Deficiency in Insurance Services under Consumer Protection Act 1986 - A Critical View & Challenges Abhay Butle Assistant Professor S.P. College of Law Chandrapur Maharashtra (India) The State was interested in diverting insurance funds for developmental purpose or at least to stop insurance companies from investing the funds in other business enterprises, which might affect prospect of the insured people and property. However, effective the law might be, the control over the funds used and their investment was difficult. Despite prescribing the goals, objectives and directives, it was not possible for the government to supervise the investment and control the funds of insurance companies. The advantages of insurance are being increasingly realized by people all over the world. For instance everybody is aware that life insurance not only inculcates the habit of saving but also provides protection and security to the insured. With the phenomenal growth of trade commerce and industry the modern day entrepreneur also believes that it is in his own interest to have and insurance cover .The business of insurance has undoubtedly developed at a fast pace over the year. It needs however to be seen whether side by side the insurance companies have also achieved consumer satisfaction .It is perhaps of the term service in the Consumer Protection Act 1986 the intention undoubtedly was to provide cheap and expeditious redresses to the aggrieved consumers presumably resenting judicial scrutiny of their actions. The public sector insurance corporations as well as the private insurance companies also challenged the jurisdiction of consumer redressal agencies set up under the Consumer Protection Act 1986 to entertain disputes relating to Insurance service. The act however restricts the ambit and scope of the power of the redressal agencies to award compensation to the aggrieved policy holder. It is only when there is deficiency in the service rendered to him and he has suffered any loss or injury due to the negligence of the insurers that relief by way of compensation can be granted to him. In other words the consumer is entitled to relief under the Act if and only if he establishes that he hired the service complained of for consideration and that the service provided to his has a deficiency.

The following are the various types of insurance businesses recognised under the Insurance Act, 1938: (a) Life insurance business (b) General insurance business (also called “Non-Life” business). This is sub divided into the following 3 sub-categories: (i) Fire insurance business (ii) Marine insurance business (iii) Miscellaneous insurance business

All businesses other than Life are classified as General insurance business. Fire insurance, as the name suggests covers the risks associated with loss due to a fire accident to properties. Marine insurance means the business of effecting insurance contracts upon vessels of any description, including cargoes, freights and other interests which may be insured for transit by land or water or both and includes warehouse risks or similar risks incidental to such transit. Miscellaneous insurance include all insurance businesses other than Fire and Marine insurance business (and Life insurance business). It includes Motor, Liability, Health and Burglary insurances. Generally, indemnity based health insurance policies (which reimburse hospitalisation expenses) were classified under the General

insurance business. Under the Insurance Bill, Health insurance business has been categorised as a separate line of business than the General insurance business. Standalone health insurance companies have been licensed by IRDA to sell only health insurance policies, given the huge potential for this business.

In India, insurance has a deep-rooted history. It finds mention in the writings of Manu (Manusmrithi), Yagnavalkya (Dharmasastra) and Kautilya (Arthasastra). The writings talk in terms of pooling of resources that could be re-distributed in times of calamities such as fire, floods, epidemics and famine. This was probably a pre-cursor to modern day insurance. Ancient Indian history has preserved the earliest traces of insurance in the form of marine trade loans and carriers' contracts. Insurance in India has evolved over time heavily drawing from other countries, England in particular. Now, we will be discussing brief about the history of Life Insurance and General Insurance in India.

The history of general insurance dates back to the Industrial Revolution in the west and the consequent growth of sea-faring trade and commerce in the 17th century. It came to India as a legacy of British occupation. General Insurance in India has its roots in the establishment of Triton Insurance Company Ltd., in the year 1850 in Calcutta by the British. In 1907, the Indian Mercantile Insurance Ltd, was set up. This was the first company to transact all classes of general insurance business. 1957 saw the formation of the General Insurance Council, a wing of the Insurance Associaton of India. The General Insurance Council framed a code of conduct for ensuring fair conduct and sound business practices. In 1968, the Insurance Act was amended to regulate investments and set minimum solvency margins. The Tariff Advisory Committee was also set up then. Lesson 4 Regulatory Environment – Specific Legislations 57 In 1972 with the passing of the General Insurance Business (Nationalisation) Act, general insurance business was nationalized with effect from 1st January, 1973. 107 insurers were amalgamated and grouped into four companies, namely National Insurance Company Ltd., the New India Assurance Company Ltd., the Oriental Insurance Company Ltd and the United India Insurance Company Ltd. The General Insurance Corporation of India was incorporated as a company in 1971 and it commence business on January 1sst 1973.

This millennium has seen insurance come a full circle in a journey extending to nearly 200 years. The process of re-opening of the sector had begun in the early 1990s and the last decade and more has seen it been opened up substantially. In 1993, the Government set up a committee under the chairmanship of RN Malhotra, former Governor of RBI, to propose recommendations for reforms in the insurance sector. The objective was to complement the reforms initiated in the financial sector. The committee submitted its report in 1994 wherein, among other things, it recommended that the private sector be permitted to enter the insurance industry. They stated that foreign companies be allowed to enter by floating Indian companies, preferably a joint venture with Indian partners. Following the recommendations of the Malhotra Committee report, in 1999, the Insurance Regulatory and Development Authority (IRDA) was constituted as an autonomous body to regulate and develop the insurance industry. The IRDA was incorporated as a statutory body in April, 2000. The key objectives of the IRDA include

promotion of competition so as to enhance customer satisfaction through increased consumer choice and lower premiums, while ensuring the financial security of the insurance market. The IRDA opened up the market in August 2000 with the invitation for application for registrations. Foreign companies were allowed ownership of up to 26%. The Authority has the power to frame regulations under Section 114A of the Insurance Act, 1938 and has from 2000 onwards framed various regulations ranging from registration of companies for carrying on insurance business to protection of policyholders' interests. In December, 2000, the subsidiaries of the General Insurance Corporation of India were restructured as independent companies and at the same time GIC was converted into a national re-insurer. Parliament passed a bill de-linking the four subsidiaries from GIC in July, 2002. Today there are 24 general insurance companies including the ECGC and Agriculture Insurance Corporation of India and 23 life insurance companies operating in the country. Beside IRDA Act and Insurance Act, 1938, there are some common Act/Regulation to the General and Life Insurance Business in India and some Acts have been made for specific requirement of Life Insurance/General Insurance Acts/Regulations common to General and Life Insurance Business in India The following Acts regulate the Insurance Business in India. • Insurance Act, 1938 • IRDA Act, 1999 • Insurance Amendment Act, 2002 • Exchange Control Regulations (FEMA) • Insurance Co-op Society • Indian Stamp Act, 1899 58 PP-IL&P • Consumer Protection Act, 1986 • Insurance Ombudsman Regulations governing/ affecting Life Insurance Business in India The following Acts govern /regulate the life insurance business in India. • LIC Act, 1956 • Amendments to LIC Act Regulations Affecting General Insurance Business in India The following Acts affect, circumscribe or regulate in some way or the other, some aspect of the General Insurance Business in India. • General Insurance Nationalization Act, 1972 • Amendments to GIN Act, 1972 • Multi-Modal Transportation Act, 1993 • Motor Vehicles Act. 1988 • Inland Steam Vessels Amendment Act, 1977 • Marine Insurance Act, 1963 • Carriage of Goods by Sea Act, 1925 • Merchant Shipping Act, 1958 • Bill of Lading Act, 1855 • Indian Ports (Major Ports) Act, 1963 • Indian Railways Act, 1989 • Carriers Act, 1865 • Indian Post Office Act, 1898 • Carriage by Air Act, 1972 • Workmens' Compensation Act, 1923ESI Act, 1948 • Public Liability Insurance Act. 1991

INTRODUCTION One of the most important principles, indemnity, can be quoted to be the cornerstone of insurance. The need to be compensated, or at least indemnified, for loss or damage suffered is the very basis of insurance. In insurance parlance, this is the bread and butter of insurance, or the second face of marketing. What if the unthinkable occurs-a fire takes place, there is an accident, a burglary or an illness occurs? What if...? Contemplation of the negative aspects makes a prospect introspect on the need for adequate insurance cover. But once the policy is availed of, the most important aspect is the speed and ease with which the insured is compensated or indemnified in the event of a claim. That is why, claims servicing is the second face and even more important face of marketing. It is the actual delivery of the product – tangible delivery of an intangible service. Servicing of customers at the time of claim is the most important and vital aspect of any insurance service. A satisfied customer is the best public relations officer of an insurance company. An insured having suffered a loss, is always in a damaged or vulnerable condition; alleviation of some of the suffering by ensuring speedy processing

and settlement of the claim is the best and most excellent aspect of any insurance. Here in this lesson, we will discuss various aspects of claim settlement in different forms of general insurance CLAIM SETTLEMENT IN GENERAL INSURANCE General insurance is basically an insurance policy that protects you against losses and damages other than those covered by life insurance. For more comprehensive coverage, it is vital for you to know about the risks covered to ensure that you and your family are protected from unforeseen losses. The coverage period for most general insurance policies and plans is usually one year, whereby premiums are normally paid on a one-time basis. The risks that are covered by general insurance are: 1. Property loss, for example, stolen car or burnt house 2. Liability arising from damage caused by yourself to a third party 3. Accidental death or injury The main products of general insurance includes 1. Motor insurance 2. Fire/ House owners/ Householders insurance 3. Personal accident insurance 4. Medical and health insurance 5. Travel insurance GENERAL PROCEDURE FOR CLAIM SETTLEMENT The general procedure for seeking claim settlement is same in most forms of General Insurance. The graphical presentation of claim settlement is as given below: Lesson 9 General Insurance – Practices & Procedures – Focus Claims 173 Step 1 – Intimation/Submission of the Claim by the Insured The insured would intimate the insurance company of the occurrence of a peril or risk which has caused loss of or damage to the insured property Step 2 – Evaluation/Registration of Claim The insurer would briefly initiate process check – (i) Whether the policy has been issued by the insurer (ii) Whether the policy is in existence (iii) Whether correct premium has been received by the insurer (iv) Whether the peril causing loss/damage is an insured peril If the insurer is not satisfied and the necessary elements of insurance are not present, it may repudiate the insurance claim and intimate the insurer about the repudiation. In some cases, the insurer may ask for some other inputs about the insurance claim which he thinks necessary for processing the claim further. If on receipt of the additional input, the insurer is not satisfied, he may repudiate the claim and intimate the insured about the repudiation of claim. Only after getting satisfied about the claim, the insurer initiates the next step for claim processing. Step 3 – Appointment of surveyor/loss assessor/investigator etc. The insurer would immediately arrange for surveyor to be appointed who would look into the circumstances of the loss, assess the actual loss suffered in money terms and that which can be indemnified in terms of the contract, advise the insurer regarding compliance of the various terms conditions and warranties under the contract etc. The loss assessor has also to advise the client on various aspects of loss mitigation, limitation, salvage. Loss investigation including forensic investigation and analysis may also come under the purview of a professional investigator. Acid tests applied by the surveyor of the various principles – insurable interest, utmost good faith, proximate cause and of course contribution, help in deciding ultimately, if a claim is payable as well as quantum payable. If the claim is not paid within the same financial year in which it occurred, then the surveyor's assessment would enable the adequate provisioning for the claim in its financials. 174 PP-IL&P Step 4 – Settlement of claims The insurer would ensure claims are settled on the receipt of the final report from the surveyor, generally within the TAT (Turn around time) stipulated by various regulations and committed by the insurance company. Step 5 – Recovery The next step for the insurance company, in certain cases is initiating process for recovery from the third person who is party – eg in marine cargo transit claims – recovery proceedings, as per

applicable statutes are initiated against carriers. In motor third party liability claims – awards are settled with victims of any motor accident and action instituted against the owner of the vehicle for recovery. CLAIM PROCEDURE FOR MOTOR INSURANCE (a) Vehicle Accident Claims After the insured submit his claim form and the relevant documents, the insurer appoints a surveyor to inspect the vehicle and submit his/her report to the insurance company. Insured also get the details of the surveyor's report. In case of major damage to the vehicle, the insurer arranges for a spot survey at the site of accident. The insured can undertake repairs only on completion of the survey. Once the vehicle is repaired, the insured should submit duly signed bills/cash memos to the insurance company. In some cases, companies have the surveyor re-inspect the vehicle after repairs. In such a scenario, the insured should pay the workshop/garage and obtain a proof of release document (this is an authenticated document signed by you to release the vehicle from the garage after it is checked and repaired). Once the vehicle has been released, insured should submit the original bill, proof of release, and cash receipt from the garage to the surveyor. The surveyor sends the claim file to the insurance company for settlement along with all the documents and Finally, the insurance company reimburses the insured. In case of an accident, the insurance company pays for the replacement of the damaged parts and the labor fees. The costs that the insured has to bear include: A. The amount of depreciation as per the rate prescribed B. Reasonable value of salvage (to be discussed separately) C. Voluntary deductions under the policy, if the insured have opted for any D. Compulsory excesses levied by the insurer In the insured uses the cashless repair facility, the claim money is paid directly to the workshop or garage. Otherwise, the amount of claim is paid to the insured. (b) Third Party Insurance Claim In the event of a third party claim, the insured should notify the insurance company in writing along with a copy of the notice and the insurance certificate. The insured should not offer to make an out-of-court settlement or promise payment to any party without the written consent of the insurance company. The insurance company has a right to refuse liabilities arising out of such promises. The insurance company will issue a claim form that has to be filled and submitted along with: (a) Copy of the Registration Certificate Lesson 9 General Insurance – Practices & Procedures – Focus Claims 175 (b) Driving license (c) First information report (FIR) After verification, the insurance company will appoint a lawyer in the defense of insurer and the insurer should cooperate with the insurance company, providing evidence during court proceedings. If the court orders compensation, the insurance company will then do it directly. (C) Vehicle Theft Claims In the event of theft of vehicle, the insured should lodge the First Information Report (FIR) with a police station immediately, inform the insurance company and provide them with a copy of the FIR. He should also submit the Final Police Report to the insurance company as soon as it is received and Extend full cooperation to the surveyor or investigator appointed by the company. After the claim is approved, the Registration Certificate of the stolen vehicle has to be transferred in the name of the company and the insured needs to submit the duplicate keys of the vehicle along with a letter of subrogation and an indemnity on stamp paper (duly notarized) to the insurance company. If there is a dispute regarding the claim settlement between the insured and the insurer, how is the dispute resolved? The most common form of dispute that arises between the insured and the insurer is about admission of liability or the size of the claim. Disputes regarding claim amounts, where the insurer has agreed to cover the

claim under the policy, are referred to an arbitrator. If the decision of the arbitrator is disputed by either party, the Consumer Forum or the Civil Court could be approached. CLAIM SETTLING PROCESS (FIRE AND MARINE INSURANCE) (1) Intimation to Insurance Company: The insured must give immediate intimation to the insurance company regarding the loss. The necessary details like the day, date, time and causes of fire and in case of marine insurance, ship and voyage taken should be mentioned. (2) Assessment of the loss: The insured makes an assessment of the actual loss. Such assessment is required to fill the claim forms correctly in respect of the loss of goods or property. (3) Submission of the claim form: the insured must fill all possible details in the claim form. He must lodge the claim form within 15 days of the fire to claim compensation. In case of marine insurance, the insured should lodge a claim with the following documents: 1. Original Insurance Policy 2. Copy of Bill of Lading 3. A copy of commercial Invoice 4. A copy of packing list 5. Survey repot 6. Claim Bill Delay in submission of claim form may result in non-acceptance of the claim. (4) Evidence of Claim: Along with the claim form, the insured must send certain proof of fire and other records, if available and if necessary. The evidence should enable the insurance company to determine the amount of loss. 176 PP-IL&P (5) Verification of Form: The claim form along with the supporting evidence is verified by the insurance company. The insurance company then appoints the surveyors to conduct an assessment of the actual loss. (6) Survey: After the receipt of the form, and necessary verification, the insurance company appoints the surveyors to assess the actual loss. The surveyors conduct the necessary investigations. They investigate into the cause of fire, the actual amount of property lost and other relevant details. The surveyors then make the report of their findings and assessment of the loss. (7) Landing Remarks: In case of marine insurance, the insured should obtain landing remarks, from the port authorities, if survey report is not obtained. (8) Appointment of the arbitrator: There may be a dispute regarding the amount of claim. In such a case, an arbitrator is appointed, acceptable to both the parties, to settle the amount of the loss. (9) Settlement of Claims: If there is no dispute between the two parties, as to the amount of loss, the insurance company then makes necessary payment to the insured. In case of marine insurance, the amount of money is paid to India Exporter in Indian rupees. If the claimant is not a resident of India, payment maybe made in foreign currency. HEALTH INSURANCE CLAIM SETTLEMENT PROCEDURE In Health insurance mainly two types of claims are raised 1. Claims pertaining to cash less 2. Reimbursement of medical expenses Claim Procedure for Cashless Health Insurance 1. For availing the cashless facility, first the insured visit the hospitals which are covered in the network of insurance Company. 2. Hospital obtains details from the customer and verifies the details along with the insurance details and send the intimation to the insurance company 3. On receiving the intimation from the hospital, the insurance company either approve the claim and authorise the hospital to carry out the treatment under cash less scheme. In some cases, the insurance company may ask for some additional information and even deny for the claim. 4. After getting the necessary authority from the insurance company, the hospital carry out the treatment without any deposit and get the settlement of bills from the insurance bills. Here it is pertinent to mention that the liability of insurance company is limited only the amount insured and if the bill for treatment is more than the amount insured, the balance needs to be recovered from the customer Claim for Reimbursement of medical expenses In the cases where the

customer does not use the cashless health insurance, he raises the claim for reimbursement of medical expenses incurred. SETTLEMENT OF INSURANCE CLAIMS (a) Repair & replacement The insurer has the option of repairing and/or replacing the damaged or destroyed property. Only conditions would be that the cost of repair/replacement will not exceed the sum insured; repair or replacement may not be exact. It may be partial repair and partial replacement. Lesson 9 General Insurance – Practices & Procedures – Focus Claims 177 (b) Replacement Usually in total or constructive total loss cases. Total loss of machinery insured under Fire policy due to fire accident. The subject matter is totally destroyed and the insurer, subject to applicable terms and conditions (depreciation, average clause, applicable liability) agrees to replace the same. Constructive Total Loss occurs where the entire subject matter of insurance eg entire consignment of gods in transit, are effectively lost, by virtue of the fact that they are inaccessible to insured and the cost of recovery and/or salvage would be more than the cost of the goods itself. (c) Repair The compensation by the insurer would be in the form of cost of repairs to the subject matter damaged by the insured peril, subject to the maximum level of indemnity (sum insured) under the policy. In property policies, for eg. Fire or engineering policy this is usually done usually after surveyor assesses the loss and submits his report indicating the net liability of the insured towards the cost of repairs. In marine policies, where, goods need to be repaired or loss minimized in transit – repairs would include costs of segregation, conditioning etc as part of the efforts of insured or his agent in minimizing losses. (d) Reinstatement One method of settlement is reinstatement of the insured to the position he was in prior to the loss occurrence. In many property claims, however, what sounds like an anomaly – 'new for old' is practiced. Here new items are replaced in place of damaged ones even if the original items were not new. CLAIMS MANAGEMENT IN GENERAL INSURANCE 1. Underwriting and claims settlement are the two most important aspect of the functioning of an insurance company. Out of any insurance contract, the customer has the following expectations: (i) Adequate insurance coverage, which does not leave him high and dry in time of need, with right pricing. (ii) Timely delivery of defect free policy documents with relevant endorsements/warranties/ conditions/guidelines. (iii) Should a claim happen, quick settlement to his satisfaction? 2. Unlike life insurance, where all policies necessarily result in claims – either maturity or death – in general insurance not all policies result in claim. Approximately around 15% policies in general insurance result in claim. The claim settlement in general insurance thus has their own peculiarities and therefore need proper handling. Also how 15% policy holders are attended is of great importance. The services being rendered will determine the attitude of the customers. How the services being rendered are perceived by the customer? That also needs to be kept in mind. 3. In the present liberalized scenario, with cut-throat competition being the order of the day, the insurance companies have to go much beyond the handling of claims. The following aspect needs to be kept in mind. 4. General insurance being a market driven service industry, the customer has to be kept satisfied. With so many options available, a customer once lost is most likely a loss forever. Claim settlement 178 PP-IL&P can be used as a marketing tool. Brining in a new customer is much more costly than retaining the existing ones. 5. In a de-tariffed market, pricing will be the key factor. Proper claims management - quick settlement at optimal cost will help keep the price competitive. 6. A dissatisfied customer is a bad publicity. It has all the potential to damage the reputation of

the company. It is an accepted fact that most of the customers complaint relate to claims. It should be the endeavour of any insurance company to ensure that such complaints do not occur in the first place and in some cases if they do occur it is attended promptly, efficiently and transparently. 7. IRDA guidelines on 'protection of policyholders' interest' stipulate certain obligation on the part of insurance company including time limit for claim settlement. This is a regulatory requirement and insurance company personnel at every level must understand its implication. 8. Delayed claim settlement generally result in higher claims cost. Claims cost is a very important factor vis-à-vis profitability. The delay in submission of survey reports is a very important reason for delay in claim settlement. The surveyors are duty bound as per IRDA regulations to submit report within a stipulated time. The insurance company should analyze about take necessary steps and put the systems in place for ensuring the timely settlement of insurance claims. 9. Claims files must be monitored as they progress. A little time spent thinking clearly right from the beginning will avoid lot of unnecessary and time consuming patch-ups and straightening out later on. Unpleasant decisions conveyed timely with proper justification of the decision is better than procrastination which is bound to create more problems and unpleasant situations. 10. Proper underwriting (u/w) is essential as defective u/w results in complication at the time of settlement of claims. Defective U/w may saddle the companies with unwanted claims. Various court judgments and consumers forum awards bear testimony to the same. Any defect / ambiguity in the documents issued invariably goes against insurance companies. It is therefore of utmost importance that the client is made aware in very clear terms about what exactly is covered and what is not. There should be a strong system of audit for examining the documents being issued. 11. Lot of time / energy / money is spent when claim cases go to Ombudsman / Consumer Forum/ Court. Besides, adverse comment bring bad name, when the insurance companies are held liable. Insurance companies are invariably at the receiving end. The "watch and wait" attitude must change. There is a need to find out why so many cases go to consumer forum or the ombudsman and what should be done about it. 12. Claims-settlement have social service angle which must be met. In times of natural calamity lot of bad publicity comes to insurance company for delay in settlement of claims. This is in spite of the fact that in such situation insurance companies goes out of their way to settle claims. In any case claims relating to the assets of weaker section needs to be attended on priority. So do the health / medical related claims. In view of the above, it is necessary that 1. Insurance companies have a corporate claims management philosophy Managing claims involves not only claims processing but goes on to cover the entire gamut of claims management – strategic role, cost monitoring role, service aspect as also the role of people handling the claim. 2. Out of the total outgo on account of claims it is estimated that around 10 to 15 % is because of leakages, frauds and inflated claims. In absolute terms this will be a quite substantial amount. If this Lesson 9 General Insurance – Practices & Procedures – Focus Claims 179 can be effectively checked, the benefit can be passed on to the customer by way of reduced premium rates. 3. Claims reserving is also an important part of the overall claim management process. Adequacy of claims reserving is important for any insurance company to meet its claim obligation. In fact in a study in USA of the insurance companies going "bust" 34% (highest) was on account of insufficient reserve / premium. The analysis of reserve and the process that goes into making the same and its comparison with past experience can help address such

important concerns as • Company's likely future obligations on account of claims and its ability to meet them. • Solvency aspect and assessing the true picture of the financial health. • Analysis of claims trend can help to timely initiate remedial action. e.g. restricting a particular class of business. • Effectiveness of loss control measure. • Average time being taken for the settlement of a claim and the claim settlement ratio and how it compares with other operators in the market. UNDERINSURANCE A situation wherein the owner of a property or the person suffering a health condition does not have enough insurance to cover the value of the item or the health care costs may be termed as underinsurance. An uninsured individual knows that he lacks the security of insurance. An underinsured individual finds out about his lack of insurance coverage only after he files a claim. For example, Mr. A believes that the health insurance cover provided by his workplace is more than adequate. Then, one day, he falls seriously ill. His family rushes him to hospital only to learn that the employer-provided medical insurance comes with a high deductible, limited annual benefits and exemptions on specific treatments. Thus, an underinsured person has insurance, but not enough. Causes of Underinsurance Underinsurance may be caused by many factors depending upon the nature and type of insurance. It ranges from a failure to update a policy in a timely manner to an underestimate of reconstruction or replacement value. Failure to report new construction or additions to the property or a decision not to purchase sufficient insurance due to cost could also lead to underinsurance problems. Relying on the health insurance problem by the employer may also be a reason of underinsurance. Even in many cases, cost cutting measure also a reason of underinsurance. Consequences of Underinsurance The dangers of underinsurance are just too high. If your business and personal assets are not adequately covered or if you have high deductibles and exemptions on your health insurance, footing out-of-pocket expenses can become a huge hurdle. If you have inadequate life insurance, you family would suffer the financial consequences when you are no more. Remember, being underinsured is as bad as being uninsured is—this is a lesson that we all must learn. CONDITION OF AVERAGE IN INSURANCE POLICY The doctrine of average – or average clause is always applied in indemnity policies – primarily in property claims – fire and engineering. At the time of taking the policy the insured has to consider the value of the risk 180 PP-IL&P or subject matter of insurance-sum insured. He must ensure that the adequate value has been declared and insured. If, at the time of loss, it is found that the sum insured is less than the actual value of the subject matter, then the proportionate or rateable portion of the claims would be payable. The insured would therefore be his own insurer for the difference Fixing of adequate sum insured is also important from the point of view of the banks or financial institutions who may have advanced money on the security of the insured property. It is sometimes found that the banks or financial institutions do not concern themselves with the adequacy of the sum insured so long as it is sufficient to cover the money advanced by them or at best the full value of the property on which they have advanced money. Invariably in such cases they find the problem only after happening of a loss when the claim amount is suitably adjusted for underinsurance and the full indemnity is not available due to the inadequacy of the sum insured. Eg. If the value of stocks which have been insured are actually Rs. 10 lac, but insurance premium has been paid on a sum insured of Rs.5 lac only- underinsurance is 50%. Hence the loss amount indemnified would be reduced by 50%. Under average clause, the claim is calculated as Claim amount = Actual Loss x

Stock insured/Total Loss, where Actual Loss = Total Loss - Stock salvaged or stock saved RECOVERY IN INSURANCE CONTRACTS Under subrogation, the insurer is subrogated to the rights and remedies that the insured enjoys against third parties who are responsible for the loss. The insured, who under the duty of the assured clause, is required to protect right of recovery against persons responsible for the loss, surrenders the same on being compensated; again the principle of indemnity restricts him from benefitting and making a profit, by recovering from the third party as well. All transits are usually done under a contract of afreightment – bill of lading air way bill, goods consignment note, railway receipt post parcel receipt etc. These are negotiable and freely assignable, together with the invpoice and insurance policy they can be assigned and usually are used for discounting with banks etc. A number of statutes come into play, particularly in cargo insurance- Marine Insurance Act, Carriage of Goods by Sea Act, Carriers Act, Railways Act, Port Trusts Act, Bailees Act. etc etc Each statute specifies action to be taken, and the time limit/jurisdiction eetc under which action can be taken by the parties to the contract of affreightment. Insurable interest in cargo insurance, is of utmost importance at the time of claim occurring, as the consignee who is in possession of the negotiable documents is the owner of the goods and would institute action under the appropriate statute, for recovery against the transporter. Primarily in Marine insurance (cargo), the insurer pursues the rights of recovery, on being subrogated post claim settlement. The insurer initiates action by way of negotiating or filing a suit for recovery of compensation in civil courts, against the transporter. Therefore, the current owner of the goods, at the time of loss, should initiate action for recovery on being intimated the same by the transporter. Especially in case of transit by sea, intimation may come weeks after the loss has occurred, eg. When the ship has sunk or been captured by pirates. Pay & Recover Pay and recover is the parlance used, generally in motor accident compensation cases, where award is Lesson 9 General Insurance – Practices & Procedures – Focus Claims 181 pronounced by the Motor Accident Claims Tribunal (MACT).After payment of the claim to the injured party or his legal heirs etc. The insurer can initiate action against the erring party- eg. the owner of the insured vehicle. Modes of Recovery 1. Excess/deductible – That portion of the claim which is to be borne by the insured is called an excess or deductible. 2. Subrogation – Rights and remedies preferred against the third party. 3. Contribution – This occurs when the insured property is insured by more than 1 insurer- insuch cases recovery would be made by the lead insurer from the co insurer. 4. Reinsurance – Reinsurance is the most common method of risk transfer – where the risk is re insured with reinsurers and after the claim the same is recovered from them after payment to insured. SALVAGE IN INSURANCE CONTRACTS Salvage is also a form of recovery in any claim. In most property claims, including transit insurance claims, damaged property can be disposed off for either lower or scrap value, this is done to reduce the financial impact of claims. Hence, most insurers advise the surveyors to complete the net assessment by valuing the salvaged value of the damaged property as well. Especially in total loss cases, the insured may abandon the wreck or damaged property in favour of the insurer who would thereafter sell the same and credit the sale proceeds to claims account.

SURVEYORS- Link between Insurer and Insured

An Insurance Policy is a combination of protection and savings to meet your future needs. In today's life the worthiness of insurance can not denied by any one. Whenever a person takes an insurance policy, the motive behind this is to secure the future from certain risk on the happening of certain event. We can feel the importance of insurance in our day to day life also. In modern and busy life people want to save their each and everything through the insurance.

As per requirements of an individual, insurance companies provide insurance policy for buildings, machinery and accessories, stock and stock in process for business purpose, furniture for the purpose of business and profession, mobile, transport, home, health etc. against loss an damages arising out of fire and allied perils. Machinery Breakdown policy covers financial loss incurred by the insured due to loss or damage to machinery as a result of accidental electrical and mechanical breakdown. It reimburses the insured for the cost of repairs or replacement of machinery of like nature.

Fire loss of profit insurance covers major fire loss, due to which the business operations get interrupted resulting in reduced turnover and eventually in loss of profits. Plate glass insurance covers against the actual breakage of plain glass of ordinary glazing quality completely and securely fixed. Any equipment operated with electrical power may suffer breakdown spontaneously. Electronic equipment insurance policy covers "All Risks" to cover Computers, Bio medical equipment, X-ray equipment, audio/video equipment etc. Disaster insurance policy provides protection against disasters arising out of earthquake, cyclone, landslide, floods, explosion, fire and so on. Machinery Insurance provides protection against unforeseen and sudden physical damage to the insured machinery. Mobile Cellular Phones and Pager can be covered against the risk of fire, theft Terrorist activity, Riot and Strike.

After looking the list of areas where insurance companies provide insurance policy, we can feel the significant role of the insurance in our life. In fact now days the insurance companies ready to provide insurance policies for all high value items, so one can get money back if something goes wrong. The insurance cover provides compensation equivalent to the cost of replacement of the goods/instrument by a new good/instrument of the same specification and same capacity, including all taxes and duties.

How the insurance company functions?

Suppose a person takes policy for his car against the fire, accident and theft etc. One day the car meets with an accident, the policyholder will lodge a claim with the company for compensation. The insurance company will appoint surveyor to assess the loss in accident. The surveyors will then go and assess the extent of loss. On the basis of the report submitted by the surveyor, the insurance company will liable to settle the claim of insurance. The IRDA (Insurance Regulatory and Development Authority) clearly articulates that a claim will have to be paid within 30 days from the date of receipt. In case the claim wants an investigation then the insurance company has to complete the investigation not later than 6 months from the time of lodging the claim. Moreover, in case a claim is ready for payment but the payment cannot be made due to any reasons then such an amount will earn interest at the rate applicable to a savings bank account.

But some times the insurance companies serve late in settling the claim lodged by the insured and do not follow the rules provided in IRDA (Insurance Regulatory and Development Authority).

As I mentioned above when insured lodge a claim before the insurance company, the insurance company appoints surveyor to assess the loss and damages and then do compare with the claim of insured. After satisfaction, the insurance company initiates to settle the claim. In this whole episode the Surveyors play crucial role between the insured and the insurer. Before going to deal with work of surveyor, it is must to know about the surveyor. Means who can be a surveyor, eligibility and qualifications needed for surveyor etc.

Surveyors are professionals who assess the loss or damage and serve as a link between the insurer and the insured. They usually function only in non life business. Their job is to assess the actual loss and avoid false claims. Surveyors like agents, are not employees but are independent professionals hired by the insurance company.

A person intending to act as a surveyor and loss assessor (S& LA) in respect of general insurance has to apply to the Insurance Regulatory and Development Authority (IRDA) for the grant of license to act as such in:
i. FORM-IRDA-1-AF, if the applicant is an individual; or
ii. FORM-IRDA-3-AF, if the applicant is a firm or company

In particular and without prejudice to the foregoing, the Authority shall satisfy itself that the applicant, in addition to submitting the application

complete in all respects:-
satisfies all the applicable requirements of section 64UM read with section 42D of the Act and rule 56A of the Insurance Rules, 1939;
possesses such additional technical qualifications as may be specified by the Authority from time to time;
has furnished evidence of payment of fees for grant of license, depending upon the categorization;
has undergone a period of practical training, not exceeding 12 months, as contained in Chapter VII of these regulations; and
furnishes such additional information as may be required by the Authority from time to time.

Insurance risk surveyors carry out surveys of buildings, machinery, transport and other sites or items that need to be insured. A key part of the work is to produce reports, to help an agent who sells insurance, decide on the terms and conditions of insurance policies. Insurance surveyors usually specialize in one of the following areas:
fire and perils examining plans, construction and fire protection systems to assess the risks to a building and its contents
accidents and liability assessing the possible risks to employees, customers and visitors to a building or site
engineering insurance surveying mechanical and industrial plants, machinery and equipment for faults and risks
burglary and theft inspecting business premises to check how goods are stored and improve security.

The insurance business operates on the principle of indemnity, that is, putting the customer in same position financially in which he was before the loss happened. As there is a tendency on the part of customer, to benefit out of an insurance transaction, the surveyor puts a check on that and assesses the loss. He then gives a report to the insurance company and based on the surveyor's report the company will settle the claim.

We can believe on the basis of above grounds that the surveyors are the major part of the insurance business. But in today's scenario it as seen that the insurance company tries to ignore the report submitted by one surveyor and keep on appointing surveyors one after another unless they get favorable report. In many cases it has been observed by the Hon'ble Court that the insured getting harassed from the professional attitude of the insurance company. This amounted to unfair trade practices on part of the insurance company that affect not only to the complainant but also to public in general.

The said issue has been discussed by the apex court in different matters like Kochar Woollen Mills Pvt. Ltd and another Vs United India Insurance Co. Ltd and Others, 2007 CTJ 701 (CP) (NCDRC). In this complaint the complainant was engaged in manufacture of shoddy woolen fabrics using shoddy woolen yarn as the raw material. The complainant took one fire policy from the respondent company. During the period of insurance, a major fire broke out at the premises of the complainant. Complainant lodged a claim application before the respondent. The respondent (insurance company) appointed one surveyor namely M/s Mehta and Padamsey Surveyors Pvt. Ltd., New Delhi. The surveyor submitted their report after assessing the loss and damages of the insured premises. The insurance company not responded for some time even after submitting the survey report by the surveyor. The insurance company again appointed one Chartered accountant namely Shri Rajesh Nakra as surveyor. The second surveyor submitted his report that the complainant did not cooperate with the surveyor, therefore the surveyor was not able to submit his complete report. In that situation the insurance company again appointed third surveyor namely M/s J. N. Sharma, Chartered Accountant, New Delhi. Lastly the insurance company became agreed to settle the 60% of the claim.

The complainant filed one complaint before the State Commission against the same but dissatisfied by the order of State Commission he moved an appeal before the National Commission.

The issues considered by the National Commission:
1. Are the respondent (insurance company) justified in appointing the third surveyor without finding any other defects in the report of first surveyor.
2. Is the insurance company liable for deficiency in services on their part

The Hon'ble National Commission held that the report of the first surveyor was based on the all records maintained by the complainant. And the second and third reporter had not submitted their report, whereas it was easy for them to submit their report on the basis of verifications of the first surveyor, but they did not do this. Therefore the respondent is liable for deficiency in services as they have made delay in settling the claim.

Further, the National Commission also held that the Insurance Company can not appoint one surveyor after another without assigning specific reason for not accepting the report of the previous surveyors

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The similar view has been taken by the Hon'ble State Commission in Ramesh Aggarwal Vs Branch Manager, The Oriental Insurance Co. Ltd. 2007 (2) CPR 204. In this complaint the complainant had taken an insurance policy for his vehicle. Vehicle was burnt during the insurance period. The complainant lodged claim before the insurance company for an amount of Rs. 6, 00,000/-. The insurance company appointed the first surveyor but not agreed on the report submitted by them. Then again the insurance company appointed second surveyor for assessing the loss and damages. The insurance company became ready to settle the matter on 3, 64,000/-. Aggrieved from this the complainant filed complaint before the District Forum but the same was rejected.

The complainant moved an appeal before the State Commission. The Hon'ble Commission held that the practice of the insurance company in appointing one and other surveyor is not justifiable. Insurance Company can not throw away the report of the surveyors and keep on appointing surveyors one after another, till insurance Company can get favorable report. Accordingly the impugned order set aside and appeal allowed.

In some cases even it has been observed that the insurance Company compels the insured to settle the claim according to the choice of the insurance company. It all depends on the survey report submitted by the surveyor before the insurance company. In Mullangie Spintex Pvt. Ltd. Vs New India Assurance Co. Ltd., 2007 (2) CPR 87 (NCDRC), the complainant filed complaint that the insurance company is pressurizing him to settle the matter on amount based on report of 2nd surveyor. The complainant had taken policy from the respondent to insured the machinery of the plants. Due to fire all machinery became worthless. The complainant moved application for claim before the insurance company. The insurance company ignored the report presented by the first surveyor who had personally visited the burnt premises. The insurance company appointed second surveyor and compelled the insured to give the consent on the amount based on the report of 2nd surveyor which was based on incomplete and false evidence.

The National Commission held that how the surveyors of the insurance Company can ruin the insured industry or the firm by underestimating the loss suffered due to contemplated peril and how insurance company can coerce the insured to accept it in full and final settlement. Both things are deficiency in service and unfair trade practice.

In Hundilal Jain Cold Storage and Ice Factory P. Ltd. Vs Oriental Insurance Co. Ltd. (2005) II CPJ 17 (NC), National Commission held that the practice of appointing of surveyor one after another is unjustified.

Conclusion:

The Insurance Company does not allow the claim lodged by the insured without assessing the loss and damages. Therefore the assessment of loss is required to settle the same. But the practice of insurance company to get favorable survey report by the appointment of one after another should be restrained. The view discussed by the apex court in different matter must come into force that the Insurance Company can not take advantages from the favorable survey report by retaining one after another surveyor.

As per sub-section (3) and (4) of Section 64UM of the Insurance Act, 1938, the insurer cannot appoint second surveyor just as a matter of course. If the report of the surveyor or loss assessor is not acceptable to the insurer it must specify reasons but it is not free to appoint second surveyor. Appointment by the insurer of a second surveyor itself would be a reflection on the conduct of the first surveyor. Surveyor or loss assessor is duty bound to give a correct report. If the insurer-Insurance Co. finds that surveyor or loss assessor has not considered certain relevant points or has considered irrelevant points or for any other account it has reservation about the report, it can certainly require the surveyor or loss assessor to give his views and then come to its own conclusion, but insurer cannot certainly appoint a second surveyor-cum loss assessor to counter or even contradict or rebut the report of the first surveyor.

Judgments on Insurance

ASHVINBHAI JAYANTILAL MODI vs. RAMKARAN RAMCHANDRA SHARMA & ANR. dated 2014-09-25

These appeals have been filed by the appellant against the impugned common Judgment and order dated 18.6.2013 passed in First Appeal No. 1064 of 2005 with First Appeal No.1555 of 2005 by the High Court of Gujarat at Ahmedabad, wherein the High Court dismissed First Appeal No.1064 of 2005 which was filed by the claimant and allowed First Appeal No.1555 of 2005 which was filed by the Insurance Company. read more +

Madras Bar Association vs. Union of India and another dated 2014-09-25

All the above cases are being disposed of by this common judgment. The issue which arises for consideration before us, in the present bunch of cases, pertains to the constitutional validity of the National Tax Tribunal Act, 2005 (hereinafter referred to as, the NTT Act). Simultaneously, the constitutional validity of the Constitution (Forty-second Amendment) Act, 1976 has been assailed, by asserting, that the same violates the basic structure of the Constitution of India (hereinafter referred to as, the Constitution), by impinging on the power of "judicial review" vested in the High Court. In the event of this Court not acceding to the aforementioned prayers, a challenge in the alternative, has been raised to various provisions of the NTT Act, which has led to the constitution of the National Tax Tribunal (hereinafter referred to as, the NTT). The NTT, according to the learned counsel for the petitioners, is styled as a quasi- judicial appellate tribunal. It has been vested with the power of adjudicating appeals arising from orders passed by Appellate Tribunals (constituted under the Income Tax Act, the Customs Act, 1962, and the Central Excise Act, 1944). Hitherto before, the instant jurisdiction was vested with High Courts. The pointed issue canvassed in this behalf is, that High Courts which discharge judicial functions, cannot be substituted by an extra-judicial body. Additionally, it is maintained that the NTT in the manner of its constitution undermines a process of independence and fairness, which are sine qua non of an adjudicatory authority.read more +

V.P. SHRIVASTAVA vs. INDIAN EXPLOSIVES LTD. & ORS dated 2010-09-24

This case is related to Section 482 of the Code of Criminal Procedure, 1973 read more +

Jai Singh and Ors. vs. Municipal Corporation of Delhi dated 2010-09-23

This case is Writ petition under Article 227 of the Constitution of India, read more +

Arising out of SLP(C) No. 21740 of 2007 vs. Chandigarh Housing Board dated 2010-09-22

This case is related to consumer protection act read more +

Ritesh Tewari & Anr. vs. State of U.P. & Ors dated 2010-09-21

This case is related to The Urban Land (Ceiling and Regulation) Act, 1976 read more +

M/s India Meters Limited vs. State of Tamil Nadu dated 2010-09-07

The appellant is a company incorporated under the provisions of the Companies Act. The appellant manufactures electric meters and supplies it to the Electricity Boards.

The appellant is also a dealer registered under the provisions of the Tamil Nadu General Sales Tax Act, 1959 as well as the Central Sales Tax Act, 1956 read more +

Yadava Kumar vs. The Divisional Manager, National Insurance Co. Ltd. & Another dated 2010-08-31

5. The material facts of the case are that, the appellant, a painter by profession, was 30 years old at the time of sustaining the injury in a road accident which took place on 24th March 2003 while the appellant was standing on the side of Nagavara Ring Road to cross it from south to north. The offending Tempo bearing No.KA-04-C/6030 came at a great speed from west to east and hit the appellant as a result of which he fell down and sustained several injuries. The appellant was rushed to Al- Habeeb Hospital where he was treated. The claim petition was filed on 3rd February, 2006. read more +

Leela Gupta & Ors vs. State of Uttar Pradesh & Ors dated 2010-08-31

. In the result, the appeal is allowed in part and the compensation awarded by the High Court in the sum of Rs. 15 4,70,000/- is enhanced to Rs. 6,04,800/-. The appellants shall also be entitled to 9% simple interest per annum on the enhanced amount from the date of filing of claim petition until the date of its actual payment. The parties shall bear their own costs. read more +

Nahalchand Laloochand Pvt. Ltd vs. Panchali Co-operative Housing Society Ltd dated 2010-08-31

In view of the above, it is not at all necessary to deal with the factual submissions advanced by Mr. Tanmaya Mehta. Having regard to the answer to question no. (iv), the finding of the High Court that undertakings are neither binding on the flat purchasers nor the society also warrants no interference. 42. These appeals, accordingly, fail and are dismissed with no order as to costs. read more +

Oriental Insurance Co. Ltd vs. Dharam Chand & Ors. dated 2010-08-27

. In this case, the premium cheque for the insurance policy was received by the appellant, the insurance company, on May 7, 1998 at 4.00 pm and a cover note was issued at the same time. In columns 3 & 4 of the cover note, however, it was stated that the insurance would commence from May 8, 1998 and expire on May 7, 1999. read more +

Eshwarappa @ Maheshwarappa and Anr vs. C. S. Gurushanthappa and Anr dated 2010-08-18

. A certain Basavaraj was the driver of a privately owned car. In the night of October 28, 1992 he took out the car for a joyride and along with five persons, who were his neighbours, proceeded for the nearby Anjaneya temple for offering pooja. On way to the temple the car met with a fatal accident in which Basavaraj and four other occupants of the car died; the fifth passenger sustained injuries but escaped death. One of the persons dying in that motor accident was Nagaraj, whose parents are the appellants before this Court. read more +

Indra Devi & Ors vs. Bagada Ram & Anr dated 2010-08-18

. This is the claimant's appeal from a motor accident claim case read more +

Meghmala & Ors vs. G. Narasimha Reddy & Ors dated 2010-08-16

The High Court failed to take all aforesaid factors into consideration before passing impugned judgment and order. 40. In view of the above, we are of the considered opinion that judgment and order of the High Court impugned herein, is not sustainable in the eyes of law. The appeals are allowed. The judgment of the High Court dated 26.4.2007 is set aside and the judgments and orders dated 6.7.2006 and 11.7.2006

passed by the Special Court are restored. No costs. read more +

Tata Memorial Hospital Workers Union vs. Tata Memorial Centre and Another dated 2010-08-09

This appeal is directed against the judgment and order of a Division Bench of the Bombay High Court dated 10.2.2009 in Appeal No.133 of 2002 arising out of Writ Petition No. 2148 of 2001, whereby the Division Bench has held that for the first respondent establishment, the Central Government was the 'appropriate government' for the purposes of application of Section 2(3) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971 (hereinafter referred to as the M.R.T.U. and P.U.L.P. Act) read with Section 2(a) of the Industrial Disputes Act 1947 (hereinafter referred to as the I.D. Act). read more +

Bimlesh and Ors. vs. New India Assurance Co. Ltd. dated 2010-08-03

The claimants are in appeal by special leave aggrieved by the judgment and order dated October 1, 2002 of the High Court for the States of Punjab and Haryana at Chandigarh. The High Court by the said order, set aside the order dated August 7, 2001 of the Motor Accident Claims Tribunal, Gurgaon, (for short, 'the Claims Tribunal') and held 1 that claim petition filed by the claimants under Section 163– A of the Motor Vehicles Act, 1988 (for short, 'Act, 1988') was not maintainable against the respondent-New India Assurance Company Ltd. (for short, 'the Insurance Company'). read more +

Assst. C.I.T., Vadodara vs. Elecon Engineering Co. Ltd. dated 2010-02-26

Scope and applicability of Section 43A of the Income Tax Act, 1961---exchange differences are required to be capitalized if the liabilities are incurred for acquiring the fixed asset, like plant and machinery. It is the purpose for which the loan is raised that is of prime significance. Whether the purpose of the loan is to finance the fixed asset or working capital is the question which one needs to answer and in order to ascertain that purpose, the facts and circumstances of the case, including the relevant loan agreement and the correspondence between the parties concerned are required to be looked into---Section 43A, before its substitution by a new Section 43A vide Finance Act, 2002, was inserted by Finance Act, 1967 with effect from 1.4.1967, after the devaluation of the rupee on 6 June, 1966. It applied where as a result of change in the rate of exchange there was an increase or reduction in the liability of the assessee in terms of the Indian rupee to pay the price of any asset payable in foreign exchange or to repay moneys borrowed in foreign currency specifically for the purpose of acquiring an asset---The Section has no application unless an asset was acquired and the liability existed, before the change in the rate of exchange. When the assessee buys an asset at a price, its liability to pay the same arises simultaneously. This liability can increase on account of fluctuation in the rate of exchange. An assessee who becomes the owner of an asset (machinery) and starts using the same, it becomes entitled to depreciation allowance. To work out the amount of depreciation, one has to look to the cost of the asset in respect of which depreciation is claimed. Section 43A was introduced to mitigate hardships which were likely to be caused as a result of fluctuation in the rate of exchange---Section 43A lays down, firstly, that the increase or decrease in liability should be taken into account to 1 modify the figure of actual cost and, secondly, such adjustment should be made in the year in which the increase or decrease in liability arises on account of fluctuation in the rate of exchange. It is for this reason that though Section 43A begins with a non-obstante clause, it makes Section 43(1) its integral part. This is because Section 43A requires the cost to be recomputed in terms of Section 43A for the purposes of depreciation (Sections 32 and 43(1)). A perusal of Section 43A makes it clear that insofar as the depreciation is concerned, it has to be allowed on the actual cost of the asset, less depreciation that was actually allowed in respect of earlier years. However, where the cost of the asset subsequently increased on account of devaluation, the written down value of the asset has to be taken on the basis of the increased cost minus the depreciation earlier

allowed on the basis of the old cost. One more aspect needs to be highlighted. Under Section 43A, as it stood at the relevant time, it was inter alia provided that where an assessee had acquired an asset from a country outside India for the purposes of his business, and in consequence of a change in the rate of exchange at any time after such acquisition, there is an increase or reduction in the liability of the assessee as expressed in Indian currency for making payment towards the whole or part of the cost of the asset or for repayment of the whole or part of the moneys borrowed by him for the purpose of acquiring the asset, the amount by which the liability 1 stood increased or reduced during the previous year shall be added to or deducted from the actual cost of the asset as defined in Section 43(1). This analysis indicates that during the relevant assessment year adjustment to the actual cost was required to be done each year on the closing date, i.e., year- end. Subsequently, Section 43A underwent a drastic change by virtue of a new Section 43A inserted vide Finance Act, 2002. Under the new Section 43A such adjustment to the cost had to be done only in the year in which actual payment is made. In this case, we are not concerned with the position emerging after Finance Act, 2002---Under Explanation 3 to Section 43A, if the assessee had covered his liability in foreign exchange by entering into forward contract with an authorized dealer for the purchase of foreign exchange, the gain or loss arising from such forward contract was required to be taken into account--- We find no merit in the alternative submissions advanced on behalf of the assessee. The Tribunal while holding that roll over charges are required to be adjusted in the carrying amount of fixed asset, has allowed the assessee the benefit of depreciation on the adjusted cost of fixed asset---Appeals allowed. read more +

Shipra Sengupta vs. Mridul Sengupta & Others dated 2009-08-20

Application under section 372 of the Indian Succession Act, 1956, in which it was claimed that she was entitled to her share of insurance, gratuity, public provident fund etc. Etc---claim was based on the principle that any nomination made by Shyamal Sengupta prior to his marriage would automatically stand cancelled after his marriage--- In view of the clear legal position, it is made abundantly clear that the amount in any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with law of succession governing them---nomination does not confer any beneficial interest on the nominee---Appeal allowed. read more +

Industrial Investment Bank of India Ltd. vs. Biswanath Jhunjhunwala dated 2009-08-18

Liability of guarantor to an agreement---The legal position as crystallized by a series of cases of this court is clear that the liability of the guarantor and principle debtors are co-extensive and not in alternative---Appeal allowed. read more +

R.K. Anand vs. Registrar, Delhi High Court dated 2009-07-29

BMW case---The other important issue thrown up by this case and that causes us both grave concern and dismay is the decline of ethical and professional standards among lawyers. The conduct of the two appellants (one convicted of committing criminal contempt of court and the other found guilty of misconduct as Special Prosecutor), both of them lawyers of long standing, and designated Senior Advocates, should not be seen in isolation---ordered that---The appeal filed by IU Khan is allowed and his conviction for criminal contempt is set aside. The period of four month's prohibition from appearing in Delhi High Court and the courts sub-ordinate to it is already over. The punishment of fine given to him by the High Court is set aside. The Full Court of the Delhi High Court may still consider whether or not to continue the honour of Senior Advocate conferred on him in light of the findings recorded in this judgment---The appeal of RK Anand is dismissed subject to the notice of enhancement of punishment issued to him as indicated in paragraph 165 of the judgment. read more +

National Insurance Company Ltd. vs. Gurumallamma & Anr. dated 2009-07-23

Application of the Second Schedule appended to the Motor Vehicles Act, 1988---appeal against order passed by High Court of Karnataka at Bangalore dismissing the

appeal preferred by the appellant insurance company from a judgment and award dated passed by the 16th Additional Judge, MACT, Bangalore, awarding compensation for a sum of Rs.4,78,300/- by way of compensation---Section 163A was inserted by Act No.54 of 1994 as a special measure to ameliorate the difficulties of the family members of a deceased who died in use of a motor vehicle. It contains a non-obstante clause. It makes the owner of a motor vehicle or the authorized insurer liable to pay in the case of death, the amount of compensation as indicated in the Second Schedule to his legal heirs. The Second Schedule provides for the amount of compensation for third party Fatal Accident/Injury Cases Claims. It provides for the age of the victim and also provides for the multiplier for arriving at the amount of compensation which became payable to the heirs and legal representatives of the deceased depending upon his annual income. The Second Schedule furthermore provides that in a case of fatal accident, the amount of claim shall be reduced by 1/3rd in consideration of the expenses which the victim would have incurred upon himself, had he been alive. It provides for the amount of minimum compensation of Rs.50,000/- . It furthermore provides for payment of general damages as specified in Note 3 thereof---The deceased was running a hotel. He was, therefore, having some income---It is not necessary for us to take into consideration, the decisions cited at the bar suggesting that in a case of death of an unmarried person and wherein the claimants are the parents of the deceased, the age of the deceased shall be irrelevant factor for applying the multiplier specified in the Second Schedule. read more +

Reshma Kumari and others vs. Madan Mohan and another dated 2009-07-23

Application of the principles for grant of compensation under the Motor Vehicles Act, 1939 and the Motor Vehicles Act, 1988---Madan Mohan Singh Saini met with an accident on 3rd September, 1987, when the scooter on which he was riding, collided with a Maruti van, driven by respondent No.1. Respondent No.2 is the insurer. He was admitted to Ram Manohar Lohia Hospital where he succumbed to his injuries on 8th September, 2006. Appellants herein who are, wife, children and mother of the deceased filed a claim petition before the Motor Accident Claims Tribunal, New Delhi, under Sections 110-A and 92-A of the Act. By an award dated 13th July, 1992 the Tribunal awarded a sum of Rs.3,36,000/- by way of compensation with 12% interest from the date of filing of the claim petition---So far as the question of loss of future earnings on the basis of average life expectancy is concerned, this Court, having regard to the phraseology used in Section 110-B of the Motor Vehicles Act, 1939 envisaging payment of just compensation to the victims and/or the successors of the deceased, stated that any application of a rigid formula may not be applied---Section 163-A of the 1988 Act does not speak of application of any multiplier. Even the Second Schedule, so far as the same applies to fatal accident, does not say so. The multiplier, in terms of the Second Schedule, is required to be applied in a case of disability in non fatal accident. Consideration for payment of compensation in the case of death in a `no fault liability' case vis-`-vis the amount of compensation payable in a case of permanent total disability and permanent partial disability in terms of the Second Schedule is to be applied by different norms. Whereas in the case of fatal accident the amount specified in the Second Schedule depending upon the age and income of the deceased is required to be paid wherefor the multiplier is not to be applied at all but in a case involving permanent total disability or permanent partial disability the amount of compensation payable is required to be arrived at by multiplying the annual loss of income by the multiplier applicable to the age of the injured as on the date of determining the compensation and in the case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) of the Second Schedule---The Parliament in its wisdom thought to provide for a higher amount of compensation in case of permanent total disablement and proportionate amount of compensation in case of permanent partial disablement depending upon the percentage of disability---Thus, prima facie, it appears that the multiplier mentioned in the Second Schedule, although in a given case, may be taken to be a guide but the same is not decisive. To our mind, although a probable amount of compensation as specified in the Second Schedule in the event the age of victim is 17 or 20 years and

his annual income is Rs.40,000/-, his heirs/ legal representatives is to receive a sum of Rs.7,60,000/-, however, if an application for grant of compensation is filed in terms of Section 166 of the 1988 Act that much amount may not be paid, although in the former case the amount of compensation is to be determined on the basis of `no fault liability' and in the later on `fault liability' In the aforementioned situation the Courts, we opine, are required to lay down certain principles. read more +

Malayora Karshaka Federation vs. Niyamavedi and others dated 2009-07-21

Effect of a writ of or in the nature of mandamus issued by a High Court directing implementation of an enactment vis-`-vis a subsequent legislation altering or modifying the right of the beneficiaries under the former Act, inter alia---Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975--Repeal of a statute, it is well known, is not a matter of mere form but one of substance. It, however, depends upon the intention of the legislature. If by reason of a subsequent statute, the legislature intended to abrogate or wipe off the former enactment, wholly or in part, then it would be a case of total or pro tanto repeal. If the intention was merely to modify the former enactment by engrafting an exception or granting an exemption, or by adding conditions, or by restricting, intercepting or suspending its operation, such modification would not amount to a repeal. In Southern Petrochemical Industries (supra), the subsequent Act did not contain the words "unless a different intention appears". It was held that the later Act was not different from the earlier Act. This Court is required to assume that the Legislature did so deliberately. In this case, however, the repealing clause is clear and unambiguous---Once they have made an enactment, the legislative intent is clear and unambiguous, viz., such exploitation was possible also in so far as non- agricultural lands are concerned. Such a right conferred on the owners of the non-agricultural land, therefore, could not have taken away without payment of compensation---to that extent the 1975 Act would continue to be applied. The State has no legislative competence to repeal that portion of the 1975 Act---Appeal allowed in part. read more +

M/s Hotel New Nalanda vs. Regional Director, E.S.I. Corporation dated 2009-07-15

In an inspection held the officers of the Employees' State Insurance Corporation found that there were 15 persons working as employees in the appellant-establishment, called M/s. Hotel New Nalanda. They also found a refrigerator and an electric grinder in use there in the `manufacturing process'. On the basis of the inspection the officers of the Corporation took the view that the appellant-establishment was a factory within the meaning of section 2(12) of the Employees' State Insurance Act, 1948 and it came within the purview of the Act---The appellant did not accept the findings recorded in course of the inspection and filed an application under section 75 read with section 77 of the Act (E.I.C. 55/91) before the Employees' Insurance Court, Kozhikode, seeking a declaration that the establishment in question was not covered by the Act and that the applicant/appellant was not bound to observe the provisions of the Act. According to the applicant/appellant, the establishment called M/s. Hotel New Nalanda was a tourist home where rooms were let out to people on monthly or daily rent basis. The establishment never employed more than 8 persons---For holding an establishment to be a `factory' within the meaning of section 2(12) of the Act it must first be established that some work or process is carried on in any part of the establishment that amounts to `manufacturing process' as defined under section 2(k) of the Factories Act, 1948. In case the number of persons employed in the establishment is less than twenty but more than ten then it must further be established that the manufacturing process in the establishment is being carried on with the aid of power. Further, the use of power in the manufacturing process should be direct and proximate. The expression `manufacturing process being carried on with the aid of power' in section 2(12) of the Act does not mean a very indirect application of power such as use of electric bulbs for providing light in the work-area. Unless the links are established, that is to say, it is shown that some process or work is carried on in the establishment which qualifies as

`manufacturing process' within the meaning of section 2(k) of the Factories Act and the manufacturing process is carried on with the aid of power, the mere presence of a refrigerator and a grinder there, even though connected to the main power line may not necessary lead to the inference that the establishment is a factory as defined under section 2(12) of the Act---Appeal allowed. read more +

NEW INDIA ASSURANCE CO. LTD. vs. SURESH CHANDRA AGGARWAL dated 2009-07-10

Insurance claim---Appeal against the This order passed by the National Consumer Disputes Redressal Commission at New Delhi---The claim was contested by the appellant on the ground that there was a breach of one of the conditions in the insurance policy inasmuch as the accidental vehicle was being driven by a person who, at the time of accident, did not hold an effective driving licence. The District Forum, upon consideration of the rival contentions of the parties, accepted the complaint and directed the appellant to pay Rs.1,00,000/- to the claimant as compensation for damage to the car, besides costs---the stand of the appellant was that the claim preferred by the claimant could not be processed and had to be repudiated because special condition No. 5 of the insurance policy had been violated inasmuch as the driver of the insured vehicle did not have an effective driving licence at the time of the accident---Section 19 of the Act does not come to the aid of the claimant. Having found that between the period 26th October, 1991 and 22nd March, 1992, the driver of the insured vehicle had no valid licence, the latter part of the afore-extracted special condition did not come into play---The vehicle met with an accident and a claim was lodged by the complainant before the Consumer Commission. It was contended by the Insurance Company that the truck was a "goods carriage" or a "transport vehicle" and since the driver of the truck was holding a driving licence to drive only "Light Motor Vehicle", he was not authorized to drive transport vehicle without an endorsement on his driving licence authorizing him to drive such transport vehicle. The claim of the insured having been rejected by the Insurance Company which was upheld by the National Commission, the complainant approached this Court. Allowing the appeal, it was held that the driver of the vehicle was holding a valid driving licence for driving a Light Motor Vehicle and there was no material on record to show that he was disqualified from holding an effective and valid driving licence at the time of accident---Appeal allowed. read more +

SATWANT KAUR SANDHU vs. NEW INDIA ASSURANCE COMPANY LTD. dated 2009-07-10

Medical Insurance---Appeal against the judgment passed by the National Consumer Disputes Redressal Commission, whereby the Commission has affirmed the order passed by the State Consumer Disputes Redressal Commission, New Delhi rejecting appellant - complainant's claim against the respondent - Insurance Company for compensation on account of deficiency in service for not processing her claim under a mediclaim policy---Before the District Forum, the stand of the respondent was that the claim preferred by the appellant had been repudiated on the basis of the report supplied by Vijaya Health Centre, Chennai where appellant's husband had died. In the written statement filed by the respondent before the District Forum, it was stated that while filling up the proposal form, against queries No.10 and 11, the insured had stated that he was in sound health and had not undergone any treatment or operation in the last 12 months, whereas the medical report revealed that he was a known case of "Chronic Renal Failure/Diabetic Nephropathy" being diabetic for the last 16 years. It was also added that the opinion of two independent doctors was obtained to affirm that the claim could not be honoured as material facts relating to the health of the insured were concealed at the time of taking out the policy---The term "material fact" is not defined in the Act and, therefore, it has been understood and explained by the Courts in general terms to mean as any fact which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would like to accept the risk. Any fact which goes to the root of the Contract of Insurance and has a bearing on the risk involved would be "material"---Answers given by the proposer to the two questions were "Sound Health" and "Nil" respectively. It would be beyond

anybody's comprehension that the insured was not aware of the state of his health and the fact that he was suffering from Diabetes as also chronic Renal failure, more so when he was stated to be on regular haemodialysis. There can hardly be any scope for doubt that the information required in the afore- extracted questions was on material facts and answers given to those questions were definitely factors which would have influenced and guided the respondent - Insurance Company to enter into the Contract of Mediclaim Insurance with the insured---Appeal dismissed. read more +

KANDIMALLA RAGHAVAIAH & CO. vs. NATIONAL INSURANCE CO. & ANR. dated 2009-07-10

Appeal under Section 23 of the Consumer Protection Act, 1986 against a common judgment and order passed by the National Consumer Disputes Redressal Commission, whereby the Commission has dismissed appellant's two complaints alleging deficiency in service against two different insurance companies on account of non-settlement of insurance claims made by the appellant, on the ground that both the complaints were barred by limitation under Section 24A of the Act---the stand of the appellant has not found favour with the Commission. The Commission has observed that the cause of action occurred on the intervening night between 22nd/23rd March, 1988 when the fire broke out but the complaint was filed only in the year 1997. The first action by the appellant was in November 1992 i.e., after a gap of 4= years, when the appellant asked for the claim form. The Commission finally held that both the complaints were barred by limitation and therefore, could not be entertained. According to the Commission, cause of action could not be assumed to continue till the date of denial of the claim. The delay in filing the complaint was obvious in both the cases and there was not even a prayer or an application for condonation of delay---cause of action in respect of the special insurance policy arose on 22nd / 23rd March, 1988, when fire in the godown took place damaging the tobacco stocks hypothecated with the Bank in whose account the policy had been taken by the appellant. Thus, the limitation for the purpose of Section 24A of the Act began to run from 23rd March, 1988 and therefore, the complaint before the Commission against the Insurance Company for deficiency in service, whether for non issue of claim forms or for not processing the claim under the policy, ought to have been filed within two years thereof. As noticed above, the complaint was in fact filed on or after 24th October, 1997, which was clearly barred by time. It is pertinent to note that in the complaint before the Commission, though there was an averment that the Bank had not disclosed to the appellant whether any amount had been received by them from the Insurance Company against the claim preferred on 14th July, 1988, but appellant's categorical stand therein was that it was because of the pendency of the criminal litigation that they could not make a claim in respect of the policy for the loss suffered and time and again they had been requesting the Insurance Company to send the claim forms, which request was not acceded to by the Insurance Company, and it shows that the appellant was not depending on the claim stated to have been made by the Bank with the Insurance Company---Appeal dismissed. read more +

M.R. Engineers & Contractors Pvt. Ltd vs. Som Datt Builders Ltd. dated 2009-07-07

The matter relates to interpretation of sub-section (5) of section 7 of Arbitration and Conciliation Act, 1996 and the issue involved is whether an arbitration clause contained in a main contract, would stand incorporated by reference, in a sub-contract, where the sub-contract provided that it "shall be carried out on the terms and conditions as applicable to the main contract."---There is a difference between reference to another document in a contract and incorporation of another document in a contract, by reference. In the first case, the parties intend to adopt only specific portions or part of the referred document for the purposes of the contract. In the second case, the parties intend to incorporate the referred document in entirety, into the contract. Therefore when there is a reference to a document in a contract, the court has to consider whether the reference to the document is with the intention of incorporating the contents of that document in entirety into the contract, or with the intention of adopting or borrowing specific portions of the said document for

application to the contract---the arbitration clause contained in the main contract would not apply to the disputes arising with reference to the sub-contract---there is no arbitration agreement between the parties---Judgment affirmed. read more +

K.K. Ahuja vs. V.K. Vora & Anr. dated 2009-07-06

Who can be said to be persons "in-charge of, and was responsible to the company for the business of the company" referred to in section 141 of the Negotiable Instruments Act, 1881---The criminal liability for the offence by a company under section 138, is fastened vicariously on the persons referred to in sub-section (1) of section 141 by virtue of a legal fiction. Penal statutes are to be construed strictly. Penal statutes providing constructive vicarious liability should be construed much more strictly. When conditions are prescribed for extending such constructive criminal liability to others, courts will insist upon strict literal compliance. There is no question of inferential or implied compliance. Therefore, a specific averment complying with the requirements of section 141 is imperative---A Deputy General Manger is not a person who is responsible to the company for the conduct of the business of the company. He does not fall under any of the categories (a) to (g) listed in section 5 of the Companies Act---the question whether he was in charge of the business of the company or not, is irrelevant. He cannot be made vicariously liable under Section 141(1) of the Act. If he has to be made liable under Section 141(2), the necessary averments relating to consent/connivance/negligence should have been made---Appeals Dismissed. read more +

Sikka Papers Limited vs. National Insurance Company Ltd. & Ors. dated 2009-05-29

Appeal under Section 23 of the Consumer Protection Act, 1996 is at the instance of the complainant as its claim to the tune of of Rs.35,06,000/- against the National Insurance Company Limited has not been accepted in its entirety and the National Commission in its judgment and order dated directed the insurer to pay to the complainant an amount of Rs. 10,47,491 only along with interest at the rate of 12% from March 1, 2000, till the date of payment after adjusting the amount already paid---As per the invoice, the diesel generating set and the alternator was purchased by the complainant in the year 1997 for Rs.45,25,000/-. The complainant, however, got the insurance cover valuing diesel generating set (Rs.26,00,000/-) and alternator 14 (Rs.9,00,000/-), in all for Rs.35,00,000/----Apparently, therefore, there is an element of under-insurance. There is merit in the contention of learned counsel for the insurer that the value of the item is always declared by the insured at the time of issuance of the insurance policy while the element of under-insurance is calculated by the insurer at the time of assessment of loss. Although on behalf of the complainant, it was contended that under-insurance, if any, must be calculated at the time of issuance of policy and could not be deducted at the time of assessment of the loss but we find it difficult to accept the same. The policy provides that if the sum insured is less than the amount required to be insured, the insurer will pay only in such proportion as the sum insured bears to the amount insured---claim of Rs.10,00,000/- made by the complainant for mental harassment is wholly misconceived and untenable. The complainant is a company and, therefore, claim for mental harassment is not legally permissible. It is only the natural person who can claim damages for mental harassment and not the corporate entity---Appeal dismissed. read more +

National Insurance Co. Ltd vs. Hamida Khatoon and Ors. dated 2009-05-06

Appeal against the judgment of the Allahabad High Court dismissing the appeal filed by the present appellant---Factual position which is almost undisputed is essentially as follows: An appeal was filed questioning the correctness of the Award made by the Motor Accident Claims Tribunal, Saharanpur wherein a sum of Rs.1,20,000/- was awarded as compensation. In appeal the stand of the appellant was that the application filed by the claimant- respondent under Section 173 of the Motor Vehicles Act, 1988 was not maintainable in view of Section 53 of the Employees State Insurance Act, 1948---The High Court did not accept the stand primarily on the ground that no such plea was taken specifically in the written statement. It was also held that

as regards applicability of Section 53 of the Act certain factual aspects were to be considered. The appeal was accordingly dismissed---Appeal Allowed---The entitlement shall be worked out by the concerned MACT by taking note of Section 53 of the Act. read more +

Vikram Greentech (I) Ltd. & Anr. vs. New India Assurance Co. Ltd. dated 2009-04-01

Appeal under Section 23 of the Consumer Protection Act, 1996 directed against the judgment and order passed by National Consumer Disputes Redressal Commission, New Delhi whereby the complaint filed by the appellant for direction to the respondent to settle the insurance claim alongwith interest @ 18% per annum and compensation of Rs.25 lakh on account of mental agony, harassment and monetary loss came to be dismissed---Vikram Greentech (I) Ltd. came to be incorporated in 1993 with an object of setting up a floriculture project in the State of Maharashtra. In 1995, the company started negotiations with the respondent for a comprehensive floriculture insurance policy---there was a severe storm/cyclone, which damaged the floriculture extensively and substantial damage was caused to the roofs and walls of the poly-houses---On November 6,1997, the Surveyors submitted their addendum to the earlier report dated October 24,1996 with regard to the first storm and reduced the assessment of loss to Rs.4,77,355/-. The Surveyors submitted another addendum on February 16,1998 to the report dated October 28,1996 with regard to the second storm and reduced the assessment of loss to Rs.95,443/---A careful consideration of the Proposal Form that sets out the particulars of the components which were to be covered and the inventory of the property insured (Sections I and II), mentioned in the policy leaves no manner of doubt that what was insured was existing poly-houses on the date of the issuance of policy. It is clear from the proposal and the policy---Appeal dismissed. read more +

K.A. Nagamani vs. Indian Airlines & Ors. dated 2009-03-27

The appellant Ms. K.A. Nagamani was appointed as a Programmer with the Indian Airlines in the year 1984. The designation of the post of Programmer was changed to that of System Officer in the year 1985. The appellant was promoted to the next higher post of Assistant Manager (Systems) in the Department of Electronic Data Processing sometime in the year 1986 and confirmed in the said post on 15.9.1987. The EDP consisted of four divisions viz. Software, Hardware, Data Communications and Computer Operations---Indian Airlines Officers' Association vide its representations dated 19.9.1990 and 28.9.1990 suggested and requested the Management to merge the hardware and software cadres and to prepare a common seniority list---The main issue that arises for our consideration is whether the Recruitment & Promotion Rules are statutory in nature or mere administrative instructions?---The said Rules are issued in exercise of the powers conferred by Rule 4 read with Rules 8 to 15 of Indian Airlines (Flying Crew) Service Rules, Indian Airlines (Aircraft Engineering Department) Service Rules and Indian Airlines (Employees other than Flying Crew and those in the Aircraft Engineering Department) Service Rules. The Air Corporations Act, 1953 (for short 'the Act') is an Act to provide for the establishment of Air Corporations, to facilitate the acquisition by the Air Corporations of undertakings belonging to certain existing air companies and generally to make further and better provisions for the operation of air transport services. The Central Government by notification established two Corporations to be known as 'Indian Airlines' and 'Air-India International'. Under Section 4 of the Act the general superintendence, direction and management of the affairs and business of each of the Corporations vest in a Board of directors which consists of a Chairman and other Directors appointed by the Central Government. Section 8 provides for appointment of officers and other employees of the Corporations. The appointment of the Managing Director and such other categories of officers as specified after consultation with the Chairman shall be subject to such rules and approval of the Central Government. Section 44 of the Act, which is crucial for our purpose empowers the Central Government to make rules to give effect to the provisions of the Act; in particular, and without prejudice to the generality, such rules may provide for all or any of the matters, namely: the terms and conditions of service of the Managing Director of the two Corporations; and such other categories of officers

as may be specified from time to time under subsection (1) of Section 8. The rules so made are required to be published by notification in the official gazette. Every rule made under Section 44, shall be laid as soon as may be after it is made before each House of Parliament as provided for. Section 45, confers power on Corporations to make regulations. It provides that each of the Corporations may subject to the rules made by the Government, by notification in the Official Gazette, make regulations not inconsistent with the Act or the rules made thereunder for the administration of the affairs of the Corporation and for carrying out its functions; the regulations inter alia may provide for the terms and conditions of service of officers and other employees of the Corporation other than the Managing Director and officers of any other categories referred to in Section 44---Appeal dismissed. read more +

Oriental Insurance Co. Ltd. vs. Kalawati Devi & Ors. dated 2009-03-24

Appeal against order of High Court dismissed the appeal primarily on the ground that in the proceedings under Section 166 of the Motor Vehicles Act, 1988 when the owner of the vehicle did not take interest after filing written statement, the insurer could have obtained leave to contest as required under Section 170 of the Act and establish that the Sheikh Akhtar, who was the driver responsible for the accident in question, had no valid licence. But no such leave to contest was obtained---Undisputedly the leave to contest the claim was granted to the insurer on 25.4.2001. Those aspects appear to have been overlooked by the High Court when the original order dated 14.11.2003 was passed---Appeal allowed. read more +

M/s. United Insurance Co. Ltd. vs. Sukh Deo Yadav dated 2009-03-24

Appeal against the order passed by the National Consumer Disputes Redresssal Commission, dismissing the revision petition filed by the appellant---The vehicle in question met with an accident and 14 persons were traveling in the Jeep, and four persons including the driver died on the spot and 10 persons received injuries. The jeep was permitted to carry 10 passengers, but it was carrying 14 passengers---The claim was repudiated by the insurance company---case remanded to district forum for retrial. read more +

New India Assurance Co. Ltd. vs. Satpal Singh Muchal dated 2009-03-16

Appeal against the order passed by the National Consumer Disputes Redressal Commission dismissing the revision petition filed by the appellant. Order passed by the State Commission, Madhya Pradesh was under challenge before the National Commission. The State Consumer Disputes Redressal Commission had dismissed the appeal filed by the insurer against the order passed by the District Consumer Redressal Forum, Indore---Respondent took a Medi-claim policy in the month of January, 1999. The policy was renewed lastly on 22.1.2002 for a period of one year i.e. till 21.1.2003. Respondent was suffering from kidney trouble and intimated the same to the Divisional office of the appellant No.1-company. On receiving the intimation that the respondent was suffering from kidney trouble, insurer terminated the policy by letter dated 18.6.2003 with effect from 17.2.2002 by placing reliance on clause 5.9. of the policy---the District Forum, the State Commission and the National Commission have not considered the effect of clause 5.9 and the admissions made by the respondent in his letter as quoted above---case remanded to District Forum to consider the matter afresh, taking into account the consequences flowing from the factum of concealment and the applicability of clause 5.9 to the facts of the case---Appeal allowed. read more +

Bhuwan Singh vs. M/s Oriental Insurance Company Ltd. & Anr dated 2009-03-05

MACT claim---The insurance company raised a contention that as the driver of the said tractor was not holding a valid and effective licence, it had no liability to reimburse the owner or the driver for the damages payable by the owner of the vehicle to the

claimants-respondents---award of Rs. 1,32,000/- was passed in favour of the claimants. An appeal preferred thereagainst by the appellant has been dismissed by the High Court by reason of the impugned Judgment---Act provides for grant of a learner's licence. It indisputably is a licence within the meaning of provisions thereof. A person holding a learner's licence is also entitled to drive a vehicle but it is granted for a specific period. The terms & Conditions for grant of a learner's licence are different from those of a regular licence. Holding of a learner's licence is imperative for filing an application for grant of licence as provided for in Rule 4 of the Rules. Converse however is not true. Only because the appellant held a learner's licence which had expired and was not valid on the date of accident, he cannot be said to be duly licensed. It is true that despite expiry of a regular licence, it may be renewed, but no provision has been brought to our notice providing for automatic renewal of learner's licence---The burden of proof ordinarily would be on insurance company to establish that there has been a breach of conditions of the contract of insurance---As on 5-01-2001 the appellant was not duly licensed as his learner's licence expired on 22-12-2000. He filed an application for grant of licence much later. Insurance company, therefore, was not bound to reimburse him i

Consumer Judgments (20 Sep to 27 Sep, 2014)

Sree Chitra Tirunal Institute for Medical vs. Smt. Premeela, dated 2014-09-25

Late Smt. Chandramathi (hereinafter referred to as the 'patient') was taken to Tely Medical Centre Ltd., Thalassery, where on investigation, she was diagnosed to be suffering from Rheumatic Heart Disease and Mitral Stenosis. Since her treatment in the hospital did not lead to improvement in her condition, she was taken to OP-5 Sree Chitra Tirunal Institute for Medical Sciences and Technology, for her treatment on 30.5.1997. She was advised to undergo a procedure called Balloon Mitral Valvulu Plasty (BMV) to get rid of her ailment. After advising medicines to her, she was asked to report at the hospital on 09.7.1997. Later, the procedure was postponed to 16.7.1997 at 8.00 a.m. and a sum of Rs.70,000/- as advance was taken for her treatment. Though, the procedure was scheduled to be conducted on 28.7.1997 by a team of doctors, headed by Dr. Francis, the patient was informed that the procedure would be performed during a workshop on BMV, which was being held in the hospital on that day. read more +

Morteza Yousefi vs. ICICI Lombard General Insurance Co. Ltd. dated 2014-09-25

The brief factual matrix of the case comprised the claim for flood/rain damage caused to the house in July, 2010. The relevant policy under which the house was insured had commenced on 13.8.2009. The assessor appointed by the Complainant estimated the loss at Rs.1 lakh. On the other hand, the surveyor appointed by the Insurance Co. assessed it at Rs.13,290/-. The Insurance Co. sent a cheque for this amount. The complainant claimed to have accepted it 'under protest'. read more +

Chairman, Sahara India vs. Chetan Prakash dated 2014-09-25

Brief facts of the case are that complainant/respondent is 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 bond, if applicant dies between the age of 16-60 years or after 12 months of purchase of bonds, OP shall give equal amount of bond per month for the period of 10 years. Amar Bai Meena died on 13.11.2003. Complainant submitted claim to OP which was repudiated by OP. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP resisted complaint and submitted that as bond holder died after attaining age of 60 years, no amount was payable and prayed for dismissal of complaint. Learned District Forum after hearing both the parties dismissed complaint. Complainant filed appeal and learned State Commission vide impugned order allowed complaint and directed OP to pay Rs.3,000/- per month from 13.11.2003 to next 10 years with Rs.1,000/- as cost against which, this revision petition has been filed. read more +

Jodhpur Vidyut Vitran Nigam Ltd. vs. Lal Singh dated 2014-09-25

Brief facts of the case are that complainant/respondent had electricity connection from OP/petitioner from 16.4.2004. Complainant complained about fast running of meter and OP changed the meter and issued bill for December, 2004 for Rs.4027/- showing previous outstanding, which was wrong. Complainant did not deposit amount and OP disconnected supply on 24.3.2005. Complainant on 15.9.2008 applied for new electricity connection and he was issued bill for previous outstanding of Rs.7387.79 inclusive of Rs.1915.35 as interest which demand was totally illegal. OP refused to release connection without depositing demanded amount. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP resisted complaint and submitted that for grant of new connection demand towards previous outstanding was to be deposited and OP was well within its rights to call for outstanding amount and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint and quashed demand of Rs.7387.79. Appeal filed by OP was dismissed by learned State Commission vide impugned order against which, this

revision petition has been filed.read more +

Manager, Hinduja Leyland Finance Ltd. vs. Motilal Swain dated 2014-09-24

Brief facts of the case are that Complainant-Respondent filed complaint before District Forum and Learned District Forum vide interim order dated 7.8.2012 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 Learned 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, Learned 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 Learned State Commission vide order dated 30.10.2012. read more +

Ferrous Infrastructure Pvt. Ltd. vs. Raj Bala dated 2014-09-24

Brief facts of the case are that complainant/Respondent booked luxury flat No.903 with OP/petitioner and made time to time payment as mentioned in the complaint. 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 for 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. OP resisted complaint and submitted that as OP was not in a position to give possession of flat No. 903, they offered similar flat at same rate at better location and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint and directed OP to allot flat No. L-1301 after accepting balance amount without interest. Appeal filed by OP was dismissed by learned State Commission vide impugned order against which, this revision petition has been filed. read more +

Brig (Retd.) J.N. Deviah vs. M/s. Shantiniketan Housing Foundation dated 2014-09-23

This revision petition has been filed by the petitioners against the order dated 26.10.2009 passed by the Karnataka State Consumer Disputes Redressal Commission, Bangalore (in short, 'the State Commission') in Appeal No. 1476/2009 – M/s. Shanthiniketan Housing Foundation Vs. Brig. (Retd.) J.N. Deviah & Anr. by which, while allowing appeal, order of District Forum in Execution Petition was set aside. read more +

DR. PANDU S. vs. M. SUBBA RAO(Deceased) dated 2014-09-23

Complainant – M. Subba Rao filed complaint before District Forum alleging medical negligence on the part of the opposite party/petitioner while conducting operation of his left eye. Opposite party resisted complaint. Learned District Forum vide order dated 09-08-2005 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 learned State Commission vide impugned order, against which this revision petition has been filed. read more +

United Bank of India vs. M/s. Janata Paradise Hotel & Restaurant dated 2014-09-22

Brief facts of the case are that complainant/Respondent is a registered partnership firm took term loan from OP/petitioner in 1986, which was cleared through a

compromise in 1995. It was further submitted 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 as OP had withdrawn from the scheme. In this respect OP also confirmed by letter dated 23.9.1993 addressed to their higher authorities. Inspite of repeated letters written to the OP for refund of aforesaid amount, 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 matter has been referred to higher authorities, but so far amount has not been refunded. Alleging deficiency on the part of OP complainant filed complaint before District forum. OP resisted complaint and submitted that claim is time barred and complainant does not fall within the purview of consumer. It was further submitted that OP rightly debited aforesaid amount and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint and directed OP to refund aforesaid amount with compensation of Rs.10,000/-. Appeal filed by OP was dismissed by learned State Commission vide impugned order against which, this revision petition has been filed. read more +

Jodhpur Vidhyut Vitran Nigam Ltd. vs. Mohit Computer & Electronics dated 2014-09-22

Brief facts of the case are that complainant/respondent filed complaint before District Forum and submitted that at the instance of Lineman one Vigilance Check Report was prepared against the complainant and leveled allegations that electricity supply was found continued in his shop and raised demand, complainant prayed for quashing demand and releasing connection. OP resisted complaint and submitted that this was a case of electricity theft and District Forum had no jurisdiction to entertain the complaint and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint and directed to give connection against the amount already deposited and further observed that OP is given right to initiate proceedings under Section 126 (3) for recovery. OP filed appeal before State Commission which was dismissed. On revision filed by OP, matter was remanded back to learned State Commission and learned State Commission vide impugned order again dismissed appeal against which, this revision petition has been filed along with application for condonation of delay of 23 days. read more +

Chairman Shivdan Singh vs. Vivek Kumar dated 2014-09-22

Complainant- Respondent filed complaint before District Forum and Learned District Forum 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 Learned State Commission by impugned order against which this Revision Petition has been filed. read more +

Sardar Harinderpal Singh vs. Sujata Meshram dated 2014-09-22

Brief facts of the case are that complainants/respondents entered into tripartite agreement with OP No. 2 & 3/petitioners for construction of duplex house for Rs.5,60,000/-. It was further submitted that complainant deposited Rs.4,67,000/- with OPs. OP also executed sale deed in favour of complainant on 6.11.2003 of the land on which house was to be constructed. It was further submitted that in sale deed Rs.2,47,000/- has been shown as sale consideration out of which, cheque of Rs.2,00,000/- was given and OP told that this cheque will be returned back on payment of Rs.5,60,000/- as cost of construction. It was further submitted that inspite of repeated requests, cheque was not returned and construction has also not been completed. It was further submitted that complainant took loan of Rs.4,00,000/- for payment. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OPs resisted complaint and submitted that complainant firstly purchased plot and then entered into agreement for construction of house for a sum of Rs.5,60,000/-. It was denied that cheque of Rs.2,00,000/- was to be returned back. It was further submitted that if complainant is ready to pay Rs.2,47,000/- plus Rs.5,60,000/-, OP is ready to complete construction work and deliver possession and

prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint and 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 learned State Commission vide impugned order deleted cost of Rs.30,000/- against which, this revision petition has been filed. read more +

HDFC ERGO General Insurance Co v Bhagchand Saini

The National Consumer Disputes Redressal Commission has ruled that any delay in the notification of theft to the Police or the insurer in motor vehicle policies is fatal to the claim in its judgment of 4 December 2014.

Facts:

The insured informed the insurer of theft of his vehicle after a delay of 3 months. The information to police was after a delay of 2 days. The insurer repudiated the claim on the ground that the enormous delay in notification was in violation of policy conditions.

The insured filed a complaint before the District Forum which allowed his claim on a non-standard basis by applying the principle laid down by the Supreme Court in *Amalendu Sahoo v OIC* AIR 2010 SC 2090, where the Supreme Court had directed payment of 75% of the claim in case of an accident of a vehicle which was registered for private use but was being used for commercial purposes. The State Commission of Rajasthan upheld the order of the District Forum and the Insurer preferred a Revision before the National Commission.

National Commission's Decision:

1. Any delay in informing the police of the theft of a vehicle was ruled to be fatal to the claim and information must be given immediately, *"..the word immediately has to be construed, within a reasonable time having due regard to the nature and circumstances of the case."*

2. The National Commission relied upon the Supreme Court judgment in the matter of *OIC v Parvesh ChanderChadha* (Civil Appeal No 6739 of 2010) to state:

"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."

3. The National Commission noted that a minor delay was also held to be justification for denial of the claim by a previous judgment of the National Commission itself:

"In the above case, a delay of 2 days in lodging the FIR and delay of 9 days in reporting the matter to the Insurance Company was found fatal."

4. The National Commission criticised the lower fora's reliance on *Amalendu Sahoo* and held:

"It is very clear that the facts of that case were entirely different because the violation relates to the nature of use of the vehicle only."

Supreme Court Decisions on Consumer Cases

New India Assurance Company Limited v Abhilash Jewellery [III (2009) CPJ 2 (SC)]

Date of Decision: 22.01.2009

The complainant/respondent, who had taken a jeweller's block policy, lodged a claim with the opposite party insurer for loss of gold ornaments. The insurer repudiated the claim on the ground that the loss occurred when the gold was in the custody of an apprentice, who was not an employee (because the policy stipulated that for indemnification of the loss, the property insured had to be "in the custody of the insured, his partner or his employee"). The National Commission allowed the complaint holding that an apprentice was an 'employee' since section 2(6) of the Kerala Shops and Commercial Establishments Act (as well as some other statutes) defined an 'employee' to include an 'apprentice'. The Supreme Court, however, held that the word 'employee' in the contract of insurance mentioned had to be given the meaning in common parlance. The definition in the local Act, including an 'apprentice' in the category of 'employee', was only a 'legal fiction', which is a concept in law and could not be applied to an insurance contract. The Court, therefore, allowed the appeal.

Karnataka Power Transmission Corporation v Ashok Iron Works Private Limited [III (2009) CPJ 5 SC]

Date of Decision: 09.02.2009

The appellant corporation contended that the complaint filed by the respondent was not maintainable as (i) a company is not a 'person' under section 2(1)(m) of the Consumer Protection Act, 1986 (CPA); (ii) the complainant is not a 'consumer' within section 2(1)(d) of the said Act since it purchased electricity for commercial production; and (iii) disputes relating to sale and supply of electricity were not covered under 'service' under section 2(1)(o) of the CPA. The Apex Court rejected the appellant's contention that a company was excluded from the definition of 'person'. In this, the Court relied upon the English Court decision in Dilworth v Commissioner of Stamps [(1899) AC 99] and its own in Reserve Bank of India v Peerless General Finance and Investment Company Limited. and Others [(1987) 1 SCC 424] and reiterated that the use of the word 'includes' in a statute often showed the intention of the Legislature to give an extensive and enlarged meaning to such expressions though sometimes, the context might suggest that 'includes' was designed to mean 'means.' The setting, context and object of an enactment might provide sufficient guidance for interpretation. The Court also referred to section 3(42) of General Clauses Act which defines a 'person' to include a company, etc., and went on to observe that out of the four categories mentioned in section 2(1)(m) of the CPA, the third i.e., co-operative society was corporate, which showed that the Legislature intended to include bodies corporate as well as incorporate.

Thus, the definition of 'person' was inclusive and not exhaustive. When so construed, 'any person' mentioned in the definition of 'consumer' in section 2(1)(d) would include a company. On the appellant's second contention, the Court held that the amendment to the CPA effective from 15 March 2003, excluding services availed of for commercial purposes, was not applicable to this case since the controversy related to a prior period. In respect of the appellant's third contention, the Court held that supply of electricity by the corporation to a consumer was not sale of goods within section 2(1)(d) of the CPA. For this, the Court relied upon its decision in Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector and ETIO and Others [(2007) 5 SCC 447], in which the Court had held that 'supply' of electricity did not mean 'sale' thereof and a case of supply of electricity was covered under section 2(1)(d)(ii) (i.e., hiring or availing of any service) as 'service' under section 2(1)(o) meant service of any description including the provision of

facilities in connection with supply of electrical or other energy. Therefore, a case of deficiency in service would fall under section 2(1)(g). The Court rejected the appellant's contention that 'service' in section 2(1)(o) was limited to providing facilities in connection with electricity.

HDFC Bank Limited v Balwinder Singh [III (2009) CPJ 40 (NC)]

Date of Decision: 16.03.2009

The complaint was of the bank, or its loan recovery agent, employing musclemen to take forcible repossession of the hypothecated vehicle and thus causing physical harassment and mental trauma to the complainant. The District Forum allowed the complaint and directed the bank to pay compensation of Rs. 4 lakh for repossessing the vehicle in this manner and reselling it to a third party. The State Commission confirmed the order in appeal. Dealing with the bank's revision petition, the National Commission expressed shock that the bank had hired musclemen directly or through its recovery agents to recover the loan/repossess the vehicle. The Commission also referred to the State Commission's order, which had observed that the alleged letter produced by the bank purporting to the complainant voluntarily handing over possession of the vehicle was unreliable and that no notice was given to the complainant at the stages of repossession and sale of vehicle. In dismissing the petition, the Commission relied upon its judgment in Citicorp Maruti Finance Limited v S. Vijayalaxmi [III (2007) CPJ 161 (NC)] where it had strongly deprecated such practices. The Commission dismissed the petition and awarded Rs. 25,000/- as exemplary costs in this case.

Malka Tarannum v Dr. C. P. Gupta [III (2009) CPJ 49 (NC)]

Date of Decision: 20.04.2009

The District Forum allowed the complaint of the complainant that there was negligence in applying (the first) plaster cast on the complainant's daughter's fractured hand, which led to the need to apply the plaster for the second time. In appeal, the State Commission dismissed the complaint and also held that the complainant was not a consumer since he was not charged any fee for the treatment. In revision, the National Commission held that application of the plaster for the second time did not imply medical negligence on the first occasion since application of POP slab (also known as temporary cast) was a normal procedure adopted in the first instance whenever there was swelling at the site of the injury. Relying on the Supreme Court decision in Jacob Mathew v State of Punjab and Another [(2005) 6 SCC 1], the Commission observed that the doctor who had applied the plaster in the first instance was a senior orthopaedic specialist with considerable experience and the complainant could not dispute his professional decision on the basis of mere allegations, without any expert evidence. The Commission also rejected the complainant's husband's contention that he was a consumer since he was covered by the Supreme Court decision in **Laxman Thamappa Kotgiri v G.M., Central Railway and Others** and that receiving free medical treatment was part of the terms and conditions of his service. It held that the complainant took no such plea before the Fora below and no evidence was produced.

Arvind Shah (Dr.) v Kamlaben Kushwaha [III (2009) CPJ 121]

Date of Decision: 30.04.2009

The complainant alleged that her deceased son, aged 20 years and otherwise healthy, died as a result of medical negligence on the part of the appellant doctor (original opposite party) who administered wrong treatment. The State Commission awarded to the complainant a compensation of Rs. 5 lakh with interest and costs. In appeal, the National Commission, on consideration of the material on record, came to the conclusion that the two medical prescriptions, which the doctor sought to deny, could have been written only by him. It also observed that though, in the appeal, the doctor admitted for the first time to having treated the patient; he did not produce any prescription on record. More important, the two prescriptions available on record did not mention any of the patient's complaints/symptoms, the doctor's clinical

observations on examining the patient or his diagnosis of the ailment. Even the ordinary vital parameters like temperature, blood pressure, pulse rate, etc., were not noted. The Commission observed that the Medical Council of India or the State Medical Council, with one of which the doctor had to be registered to practice modern (allopathic) medicine, required, through their respective codes of ethics/guidelines/ regulations, to make some minimal record even for outpatients.

Such a record would ordinarily include a summary of the history of illness and current complaints/symptoms of the patient and clinical observations of the doctor. If the doctor considered none of the above as essential, he would need to at least record a provisional diagnosis of the patient's ailment in the prescription while advising further diagnostic test(s) or treatment (medicines/injections). This was one of the primary duties of disclosure owed by a physician of ordinary skills to his patient. The Commission held that in line with the Apex Court's decision in **Samira Kohli v Dr. Prabha Manchanda** [I (2008) CPJ 56 (SC)] regarding need for valid prior consent of the patient for his treatment by a doctor and the doctor's corresponding duty of disclosure, it was essential for the doctor to write a prescription with such necessary details and failure to do so would constitute medical negligence. The Commission further observed that if a patient found that the doctor's treatment did not help ease his felt problem and wanted to consult another, a prescription with such details would be necessary. On the other hand, a prescription meeting these basic requirements would also assist a doctor in demonstrating that he had treated his patient with due care, if charged with a wrong/false allegation of negligence by the patient. While returning a finding of medical negligence against the doctor, the Commission found that the material on record case was insufficient to attribute the patient's death directly and wholly to the doctor's negligence. Accordingly, it scaled down the compensation to Rs. 2.5 lakh along with interest.

Sehgal School of Competition v Dalbir Singh [III (2009) CPJ 33 (NC)]

Date of Decision: 30.04.2009

The complainant sought refund from the opposite party's coaching school after only one year of the two-year course on the ground that the coaching was not up to the mark. The District Forum directed refund of the fees and the opposite party's appeal was dismissed. In revision, the petitioner contended that payment of lump sum fees for two years was a condition (of the contract) that and no part of the fees could either be refunded or transferred under any circumstances. The Commission held that this condition was one sided and biased in favour of the opposite party, against natural justice and not a fair trade practice. The Commission also rejected the opposite party's plea that in **Homeopathic Medical College and Hospital, Chandigarh v Miss Gunita Virk** [I (1996) CPJ 37 (NC)] it was held that Consumer Fora did not have jurisdiction to declare any rule in the prospectus of any institution as unconscionable or illegal. Referring to its recent decision in **Nipun Nagar v. Symbiosis Institute of International Business** [I (2009) CPJ 3 (NC)], it observed that the Commission had held that (under certain circumstances) it was unjust to collect fees for the total period of the course and dismissed the petition.

Medical Superintendent, St. Gregorious Mission Hospital v Jessy and Another [III (2009) CPJ 61 (NC)]

Date of Decision: 04.05.2009

The District Forum awarded Rs. 2.75 lakh along with interest to the complainants, viz., the wife and daughter of the deceased since the opposite party hospital had been negligent in not providing due care on account whereof the deceased who was undergoing alcoholic psychosis treatment for de-addiction of drugs, had committed suicide by hanging in the hospital. In its revision petition, the hospital contended that it was impossible to provide 24-hour service to look after the affairs and needs of each patient. The National Commission held that the patient was allowed to move away on his own from his ward into an empty ward without being noticed by the

nurses and ward boys. The patient hung himself with lungi which was not noticed by the staff but the co- patients. As per the hospital's own evaluation, the hospital staff should have taken extra care to deal with such a patient but the required degree of care was not exhibited. The Commission relied upon the Supreme Court judgment in **M.S. Grewal v Deep Chand Sood** [II (2001) ACC 540 (SC)] and held there was negligence. Relying upon cross-examination of the Medical Superintendent, the Commission held that the complainant wife was not instructed to be continuously with her husband as alleged and that the instruction in the Nurses Daily Record, being in a different ink, was a manipulation.

Life Insurance Corporation of India v Gowramm [III (2009) CPJ 25 (NC)]

Date of Decision: 11.05.2009

The petitioner insurer repudiated the life insurance policy in the name of the respondent's late husband (insured) on the ground of deliberate misstatements and withholding of correct facts regarding the health of the insured. The lower Fora rejected the various contentions of the insurer and allowed the complaint. Before the National Commission, the insurer relied upon the Commission's decision in **L.I.C. of India and Another v Parveen Dhingra** [II (2003) CPJ 70 (NC)] and contended that revival of the policy constituted a new contract between the parties and the limitation period of two years under section 45 of the Life Insurance Act, 1938 had to be counted from the date of revival. Therefore, the misstatements and concealment of facts could be made a ground for repudiation even though same were not made a ground at the time of initial policy. The Commission referred to the Supreme Court decision in **Mithoolal Nayak v Life Insurance Corporation of India** [AIR 1962 SC 814] where the Court had rejected a similar contention that the revival of the policy constituted a new contract between the parties and held that section 45 was clear that the period of two years was to be reckoned from the date on which the policy was originally effected. The Commission observed that the decision of Supreme Court had to be preferred and followed.

Narinder Kumar Suneja v R.K. Goel [III (2009) CPJ 35 (NC)]

Date of Decision: 14.05.2009

In revision, the petitioner who was a lawyer claimed that he was entitled to retain the fee which he took from the respondent since the respondent had executed the power of attorney/vakalatnama and handed over some papers to the petitioner in connection with a proposed case to be filed. He claimed having wasted valuable time when the respondent met and sought expert advice. The National Commission referred to the order of the State Commission which, in turn, referred to the District Forum's order holding that the opposite party (petitioner) was not entitled to retain the fee when he did not perform the duty for which the fee was meant and that a complaint made by the complainant to the Bar Council related only to misconduct on the part of its member (i.e., petitioner) whereas the Consumer Fora were required to determine whether proper service had been rendered or not. The Commission relied upon **D.K. Gandhi v M. Mathias** [III (2007) CPJ 337 (NC)] in holding that deficiency in service by lawyers was covered under the CPA.

Rajasthan Financial Corporation v M.K. Bhoot and Another [III (2009) CPJ 10 (NC)]

Date of Decision: 18.05.2009

The complainant/respondent participated in an auction conducted by the petitioner for moveable and immoveable properties. The complainant deposited the requisite sum/earnest money at the time of making his bid, which bid was then accepted. Due to non-payment of 25% of the bid amount, the sum/earnest money was forfeited. The District Forum dismissed the complaint for refund of the earnest money but the State Commission allowed the appeal. The National Commission allowed the revision petition holding that no consumer dispute under the CPA could arise out of a relationship of seller and purchaser in an auction as there was no arrangement of

hiring of services for consideration. The Commission followed a three member bench decision in **Panjim Planning and Development Authority v Mrs. Rashmi A. Sisat and Others** [R.P. No. 258/1992 decided on 10.1.1994 (1986-95 Consumer Vol. 1 pp 8-9] and a four-member bench decision in **Tamil Nadu Housing Board v R. Sivasubramaniyan** [1989 Consumer 3587 (NS)] which were cases of sale/allotment of plots in public auction.

K. A. Bhandula and Another v Indraprastha Apollo Hospital and Others [III (2009) CPJ 164 (NC)]

Date of Decision: 09.07.2009

Complainant no. 1 (a patient of nasopharyngeal cancer) made various allegations of medical negligence against the opposite party hospital and consultant doctor. The National Commission partly allowed the complaint holding first that the hospital was negligent in not duly preserving the biopsy tissue sample (in formalin) after the opposite party consultant doctor carried out the biopsy of the nasal tumour of the complainant. It rejected the hospital's plea of mere 'human error.' In this the Commission relied on the Supreme Court decision in **Savita Garg v. Director, National Heart Institute** [IV (2004) CPJ 40 (SC)]. On the basis of the medical record, the Commission also held that the consultant doctor had concealed from the complainant that the aforesaid biopsy had gone awry and pretended that he had seen the biopsy report and found it in order. Further, the consultant doctor failed to advise the complainant to undergo a repeat biopsy at the earliest and instead recorded that there was no evidence of recurrence (of the disease). There was delay in conducting the second biopsy which led to delay in starting proper treatment while the cancer progressed. It also found that the consultant doctor had manipulated the medical records. On its suo motu review of medical literature, the Commission found that the surgery finally recommended by the opposite party doctor (consultant) was 'craniofacial resection'. According to the medical literature, this was a very complex surgery, warranting removal of parts of the base of the skull and upper parts of the eye sockets and consequent changes in the looks of the patient.

On the basis of this literature review, the Commission observed that prima facie this surgery was (perhaps) not called for in the present case, as the surgery actually performed on the complainant by a specialist surgeon at a Mumbai hospital established. However, the Commission noted that while the complainant alleged medical negligence against the consultant doctor in this regard and the latter vehemently disputed the allegation, neither side produced any medical literature in support of their respective contentions. Relying on the Apex Court decision in **Jacob Mathew v State of Punjab and Another** [III (2005) CPJ 9 (SC)], the Commission thus held that to bring home the allegation, it was necessary for the complainant to cite medical opinion of a cancer specialist in the relevant speciality and in the absence thereof, benefit had to be given to the doctor. However, applying the ratio of the Apex Court judgment in **Samira Kohli v Dr. Prabha Manchanda and Another** [I (2008) CPJ 56 (SC)], the Commission held that the other allegation that the consultant doctor did not apply due standards of care expected of a surgeon of ordinary skills in apprising the complainant fully of the most probable implications of the recommended surgery (craniofacial resection) and the available alternatives, was established. Accordingly, the Commission awarded a compensation of Rs. 1 lakh against the hospital and Rs. 2 lakh against the doctor.