Ajay Enterprises Pvt. Ltd. & Ors.*; by which application for review of its order dated 03-04-2013 was dismissed. Revision Petition is dismissed on the ground that the State Commission had correctly dismissed the review petition as the State Commission is not empowered to review its own order.

ii) Order appealed against:

Against the order dated 10.10.2014 in Appeal No.C-113/11 of State Commission, Delhi.

iii) Parties:

Ajay Enterprises Pvt. Ltd. and others - Petitioner(s)

Vs.

Shobha Arora and another - Respondent(s)

iv) Case No and Date of Judgement:

Revision Petition No.4219 of 2014 & Date of Judgement: 10-12-2014.

v) Acts and Sections referred:

Section 151 of Civil Procedure Code, 1908 & Sections 17, 19 & 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The issue raised by the petitioner was that amendments allowed by State Commission has changed the nature of complaint and therefore, the decision of the State Commission based on the earlier complaint has to be reviewed. But the petitioner has not challenged the order dated 03.04.2013.
- b) Held, that the State Commission declining to review its earlier order is in accordance with law as the State Commission is not empowered to review its own order.

vii) Citation:

2015(1) CPR 341.

6. Shri Narinderjit Singh Sahni and another Vs. Shri Kuldeep Singh Bagga and others

i) Case in Brief:

Appellant/Complainant No.1 filed complaint on 8-4-99 before the State Commission for refund of Rs.6,25,000/- deposited as Fixed Deposit with 2% interest per month. Complaint dismissed in default on 29-9-2000. Complainant filed application for restoration on 31-01-2001. Again dismissed on 16-4-2002 as none appeared for the complainant. Complainant filed Miscellaneous Application on 6-8-2002. After repeated adjournments it was posted for arguments on 9-7-2007. As none appeared, State Commission vide its order dated 9-7-2007 allowed complaint and directed O.Ps to refund Rs.6,25,000 along with compensation of Rs.25,000. O.Ps.4-7 filed application for recall of order dated 9-7-2007 which was dismissed by State Commission vide order dated 13-9-2008. The present appeal is against both orders dated 09-7-2007 and 13-03-08. Order dated 9.7.2007 set aside since no complaint existed before its restoration. Order dated 13-3-2008 passed by State Commission is in accordance with law as State Commission has no power to recall its order.

ii) Order appealed against:

From the order dated 9.7.2007 in Consumer Case No.C-70/1999 of the State Consumer Disputes Redressal Commission, Delhi.

iii) Parties:

Shri Narinderjit Singh Sahni and another - Petitioner(s)

Vs.

Shri Kuldeep Singh Bagga and others - Respondent(s)

iv) Case No and Date of Judgement:

First Appeal No.186 of 2008 & Date of Judgement: 17-12-14.

v) Acts and Sections referred:

Section 19 & 21(a)(ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) State Commission had passed a wrong order on 09-7-2007 allowing the complaint though in fact no complaint was pending before the State Commission. What was pending was an application for

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restoration of application. Before passing orders on the application for restoration of complaint, no order should have been passed on the complaint.

- b) State Commission had no power to recall its order. Therefore, order passed by State Commission on 13-03-08 dismissing the application for recall of order dated 9-7-2007 was in accordance with law
- c) Matter remanded to the State Commission to decide application for restoration of restoration application.

vii) Citation:

2015(1) CPR 134.

XIV. TRANSFER OF COMPLAINTS

1. Shri. Anupam Bhattacharjee Vs. Sri.Sibsankar Bandhopadhyay

i) Case in Brief:

Complainant had filed his application seeking transfer of Complaint No.CC-66 of 2011 before the State Consumer Redressal Commission, West Bengal, filed by him against the Respondent, an Advocate, in terms of the leave granted by the National Commission vide order dated 20-05-2011 in R.P.No.1406 of 2007. Transfer application was dismissed on the ground that the application was not bonafide in as much as it had been filed to harass the Respondent.

ii) Order appealed against: Nil

iii) Parties:

Shri. Anupam Bhattacharjee - Applicant

Vs.

Sri. Sibsankar Bandhopadhyay - Respondent

iv) Case No and Date of Judgement:

Transfer Application No.06 of 2012 & Date of Judgement: 05-11-2014.

v) Acts and Sections referred:

Section 22 B of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Though the power of transfer of cases from one District Forum to another or from one State Commission to another, conferred on the National Commission under Section 22 B of the Act, is wide, it cannot be exercised as matter of routine. The paramount consideration is to meet the ends of justice. In the present case, it was held that the applicant had failed to make out a case for transfer of his complaint from Kolkata to Agartala. It was noted that despite the stated handicap, he had been effectively pursuing his complaint not only in Agartala and in Kolkatta but he has had rounds of litigation in the National Commission as well. The transfer application was considered to be not bonafide and it was filed to harass the complainant. It was therefore dismissed.

vii) Citation:

1 (2015) CPJ 3; 2014(4) CPR 727.

XV. UNFAIR TRADE PRACTICE

1. Cashier, Shree Automotive Private Limited and another Vs. Sai Partha Kumar Chatterjee

i) Case in Brief:

The complainant, Chairman, Municipality, purchased an ambulance from the petitioner company for a consideration of Rs.7,17,968/- and took delivery of the ambulance on 23.04.10. On obtaining registration certificate, the complainant found that the chassis of the ambulance was manufactured in the year 2006. The year of manufacturing the chassis, however, was not mentioned either in the delivery challan or in the quotation. Alleging that the vehicle was defective and was constantly giving troubles such as overheating of engine etc., a complaint was filed before the concerned District Forum which directed the petitioner to refund a sum of Rs.7,17,968/- to the complainant alongwith Rs.2,50,000/- as compensation for adopting unfair trade practice. Rs.40,000/- were also awarded towards damages. It was further directed that if the order is not complied within 45 days, the petitioner shall also pay a sum of Rs.200/- per day as interest of the entire amount. Being aggrieved of the order of the District Forum, the petitioner approached the concerned State Commission by way of an appeal. The State Commission dismissed the appeal with cost assessed at Rs.5,000/-. Being aggrieved from the dismissal of its appeal, the petitioner is before this Commission by way of this revision petition. Petition allowed.

ii) Order appealed against:

From the order dated 25.04.14 in S.C. Case No.FA/254/2013 of West Bengal State Consumer Disputes Redressal Commission, Kolkata.

iii) Parties:

Cashier, Shree Automotive Pvt. Ltd. & Anr. - Petitioners

Vs.

Sai Partha Kumar Chatterjee - Respondent

iv) Case No and Date of Judgement:

Revision Petition No.2860 of 2014 with I.A. No.4716/2014 (For Stay) & Date of Judgement: 24-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The question which arises for consideration is as to whether the complainant was informed, before the ambulance was ordered by it, that the chassis manufactured in the year 2006 would be used for fabricating an Ambulance on it.
- b) It was pointed out by the National commission that the total depreciated value + registration charges amounted to Rs.28,000/- + insurance amount Rs.12,922/-, comes to Rs.2,72,182/-. The petitioner was, therefore, directed to pay a sum of Rs.4,45,786/- [Rs.7,17,968/- minus Rs.2,72,182/-] to the complainant within four weeks from the date of the order along with interest on that amount @10% p.a. The petitioner was also directed to pay a lumpsum compensation of Rs. 1 lakh to the complainant with interest on it @10% p.a. from the date of the order of the District Forum.

vii) Citation:

Not reported in CPJ and CPR.

2. Emaar MGF Land Pvt. Ltd. and another Vs. Krishan Chander Chandna

i) Case in Brief:

A plot measuring 500 sq. yards in Mohali Hills was allotted to the Respondent by the Appellants on depositing the entire sale consideration of Rs.67,50,590/-. As per the Plot Buyers Agreement, the Appellants were liable to hand over the physical possession of the plot within a period of two years i.e upto 04.07.2009. It is the Respondent's case that the plot was not handed over even by December, 2011 and when he visited the site he found no development in the construction of the project. He filed a consumer complaint before the State Commission which vide impugned order partly accepted complaint and directed the OPs to refund the amount of Rs.64,63,090/- to the complainant along with interest at 12% p.a and to pay compensation in the sum of Rs.1,50,000/- for causing mental agony and physical

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harassment. Cost of Rs.10,000/- was also imposed. Aggrieved by the order, the appellants' filed the First Appeal before the National Commission. Appeal dismissed with punitive damages of Rs.5,00,000/

ii) Order appealed against:

From the order dated 24-10-2013 in C.C.No.50/2013 of the State Consumer Disputes Redressal Commission, U.T. Chandigarh.

iii) Parties:

Emaar MGF Land Pvt. Ltd. and another - Appellants

Vs.

Krishan Chander Chandna - Respondent

iv) Case No and Date of Judgement:

First Appeal No.873 of 2013 & Date of Judgement: 29-09-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o), 19 and 21(a) (ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

It was held by the National Commission that the act of the appellants, even after collecting the total amount of Rs.67,50,590/- including the external development charges and preference location charges from the Respondent and after executing the Plot Buyer Agreement dated 04-07-2007 and not confirming till date any firm handing over of the possession of the plot amounts a 'deceptive practice' which falls within the meaning of 'unfair trade practice' as defined under the CP Act, 1986. It was observed that unscrupulous builders like the Appellants should not be spared and a strong message should be sent that the Commission is not helpless in such matters. Relying on the judgements of the Hon'ble Apex Court in *Ravinder Kaur v. Ashok Kumar* AIR 2004 SC 904 and *Ramrameshwari Devi and others v. Nirmala Devi and others* (Civil Nos.4912-4913 of 2011 decided on July, 4, 2011), it was held that the present appeal is nothing but gross abuse of the process of law and the same is required to be dismissed with punitive damages. The Commission dismissed the appeal and imposed punitive damages of Rs.5 lakhs of which Rs.2,50,000/- was to be paid to the Respondent and the balance Rs.2,50,000/- was to be deposited in the name of 'Consumer Legal Aid Account' of the Commission.

vii) Citation: IV (2014) CPJ 589; 2014(4) CPR 171.

3. Suresh Kumar Yadav Vs. Dining Plus India and others

i) Case in Brief:

Complainant/Petitioner, holder of SBI Credit Card of OP.2 & 3/ Respondents No.2 & 3 was approached by OP.No.1/Respondent No.1 on the ground that he was a lucky winner in the draw of lots and that after charging Rs.6,300 through his credit card, he would be supplied gift voucher, free air ticket and concessional coupons for accommodation etc. It is the complainant's grievance that in spite of charging Rs.6,300, no gift voucher, air ticket etc were provided to him. He alleged that OP.No.2 was also claiming Rs.31,213/- due on 9-7-2013 from him which demand was unfair. He filed complaint before District Forum which partly allowed the complaint and directed OP No.1 & 2 to pay compensation of Rs.20,000 and Rs.7,000 as cost of litigation. Appeal filed by the Complainant was dismissed and appeal filed by O.P No.2 was allowed by the State Commission against which these revision petitions have been filed. Both the revision petitions dismissed.

ii) Order appealed against:

From the order dated 16-06-2014 in First Appeal No. 191/2014 of State Consumer Disputes Redressal Commission, UT Chandigarh

iii) Parties:

Suresh Kumar Yadav - Petitioner

Vs.

Dining Plus India and others - Respondents

iv) Case No and Date of Judgement:

Revision Petition No.3735-3736 of 2014 with IA/7309/2014 (For Condonation of delay) & Date of Judgement: 16-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(b) of the Consumer Protection Act, 1986

vi) Issues raised and decided:

OP.No.1 resisted the complaint on the ground that the Complainant purchased dining plus kit on 27-03-2012 through his credit card for Rs.6,300 and he was dispatched kit through courier and that Complainant never approached O.P No.1 for not receiving kit. Perusal

of record revealed that Rs.6,300/- was charged from the Complainant's credit card and the amount was received by OP.No.1. Ultimately, this amount was refunded by OP. 1 to the Complainant. It was held that OP.2 had no role in lucky draw for purchase of dining plus kit and OP.2 was entitled to recover that amount from the Complainant. It was further held that whatever amount was due from the Complainant upto 9-7-2013 from OP.No.2 had every right to recover that amount from the Complainant and that the District Forum wrongly fastened liability on OP.No.2. The Commission held that there was no illegality, irregularity or jurisdictional error in the impugned order of the State Commission and consequently, both the revision petitions were dismissed.

vii) Citation:

IV (2014) CPJ 709.

4. Kwality Colonisers Private Ltd Vs. Sunita Bali and others

i) Case in Brief:

Complainant/Respondent No.1 booked shop number/unit measuring super area 646.76 square feet by paying Rs.10 Lakhs to Respondent No.3/O.P on 4-10-2010. The total price of the said unit was Rs.35,24,842/-. She paid a further amount of 14,74,438/- partly by cheque and mostly in cash to Respondent No.2/OP.1. Allotment letter was issued and Buyers Agreement was executed. Benefit of a sum of Rs.6,97,920/- on account of return of 11% p.a for a period of two years was credited to her account. Total amount came to Rs.31,72,358/- i.e 90 % of the sale price. Possession was to have been delivered by November 2011 which was not done. Respondent No.1 by registered letter dated 03-09-2013 asked for refund of the amount but did not get a proper reply. Alleging deficiency in service, she filed a complaint in the State Commission which partly allowed the complaint and directed OPs.1 & 2 jointly and severally to pay a sum of Rs.24,74,438/- with interest at 11% p.a and a sum of Rs.6,97,920/- being return at 11% p.a for two years, sum of Rs.1,00,000/- as compensation and Rs.20,000/- as cost of litigation. Aggrieved by the State Commission's order, the present appeal has been filed by the appellant. Appeal dismissed with punitive damages of Rs.2,50,000/-.

ii) Order appealed against:

Against the order dated 29.4.2014 in C.C. No.19/2014 of the State Consumer Disputes Redressal Commission, U.T., Chandigarh.

iii) Parties:

Kwality Colonisers Private Ltd - Appellant

Vs.

Sunita Bali and others - Respondents

iv) Case No and Date of Judgement:

First Appeal No.349 of 2014 with I.A. No.3967 of 2014 (For Stay) &
Date of Judgement: 16-10-2014.

v) Acts and Sections referred:

Sections 2(1) (g), (o),(r), 19 and 21(a) (ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

- a) The Appellant tried to put the blame on Respondent No.2 by pleading that the alleged buyer's agreement was a forged and fabricated document and the amount if any was taken only by Respondent No.2. He also claimed that a FIR had been lodged against Respondent No.2 and Criminal Case was pending against him. But records revealed that Respondent No.2 was Director of the appellant company when the Buyer's Agreement was executed with Respondent No.1 on 4-11-2010. It was held that the act of the appellant amounted to a 'Deceptive Practice' falling within the meaning of 'Unfair Trade Practice' as defined in the Consumer Protection Act, 1986. The Commission took a very serious view of such practice by the Appellant/Builder.
- b) In the light of the judgements of the Apex Court in *Ravinder Kaur v. Ashok Kumar*, AIR 2004 SC 904 & *Ramrameshwari Devi and Ors v. Nirmala Devi and Ors*, Civil Nos.4912-4913 of 2011 decided on July, 4, 2011, the Commission dismissed the appeal and imposed punitive damages of Rs.2,50,000/- of which a sum of Rs.1,25,000 was to be paid to Respondent No.1 and the remaining amount of Rs.1,25,000 was to be deposited by way of Demand Draft in the name of 'Consumer Legal Aid A/c' of the Commission within 4 weeks from the date of the order.

vii) Citation: IV (2014) CPJ 758; 2014(4) CPR 456.

5. Amit Chawla Vs. M/s. Parsvnath Developers Ltd.

i) Case in Brief:

Since facts of all three cases are similar, case of Amit Chawla Vs. Parsvnath Developers Ltd., F.A. No.1158/2014 (Complaint Case No.317/2011) was taken as the lead case. Appellant's case was that he booked a three bedroom apartment in the upcoming project of respondent and paid a sum of Rs.4,50,000/- as advance payment on 11.4.2006. Respondent did not issue any allotment letter within six months as promised. However, on 14.03.2007, respondent made a provisional allotment and demanded the installments which were due. After making payments totalling Rs.16,02,720/-, appellant visited the construction site several times and found no progress in the project. The appellant therefore, decided to take back his money and after several requests from the Appellant, the Respondent offered settlement proposal to the appellant to pay actual amount with a condition that the appellant will surrender all his rights, claim and interest. The appellant agreed to that and surrendered all his original documents along with rights. Thereafter, appellant sent a legal notice to the respondent requesting the payment of interest on Rs.16,02,720/- @ 24% p.a along with compensation of Rs.10 Lac totalling to Rs.24,49,276/-. The State Commission dismissed all the complaints. Being aggrieved, the appellants have filed these appeals. Along with all these appeals, separate applications for condonation of delay have also been filed. Appeals dismissed.

ii) Order appealed against:

First Appeal No.1158 of 2014

Against the order dated 28.5.2014 in Complaint Case No.C-317/2011 of the State Commission, Delhi. (In First Appeal No.1158 of 2014)

First Appeal No.1156 of 2014

Against the order dated 28.5.2014 in Complaint Case No.C-315/2011 of the State Commission, Delhi. (In First Appeal No.1156 of 2014)

First Appeal No.1157 of 2014

Against the order dated 28.5.2014 in Complaint Case No.C-316/2011 of the State Commission, Delhi. (In First Appeal No.1157 of 2014)

iii) Parties:

First Appeal No.1158 of 2014

Amit Chawla - Appellant

Vs.

M/s. Parsvnath Developers Ltd. - Respondent

First Appeal No.1156 of 2014

Aman Grover - Appellant

Vs.

M/s. Parsvnath Developers Ltd. - Respondent

First Appeal No.1157 of 2014

Sh. Sanjay Kumar Sharma - Appellant

Vs.

M/s. Parsvnath Developers Ltd. - Respondent

iv) Case No and Date of Judgement:

- a) First Appeal No.1158 of 2014;
- b) First Appeal No.1156 of 2014;
- c) First Appeal No.1157 of 2014 &
Date of Judgement: 20-11-2014.

v) Acts and Sections referred:

Sections 2(1) (g) & (o), 19 and 21(a) (ii) of the Consumer Protection Act, 1986.

vi) Issues raised and decided:

Held that there was nothing on record to show that appellants were compelled by the respondent at any stage to settle the claim at lesser amount than the claim made by them. There was also not an iota of evidence on record to show that any official of the respondent compelled the appellants to settle the claim at lesser amount. Once appellants have received the amount unconditionally, under these circumstances appellants ceased to be 'Consumer' as per the Act. The privity of contract or relationship of consumer and service provider between the parties if any, came to an end, the moment appellants accepted the

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amount unconditionally. Thus, there was no merit in the present appeals and the same were accordingly dismissed with cost of Rs.5,000/- (Rupees Five Thousand only) in each case. Further, no sufficient cause for condonation of delay was made out.

vii) Citation:

2015(1) CPR 62.
