सत्यमेव जयते
Government of India

State Consumer Helpline

Knowledge Resource Management Portal

[Project Supported by Department of Consumer Affairs, Govt. of India]

SYNOPSIS OF JUDGMENTS

(Vol.2)

CENTRE FOR CONSUMER STUDIES

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Delivery of broken items and short delivered consignment on account of "inefficiency, lack of due care, absence of bona fides, rashness, haste or omission and the like may be the factors to ascertain the deficiency in rendering the service

National Consumer Dispute Redressal Commission, New Delhi in Revision Petition No.1026 of 2011 of M/s Aggarwal Packers vs. Alok Chaturvedi upheld the order of the State Commission and District forum directing the M/s Aggarwal Packers to pay the complainant a sum of Rs.43,000/- on account of broken and missing items. OPs are also directed to pay to the complainant a sum of Rs.40,000/- as compensation for causing discomfort and Rs.5,000/- as costs of litigation. The Complainant-respondent who was earlier posted at Kochi was transferred to Chandigarh and had hired the services of petitioner No.1 for transportation of his car as well as other household luggage from Kochi to Chandigarh. The car and luggage were to be carried separately. One of the conditions on which the luggage was booked with petitioner No.1 was that the luggage would not be shifted from one vehicle to another during transit and petitioner had agreed to the said term.

The entire household luggage was loaded in a truck having closed container on 10.5.2009 and each and every item was compactly adjusted. Thereafter, complainant put his own lock on the door of the container as the luggage was to be transported in the same truck without there being any transshipment on the way. The complainant received the said luggage on 10.5.2009 and was utterly surprised to see that the luggage was contained in two trucks, as obviously transshipment was done on the way in most careless manner. On unpacking the household luggage, complainant found that the items of crockery, furniture electronics etc. as mentioned in the list were found damaged and he got assessment done of these items which was to the tune of Rs.20,000/-. The other household items/clothes as mentioned in the list worth Rs.23,000/- were found missing. No steps were taken by petitioners to make good the loss suffered by the complainant for three month in spite of getting information from the complainant, of the loss. Thus, alleging deficiency in service and breach of trust on the part of petitioners, complainant filed complaint before the District Forum.Notice of the complaint was sent to the petitioners but they did not appear despite service and were proceeded ex-parte. District Forum allowed the complaint vide its order dated 11th February, 2010 with a compensation of Rs.43, 000/- on account of broken and missing items. Being dissatisfied with the order of the District Forum, petitioners filed appeal before the State Commission which did not give any relief to the petitioners and dismissed the appeal being without merit with cost of Rs. 2,200/- vide its order dtd. 21st Dec 2010. Being dissatisfied with order of the State Commission, petitioner filed a revision petition in National commission who found no jurisdictional or legal error to call for interference in the exercise of the power under section 21(B) of the Act, since two fora below have given detailed and reasoned orders which does not call for any interference nor they suffer from any infirmity or erroneous exercise of jurisdiction. Therefore present revision petition was dismissed with cost of Rs.20, 000/- with interest @9% per annum, till realization vide its order dated 3rd May 2011. National Commission also observed that petitioners have been pursuing this litigation in a very careless and negligent manner and when they had no defence, they have chosen to file the present revision petition just to deprive the respondent fruits of the decree. It is well settled that no leniency should be shown to such type of litigants, who in order to cover up their own fault and negligence goes on filing meritless petitions in different foras.

The repudiation of insurance claim on account of failure to fulfill obligation to intimate the theft of the vehicle to the insurer in writing immediately after the theft as per terms and conditions of insurance policy is justified.

National Consumer Dispute Redressal Forum in Revision Petition No. 1054/2016 of Reliance General Insurance Co. Ltd. Versus Arun Kumar Singh & Anr. set aside the orders of the State Commission and District Forum in directing the Reliance General Insurance Company to pay the amount of insurance claim of the insured vehicle Rs. 5,41,000/- with interest from the 12th August 2010 till date of payment the rate of 06% simple interest annual and also order to ensure payment of rs.500/- as compensation for mental and physical loss and 200/- as litigation cost. According to the complainant, vehicle was stolen by some unknown person from Loco Road, Bholepur on 11.08.2010. The theft was reported to the police station Kotwali on the same day. Oral information of theft was given to the opposite party. The vehicle could not be traced. However, the insurance company repudiated the claim on the ground that the complainant had failed to give immediate intimation of the theft in writing to the insurance company which is in violation of the terms and conditions of the insurance policy.

The District Forum on consideration of the pleadings and evidence allowed the complaint and directed the insurance company to ensure payment of the insurance claim to the complainant. The decision of the District Forum was upheld by State Commission, Uttar Pradesh in an Appeal No. 2081/13 filed the insurance company. This has led to the filing of the revision petition before National Commission. National Commission considered as to whether the Fora below were justified in allowing the consumer complaint ignoring condition of the insurance contract reading as under: “Notice shall be given in writing to the company immediately upon the occurrence of any accidental loss or damage in the event of any claim and thereafter the insured shall give all such information and assistance as the company shall require. Every letter claim writ summons and/or process or copy thereof shall be forwarded to the company immediately on receipt by the insured. Notice shall also be given in writing to the company immediately the insured shall have knowledge of any impending prosecution, inquest or fatal inquiry in respect of any occurrence which may give rise to a claim under this policy.

In case of theft or criminal act which may be the subject of a claim under this policy the insured shall give immediate notice to the police and co-operate with the company in securing the conviction of the offender.” National commission has no hesitation in holding that as the insured has failed his obligation to intimate the theft of vehicle to the insurer in writing immediately after the theft, insurance company was justified in repudiating the insurance claim. National commission allowed the revision petition, set aside the order of fora below and dismissed the complaint.

Firm fined Rs. 50K for misbranded product

NEW DELHI: A court here has imposed a consolidated fine of Rs. 50,000 on a manufacturer and the production unit for misbranding ‘Pan Masala’. The food analyst had reported that the “sample is misbranded because there is a violation of **Regulation No. 2.2.2.9 of the Food Safety and Standards (Packaging and Labelling) Regulation, 2011”** Without date of packing. The analyst also reported that the sample was found to be without declaration of date of packing.

When a telephone connection does not exist in the complainant's residence during a period there is no question of making any calls or paying any bills for the disconnected period.

Meghalaya State Consumer Disputes Redressal Commission, Shilong in First Appeal No. 4 of 2009 of BSNL vs. Smt Betty Sebastian upheld the decision of District Forum in directing BSNL that the bills for the said period be written off by the Appellants. The complainant has applied for shifting of the landline connection in June 2006 and reconnected only in January 2008 on shifting to the new premises. BSNL raised the bills during this period which were not paid by the complainant.

Due to non-payment of these bills, BSNL disconnected the telephone connection on April 2008. Hon'ble State Commission having heard learned counsels from both sides and perusing the case records found that the submissions of the Appellants are only wishy-washy and without substance. **The findings of the learned District Forum that the Complainant's phone was disconnected for shifting purposes in June 2006 and re-connected only in January 2008 after 1 ½ years are** clear and there is nothing on record to controvert the same. It is therefore obvious that when even a telephone connection did not exist in the Complainant's residence during this period there was no question of her making any calls or paying any bills for this period.

The learned District Forum was therefore right in directing that the bills for the said period be written off by the Appellants. In view of the findings of the Forum, the opposite party BSNL was directed to pay compensation to the Complainant as follows: -

(a) Payment for mental agony and harassment	Rs. 10,000/-
(b) Cost of the Petition	Rs. 2000/-
(c) Lawyer's fee	Rs. 3000/-

While upholding the impugned order dated 28.11.2008 passed in Consumer Complaint No. 23 of 2008 by the Learned District Consumer Disputes Redressal Forum, Hon'ble State Commission imposed Rs. 5000/- (Rupees Five Thousand) as costs of appeal to be paid by the Appellants to the Respondent within 1 (one) month hereof, also hoping that this will help in mending their ways in future.

Railways to pay Rs. 4 lakh to passenger

NEW DELHI: The Railways has been directed by the Delhi State Commission to pay a compensation of Rs. 4 lakh to a senior citizen, whose valuables, including gold jewellery, were stolen while she was travelling to Bengaluru to attend a wedding in January 2014. The State Commission found the Railways, the erring party since the bolt of the AC first class coach she was travelling in broken and the coach attendant not on duty throughout to stop random people from boarding the train. Enter the coach, the State Commission in the instant case observed, "These duties must be more stringent for TTE attached to Ist class AC compartment".

सुपरटेक को निवेशक के 41 लाख लौटाने के आदेश

नई दिल्ली : दिल्ली राज्य उपभोक्ता विवाद निवारण आयोग ने एक मामले में सुपरटेक बिल्डर को याचिकाकर्ता के 40.98 लाख रुपये लौटाने के आदेश दिए हैं। न्यायाधीश ओपी गुप्ता ने अपने आदेश में कहा कि कंपनी को अपने कार्यो के लिए खुद भुगतना होगा। इसके लिए वह अपने ग्राहकों को परेशान नहीं कर सकती है। यह याचिका अरुण नंदा नामक शख्स ने लगाई थी। जिसमें कहा गया था कि उन्होंने सुपरटेक बिल्डर के साथ वर्ष 2010 में फ्लैट के लिए अनुबंध किया था। कंपनी ने न तो उन्हें फ्लैट मुहैया कराया और न ही रुपये लौटाए। बार-बार कंपनी ऑफर बदलती रही। ऐसा करने से पूर्व उनसे इजाजत भी नहीं ली गई। न्यायाधीश ने कहा कि बिल्डर के पास यह अधिकार उपलब्ध नहीं है कि वह स्वयं ही ऑफर, फ्लैट की जगह व लोकेशन को बदल सके। फ्लैट बुक कराने वाले शख्स को इस तरह सात साल बाद बिल्डर अपनी मनमर्जी से फ्लैट थोप नहीं सकता है। इसमें निवेशक की कोई गलती नहीं है। अगर बिल्डर समय रहते काम पूरा नहीं कर पाया है तो यह उसकी समस्या है। पेश मामले में याची ने सुपरटेक के ग्रेटर नोएडा एक्सटेंशन में स्थित ईको विलेज प्रोजेक्ट में 2,275 वर्ग फीट का फ्लैट बुक किया था।

Death by mosquito bite an accident, insurer must pay up

Mumbai: In what could be a path-breaking order, the National Consumer Disputes Redressal Commission has held that a malaria death caused by mosquito bite is an accident, and directed the insurer to honour its policy to a widow. “An accident is something that happens unexpectedly and is not planned,'' said the commission. “It can hardly be disputed that a mosquito bite is something which no one expects and which happens all of a sudden without any act of omission on part of the victim,“ said Justice V K Jain, presiding member of NCDRC. The order came on a claim filed by Mousumi Bhattacharjee, who lost her husband in November 2012 to malaria in Mozambique where he worked in a tea

factory.The husband, Debasish, a Kolkata resident, had availed of a policy of the National Insurance Company called “Bank of Baroda Home Loan Suraksha Bima“ to cover death by accidents. He paid a one-time premium for the sum insured, Rs 13.15 lakh, to be paid in case of “death due to accident“. But when his widow filed a claim, the insurance company rejected it saying a mosquito bite was not an accident under the policy, and that malaria was a disease. But all three consumer fora, right from the district and state consumer forums to the apex National Consumer Commission, held the company's stand incorrect. **The national commission observed that the insurer had included snake bites, dog bites and frost bites under the `accident' category. The commission also cited Black's Law dictionary that describes an accident as “an unanticipated and untoward event that causes harm“**.Consumer activist Jehangir Gai said the

Judgment would benefit several policy holders, especially those who are victims of dengue and malaria as the same interpretation will apply to dengue also.“ While welcoming the decision, another veteran consumer activist Shirish Deshpande, however sounded a note of caution. “The commission has equated dog and snake bites with mosquito bites. But malaria is endemic in nature. The judgment may need to be tested finally by the SC as it may open floodgates for such claims.“

8 Years, 2 botched ops later, woman wins Rs 6.5L compensation

Chennai: After eight years, five surgeries and unmitigated suffering, a woman was awarded a compensation of over Rs 6.5 lakh by the North Chennai district consumer disputes redressal forum for negligence by two hospitals. According to V Visalakshi, she was admitted to Raghavi Hospital in Mogappair East in labour pain on August 24, 2008. A doctor there, Dr Balamani Mugian, said she would have a normal delivery, but Visalakshi later learned that he had conducted an episiotomy (a surgical cut doctors make at the opening of the vagina to help in a difficult delivery). Mugian, however, made the incision too deep, which resulted in a gash in the anal canal. The hospital suppressed the fact. After her discharge the next day, Visalakshi discovered that the sutured area was secreting pus and fecal matter. Her family then admitted her to SKS Hospital in Anna Nagar West (extension), where she was diagnosed as having undergone a forceps delivery , because of which there was a complete tear of the perineal area (the surface between the pubic symphysis and the coccyx) and a wound. On the doctor's advice, she underwent two surgeries. In October, Visalakshi again developed intense pain. Doctors at CSM Nursing Home in West Mambalam found a fistula extending from the anal wall to the vagina. The nursing home discharged her after 10 days and advised another surgery. Visalakshi then issued a legal notice to Raghavi Hospital, alleging medical negligence, and subsequently approached the consumer forum. At the forum, Raghavi Hospital stated that pus was normal after an episiotomy, while SKS Hospital said Visalakshi had failed to follow the doctors' advice. But the forum held them guilty -SKS Hospital because it just sutured an infected wound.

Airline overbooks, refuses to let flyer board, fined

MUMBAI: The National Consumer Disputes Redressal Commission has raised the flag on the over booking of flights by airlines, and urged the civil aviation ministry and the director general of civil aviation (DGCA) to formulate guidelines to prevent the harassment of passengers refused boarding despite having confirmed seats. The ruling came as the

commission awarded compensation to a passenger denied travel on an international flight. "The policy to take care of such passengers and make arrangements to book them on alternative flights in the shortest possible time is opaque and no clear-cut guidelines are available on the subject," the commission said on Monday Kolkata-based Radha Kejriwal, who was studying in the UK, was denied boarding on a London-Delhi Jet Airways flight on December 9, 2009, on the grounds that she arrived 70 minutes before departure instead of the stipulated 75 minutes. The commission, however, observed that the flight was overbooked and two others who arrived after her were accommodated. The commission ordered the airline to pay the flier a compensation of 600 euros (Rs 42,300) under guidelines applicable to the European Union. The commission also directed it to reimburse Rs 82,000, the amount spent on booking an alternative flight.

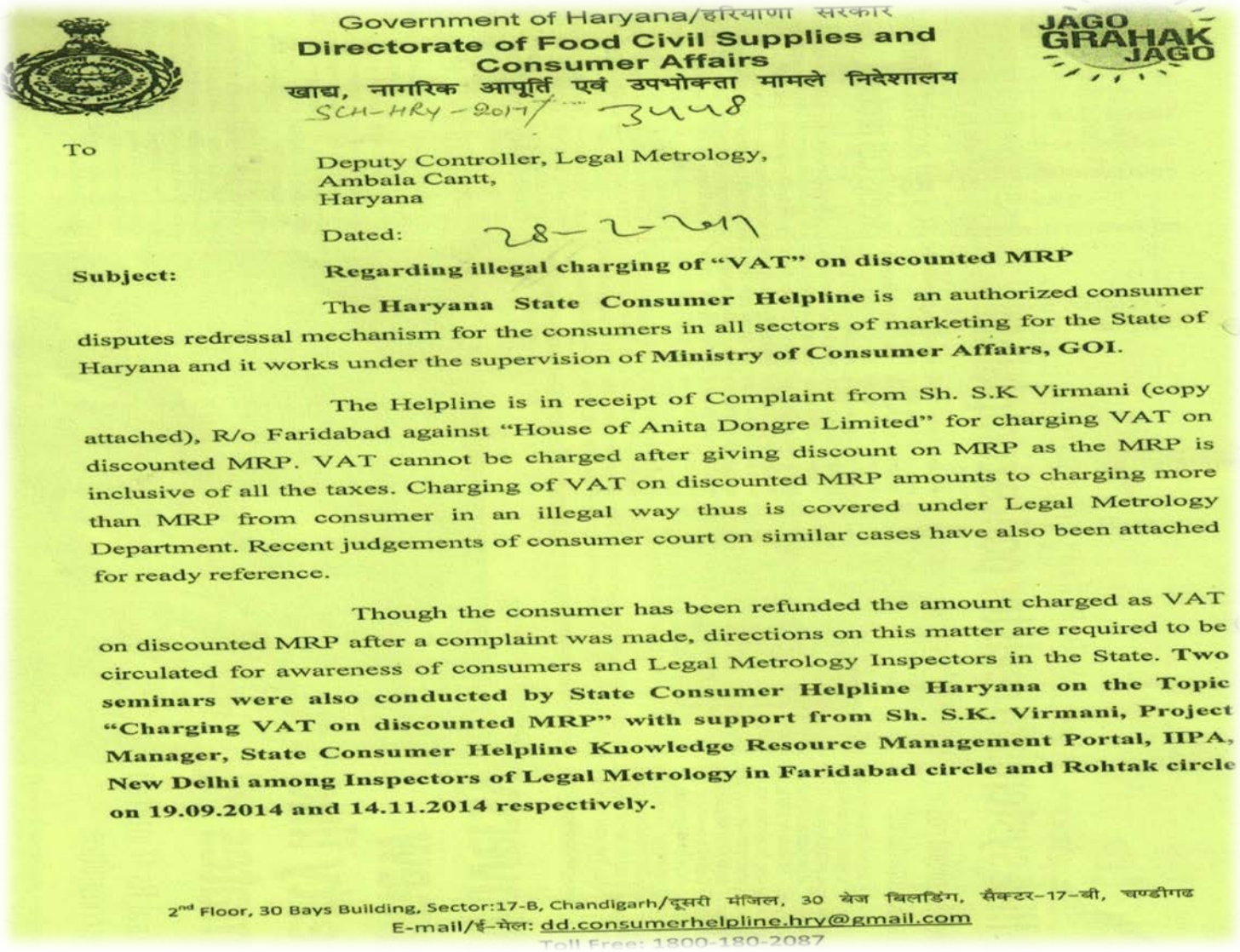
Insurance firm told to settle medical bill with compensation

SRIVILLIPUTTUR: Virudhunagar District Consumer Redressal Forum on Monday ordered the Oriental Insurance Company in Rajapalayam to settle the medical bill to a mediclaim insurance policy holder along with a fine of Rs. 10,000 and Rs. 3,000 for the legal expenses Types of services “A person travelling in AC first class cannot be given the same treatment given to an occupant of an unreserved compartment, where anyone can board and deboard,” the State Commission said. Holding the Railways guilty of negligence, the Commission ordered it to “pay Rs. 2 lakh for the value of the stolen valuables and jewellery with interest of 12 per cent per annum from the date of theft till the date of payment. It is further directed to pay Rs. 2 lakh towards compensation for harassment, mental agony and torture suffered by the complainant. The order shall be complied with within two months.” Major loss In the instant case, the complainant, a resident of Hauz Khas Enclave, was travelling on Rajdhani Express from New Delhi to Bengaluru in AC first class. Her valuables, including jewellery, I-Phone and money, were found missing from her cabin when she returned from a visit to the restroom. Duties specified The Commission took note of the railwayguide which contains list of duties of coach attendant and specifies that “he has to ensure that end doors of the vestibule train are kept locked during the journey to prevent outsiders from entering the coach...One of the duties of attendant is to look after safety of the luggage in railway coaches.” Relying on a judgment of the National Consumer Disputes Redressal Commission which noted that the duty of TTE attached to IInd class sleeper coach included duty to ensure “doors of the coach” kept latched when train is on the move and open them up for passengers as and when required to ensure that the end doors of vestibule train are kept locked, prevent intruders entering the coach to remain vigilant, particularly during night and ensure that the intruders, beggars, hawkers and unauthorized persons do not the department must indicate the helpline number near the weighing machine counter to help people make complaints. He cautioned that the mechanism would be effective only if the authorities take action against the owners of malls or supermarkets for gross underweight of the commodities they sell.

No VAT on items sold at discount: Consumers' body

NEW DELHI: The National Consumer Disputes Redressal Commission has held that shops selling goods at 40% discount cannot charge VAT or any other duty on the discounted price. It said that the rebate was on the MRP, which includes all taxes and cess as per Section 2(d) of Consumer Goods Act. The NCDRC order came last month after state forums had rejected the plea of Woodland franchises in Chandigarh and Delhi that had refused to refund VAT charged to customers on jackets sold at 'flat 40% discount'. The amount in dispute was Rs 119.85, which was the VAT charged on a jacket bought at 40% discount on an MRP of Rs 3,995. Justice D K Jain, NCDRC president, held that "the advertisement in the above form is nothing but an allurement to gullible consumers to buy the advertised merchandise at a cheaper bargain price, which itself was not intended to be the real bargaining price and, therefore, tantamount to unfair trade practice". "The defence of the petitioners that they had charged VAT as per law is of no avail as the issue, viz misleading advertisement resulting in unfair trade practice, is concerned," the order said.

The bench upheld verdicts of district and state forums that any discount falling short of "flat 40%" on the MRP would amount to unfair trade practice. The district forum had directed the shop owners to refund the extra amount to complainants, besides paying compensation, ranging between Rs 2,000 and Rs 5,000, and litigation cost, between Rs. 1,000 and Rs. 2,500.



Government of Haryana/हरियाणा सरकार

Directorate of Food Civil Supplies and Consumer Affairs

खाद्य, नागरिक आपूर्ति एवं उपभोक्ता मामले निदेशालय

JAGO GRAHAK JAGO

SCH-HRY-2017/ 3448

To

Deputy Controller, Legal Metrology,
Ambala Cantt,
Haryana

Dated: 28-2-2017

Subject: **Regarding illegal charging of "VAT" on discounted MRP**

The **Haryana State Consumer Helpline** is an authorized consumer disputes redressal mechanism for the consumers in all sectors of marketing for the State of Haryana and it works under the supervision of **Ministry of Consumer Affairs, GOI.**

The Helpline is in receipt of Complaint from Sh. S.K Virmani (copy attached), R/o Faridabad against "House of Anita Dongre Limited" for charging VAT on discounted MRP. VAT cannot be charged after giving discount on MRP as the MRP is inclusive of all the taxes. Charging of VAT on discounted MRP amounts to charging more than MRP from consumer in an illegal way thus is covered under Legal Metrology Department. Recent judgements of consumer court on similar cases have also been attached for ready reference.

Though the consumer has been refunded the amount charged as VAT on discounted MRP after a complaint was made, directions on this matter are required to be circulated for awareness of consumers and Legal Metrology Inspectors in the State. **Two seminars were also conducted by State Consumer Helpline Haryana on the Topic "Charging VAT on discounted MRP" with support from Sh. S.K. Virmani, Project Manager, State Consumer Helpline Knowledge Resource Management Portal, IIPA, New Delhi among Inspectors of Legal Metrology in Faridabad circle and Rohtak circle on 19.09.2014 and 14.11.2014 respectively.**

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UP school told to pay Rs 10L for kid's death

Delhi: In a significant order, observing that schools are supposed to act and behave like parents with students, the National Consumer Disputes Redressal Commission has ordered a school in Meerut, UP to pay a compensation of Rs. 10 lakh to the parents of 16-yearold student who had died after suffering an asthma attack while appearing for a final examination paper in 2003. Calling it gross negligence, the panel on Friday said, "The carelessness and apathy shown by the school officials leaves no doubt about their negligence in taking care of the minor child and providing even the basic aid and assistance which every school is expected to provide to its students who are in distress. In fact, the school officials are expected to act and behave like the parents of the child in such an emergency. "

The commission said that valuable time was lost on account of school officials waiting for family members of the child to arrive along with their doctor. "Instead of waiting for the family members, they ought to have immediately taken him to the nearest doctor or the hospital. On reaching the hospital or the clinic they could have intimated the family members," the commission said.

It held that the fact that the child did not carry an inhaler despite being asthmatic would not absolve the school officials from the gross negligence displayed. The family claimed it was informed by one of the students of the school. An appeal was filed before the Commission by the child's father Krishnan Goyal last year. Goyal was aggrieved after the state commission lowered the district forum compensation of Rs 10 lakh to 5 lakh. Goyal told the commission that from the academic year 1998-99 his son Rishab, had taken admission to the school. The school he said, was attached to a local hospital and the principal was informed about Rishab's condition and his need for special care. On March 21, 2003, Rishab suffered the attack and was allegedly taken to the residence of the principal who expressed his inability to help him as no medical facility was available in the school. Goyal said that one of the students's informed the family about his condition. Rishab's sister rushed to the school and took him to the hospital where he was declared dead.

Patanjali Ayurved fined Rs. 11 lakh

DEHRADUN: Yoga guru Baba Ramdev's Patanjali Ayurved Ltd. has been fined Rs. 11 lakh for indulging in misbranding and misleading advertising. On August 16, 2012, the Haridwar health department's food safety division took samples of a few Patanjali products and sent them for

testing. However, when the products failed the tests, the food safety division, in November 2012, filed a case in the Haridwar Additional District Magistrate (ADM) Court against the Haridwar-based.

Patanjali Ayurved. The case went on for four years and on December 1, the ADM court asked Patanjali Ayurved to pay " Rs. 11 lakh as fine for indulging in misbranding and misleading advertising," said Haridwar Food Safety Officer Yogendra Pandey, under whom the samples were taken and sent for tests. Not the manufacturer Samples of honey, mustard oil, pineapple jam, gram flour and iodised salt were sent for testing and the test results showed that Patanjali was not the manufacturer of the products, the Court Order stated.

"It was found that the sampled Patanjali products were being manufactured at other factories and not Patanjali's production units, but they were being marketed by Patanjali Ayurved Ltd as exclusive Patanjali products. This was Patanjali's attempt to mislead buyers," Mr. Pandey said. The Court Order stated that the products were "in contravention of Food Safety and Standards (Packaging and Labelling) Regulation 2011".

Insurance firm to pay Rs 25,000 for claim rejection

Gurgaon: The District Consumer Dispute Redressal Forum has imposed a penalty of Rs 25,000 on health insurance company Max Bupa for rejecting a 70-year-old cancer patient's claim. It also asked the firm to pay the complainant Rs 3.23 lakh, the money spent on treatment, with an interest of 9%. "For the mental agony and harassment of the complainant, a penalty of Rs 25,000 was imposed on insurance company, "reads the order dated December 18 passed by the president of the forum, Subhash Goyal. Max Bupa was asked to pay the sum within 30 days of the order being passed. The rejection of mediclaim reimbursement, the forum observed, was tantamount to deficiency in service. "Thus we direct the company to reimburse the amount as spent by the complainant on his treatment i.e. to the tune of Rs 3.23 lakh along with interest of 9% per annum from the date of filing of the complaint to date of order," read the order. Kewal Pal Singh, a resi dent of DLF 2, had filed the complaint against Max Bupa in January 2015. Singh and his wife informed the forum they had had taken a medical insurance policy from National Insurance Company from 20042012 and paid an annual premium of Rs 77,254 without any break. In 2012, they upgraded their insurance and opted for `Family First Gold' policy of Max Bupa with an assured cover of Rs 14 lakh. "They bought insurance from October 2012 to October 2013 by paying a premium of Rs 82,000. They renewed the policy till 2015," said Harish Malhotra, Singh's counsel. On September 26, 2014, Singh claimed he was diagnosed with `disorder

of calcium metabolis' and was admitted to Sir Gangaram Hospital in Delhi. He informed the insurance company to avail of the cashless benefit, but it was rejected and he was asked to apply for reimbursement after paying the hospital. A Max Bupa spokesperson said the reimbursement was rejected in accordance with terms and conditions of the policy. “Our legal team is going through the order of the forum, “he said.

Employer deducting insurance premium from the salary of an employee and not depositing with the insurer is deficiency in service

Sh. Bhajan Lal (Complainant) vs. Municipal Corporation of Delhi (OP1) , and Life Insurance Corporation (OP2) in District Consumer Dispute Redressal Forum (North) Delhi 2016 C.C.No.794/2008 Facts: Sh. Bhajan Lal (complainant) is working under the employment of O.P-1(MCD) as ‘Malaria Beldar’. It is alleged that the complainant is a policy holder with the O.P-2 vide policy No.112695232 dated 13.01.2001 for a sum assured of Rs.50, 000/-.

It is further alleged that complainant has empowered the O.P-1 to pay the monthly installment of the said insurance policy from the salary of the complainant regularly and continuously as such the O.P-1 had deducted the policy amount of Rs.330/- from complainant salary each and every month and to pay the same to O.P-2. It is alleged that the complainant was shocked and surprised to receive a notice from the O.P -2 regarding the lapse of the policy due to non-payment of installments for the months i.e. for 23 installments for March, 2001, April, 2001, June, 2001 to March, 2002, May, 2002 to August, 2002, October, 2002 to January, 2003, August, 2004, November, 2004 and December, 2004.

It is further alleged that the complainant enquired about the gap in the payment of the installments from the O.Ps on a number of times and requested the O.P-1 to fulfill the gap installments of his insurance policy both in writing as well as verbal but no action has been taken so far. It is alleged that the action of the O.Ps for non-payment of the premium amount clearly shows negligence and deficiency in service on the part of the O.Ps. On these facts complainant prays that O.P-1 be directed to pay/ deposit the gap installments of the policy of the complainant and the O.P-2 may also be directed to issue the receipt thereof upto date and also to pay cost and compensation as claimed. O.Ps appeared and filed written statement OP-1 has stated that the complainant is not a consumer as per the definition mentioned in the Consumer Protection Act, 1986, because he is an employee of the MCD and no consideration has been paid or promised or partly paid and as such the present complaint is not maintainable and is liable to be dismissed. Issue: Whether the complainant is a consumer as defined under Consumer Protection Act and whether there was deficiency in service by the opposite parties Decision: At the outset, it need to be decided whether the complainant is a consumer or not as defined under Consumer Protection Act as O.P-1 has taken a categorical stand that complainant does not fall within the purview of consumer.

Consumer ordinarily is a person who is availing any service or has taken goods for consideration. In the present case the complainant started availing the service provided by O.P-1 for having LIC policy executed by O.P-2. O.P-1 being employer of the complainant provided him service facility of LIC policy by deducting a particulars sum from his salary month wise, thus the complainant falls within the category of consumer. Whether the LIC policy lapsed due to deficiency in service

on the part of O.P-1. Admittedly the complainant is an employee of O.P-1 who had instructed O.P-1 to pay premium of Rs.330/- per month towards the LIC policy executed by O.P-2.

The grievance of the complainant is that due to non-payment of monthly installments towards LIC policy by O.P-1, O.P-2 issued him a letter stating that there were 23 gaps in payment of premium till March, 2006 upon which complainant got verified about the payment of installments to O.P-2, there upon O.P-1 candidly admitted that there was lapse on its part to deposit the premium for the month of March, 2001 and April, 2001.

The documents placed on record by the parties clearly demonstrate that O.P-1 was negligent in not deducting the monthly installments from the salary of complainant for the purpose of depositing the same with O.P-2 which resulted in 23 gaps of installment as pointed out by O.P-2. The O.P-1 has categorically admitted his mistake in not depositing the regular installments with O.P-2 and this amounted to deficiency in service.

The O.P-1 is directed to make entire payment of its own including the penalty and revival expenses, if any, within 60 days from the date of this order to O.P-2. O.P-1 is at liberty to deduct the arrear of installments towards LIC policy from the salary of the complainant in such a manner that the arrear are realized before superannuation of the complainant. The O.P-2 is directed to revive the policy within 30 days from the date of payment of entire arrears due to it. In the light of peculiar circumstances **the District Consumer Forum also awarded Rs.5,000/- to be paid by O.P-1 towards harassment and litigation expenses to the complainant.**

Complainant could not appear at the interview and missed the opportunity of having a job because of carelessness. State Commission termed it as deficiency in service on the part of the Department of Post. National Commission dismissed appeal as complaint was time barred.

Department of Post & Anr. {Petitioner/Op (s)} Vs. **Fulu Mal** {Respondent/complainant (s)} in National Consumer Dispute Redressal Forum Revision Petition no.1313/2015

FACT: The complainant/respondent applied for appointment to the post of Nursing Orderly in ESIC Hospital and ODC (EZ) Joka, Kolkata. An interview letter was sent to him requiring him to appear in the interview scheduled to be held on 13.12.2008. The said letter however, was not delivered to the complainant/respondent, as a result of which, he could not appear for the interview. Alleging negligence on the part of the Post Office, he approached the concerned District Forum by way of a complaint seeking compensation quantified at Rs.4.50 lacs.

The complaint was resisted by the petitioners. It was stated in the reply that the letter in question was delivered on 13.12.2008 by Mr. Fued Ahmed who himself had since died on 30.08.2010 while in service. It was thus, admitted in the reply that the letter in question was not delivered to the complainant in time.

The District Forum, vide its order dated 28.05.2013, directed the petitioners to pay a sum of Rs.1, 00,000/- as compensation to the complainant and litigation cost quantified at Rs.5,000/-. Being aggrieved from the order passed

by the District Forum, the Department of Post approached the concerned State Commission by way of an appeal. The interview call letter was sent by the ESIC Hospital and OD (EZ), JOKA, Kolkata, in the name of the Complainant for his appearance at an interview scheduled on 03.12.2008 at 9 a.m. The call letter was delivered to the Complainant on 13.12.2008 when the interview process was already over. The consignment to be delivered to the complaint was received in the post office on 14.11.2008. The said article was unattended for about a month in the Branch Office of Srirampur Post Office. It has been stated by OP/Appellant that Fued Ahmed being the person concerned for delivery of the article died on 30.08.2010 and as such no action could be taken against him. Whether it was an intentional or unintentional delay on the part of the employee concerned who has already expired cannot be ascertained but the purported loss as alleged by the Complainant cannot be ruled out altogether . It is on the record that the Speed Post article was sent well ahead of the target date of the interview. As a beneficiary of the service, for which a consideration was paid by way of speed post charges, the Complainant / Respondent has suffered deficiency in service. It was no doubt a negligent act on the part of the concerned Post Office and the Postal Department cannot avoid their liability to compensate for the mental agony and the loss of opportunity of securing a job. Ld. Forum below appears to have adjudicated the matter in a reasoned manner and state commission find no reason to interfere with the impugned order. The appeal does not succeed. Hence, Ordered that the appeal be and the same is dismissed. The impugned order is confirmed.

The said appeal having been dismissed vide impugned order dated 19.11.2014, the petitioners Department of Post filed a revision petition before National Commission. It has been submitted by the learned counsel for the petitioners at the very outset that having been filed in the year 2012, the complaint was patently barred by the limitation prescribed in Section 24A of the Consumer Protection Act. In this regard, he has pointed out that the letter in question having been delivered to the complainant on 13.12.2008, he came to know on that date that he had missed the opportunity to appear in the interview and therefore, a cause of action accrued on that day. He further submitted that even if the cause of action is computed from 19.03.2009 when a written communication was sent to the complainant, the complaint was barred by limitation.

Section 24A of the Consumer Protection Act, to the extent it is relevant, provides that a complaint shall not be admitted unless it is filed within two years from the date on which the cause of action has arisen. The cause of action in this case had actually arisen on 13.12.2008 when the complainant came to know that on account of late delivery of letter, he was unable to appear in the interview scheduled to be held on that date. Even if the limitation is computed from the date on which the written communication was received by the complainant from the Post Office, having been filed in the year 2012, the complaint is clearly barred by limitation.

Decision: National Commission allowed the revision petition and set aside the impugned orders. The complaint is consequently dismissed as barred by limitation, with no order as to costs.

Rs.25 lakh compensation to kin of mason killed in accident

Quantum of compensation decided on basis of minimum wages of skilled persons: A Motor Accident Claims Tribunal (MCT) has granted a compensation of Rs. 25 lakh to the family members of a mason who died in a road accident in 2014. The Judge directed insurance company to pay the compensation amount, after the mason's family filed a petition regarding the

same. Additional Sessions Judge Manish Gupta decided the quantum of compensation on the basis of the minimum wages of skilled persons, which were Rs.10,374 per month as on the date of accident and other fixed parameters. The petition had been filed jointly by the widow of the victim, her mother-in-law and three dependent children of the widow. The car had hit the two-wheeler on which the victim was travelling as pillion rider.

The owner, who was driving the vehicle at the time, submitted before the court in his defence that he had been falsely implicated in the case. Circumstances He further said that in case it was found that compensation was payable to the petitioners, then the insurance company was liable to make it to the petitioners. “From the overall facts and circumstances and evidence on record it is clear that the accident in question occurred due to rash and negligent driving of the offending vehicle on the relevant date, place and time which caused fatal injuries to deceased Shri Dinesh Kumar,” the Judge said in the order. “The total compensation awarded comes out to be Rs. 25,00,735, including interim award (date of interim award is 04.07.2015) along with simple interest at the rate of 9 percent per annum.

Hearing the case of V.K. Beemaraja, who claimed that the nationalized insurance company refused to pay him Rs. 16,669.20 towards a cataract surgery despite that his mediclaim policy was renewed for the second time. The insurance company rejected the claim, contending that the policy holder had failed to renew the policy for the second time on time. He had renewed the policy only after a lapse of three days and hence it could not be considered as a continuous renewal policy but only a fresh policy.

"As per the policy conditions, cataract surgery are not payable for the first two years. If the policy is renewed continuously without a break it is payable for 3rd year," it claimed. However, when the case came up for hearing, the forum chairman, V. Balasundarakumar, quoting a Supreme Court verdict on a similar case, said that the policy in vogue could be considered only as the continuously renewed policy and could not be taken as a fresh policy as the policy holder has not given any separate proposal form meant for a fresh policy as claimed by the insurance company. The medical claim should be paid within one month or else pay it with an interest at the rate of 6 per cent till the date of payment. Besides, the forum also ordered to pay a compensation of Rs. 10,000 for the mental agony and Rs. 3,000 towards legal expenses.

Adjudication on allegations of forgery, fraud and cheating requires elaborate evidence, analysis of documents, examination and cross examination of witnesses and the same cannot be decided by consumer fora.

Urmil {Complainant (s)} **vs. PNB** {Opp.Party (s)} in Room no.2, Old Civil Supply Building, Tis Hazari, Delhi Complaint Case No. CC/310/2014

Fact: The complainant was having saving bank account in the Punjab National Bank Branch, Mall Road, Delhi. It is further pleaded in the complaint that on 14.12.2012, during her visit to the Bank for updating her pass-book she found that a sum of Rs.22,000/- and Rs.17,000/- have been withdrawn from her account on 3.11.2012 and 16.11.2012 respectively. It is alleged in the complaint that she never visited the Bank on the dates mentioned above for withdrawal of the amount. It has been alleged that someone by forging her signature or otherwise in connivance with the staff of the Bank first stopped payment on 3.11.2012 and thereafter by signing withdrawal voucher withdrew the above said amount. It has been further alleged that complainant obtained the copies of the withdrawal forms used for withdrawal

of the amounts which showed that these were not hersignatures and is apparent or clear to any naked eye. It has been also alleged that efforts made by her vide complaints and reminders did not resolve the issue, therefore, the present complaint has been filed by the complainant claiming refund of Rs.39,000/- with interest and Rs.20,000/- as harassment and damages etc. As none appeared from opposite parties, the proceedings held ex-parte.

The complainant has filed her affidavit in support of the complaint testifying the averments raised therein. The complainant has also filed copies of the letters addressed to the OPs and copy of RTI Application. The complainant has also filed photocopy of withdrawal forms involved in this case. She has also filed her statement of account which shows withdrawal of Rs. 22,000/- and Rs.17,000/- on 3.11.2012 and 16.11.2012 respectively. Statement also shows that withdrawal were made 'by self '.

The court has carefully gone through the pleadings as well as documents placed on the file, the most important and basic documents which go to the root of the case are the withdrawal forms which it has carefully examined. The court is of the considered view that the signatures on the complaint, affidavit of evidence and letter to the bank bearing signatures of the complainant are the admitted documents and if these admitted documents are compared with the disputed documents, such as withdrawal forms, it will lead us to only one conclusion that the signatures of the complainant on both the documents are similar. The complainant has not placed any documentary evidence or any handwriting expert report/opinion to prove that the signatures on the withdrawal forms were either forged or were not of the complainant. The Bank is not expected to doubt the signature unnecessarily and check them minutely. Bank officials are not handwriting experts.

It is settled law that where there are allegations for forgery, fraud and cheating, adjudication whereof requires elaborate evidence, analysis of documents, examination and cross examination of the witnesses, the same cannot be decided by a Consumer Fora, proceedings before which are summary in nature. **Reliance is placed on Oriental Insurance Company Ltd. Vs. Munimahesh Patel, 2006(2) CPC 668 (SC). Reliance Industries Ltd. Vs. United India Insurance Co. Ltd. 1 (1998) CPJ 13 and M/s Singhal Swaroop Ispat Ltd. Vs. United Commercial Bank III (1992) CPJ 50.**

Judgment: There is no deficiency in services on the part of PNB (Ops). Accordingly, the complaint is dismissed, with liberty to the complainant to get the issues in this complaint resolved from the Civil Court.

खराब खाने से बीमार होने पर मांग सकते हैं मुआवजा

पंजाब राज्य दुग्ध सहकारी संघ व अन्य बनाम सुषमा साहनी व अन्य, वॉल्यूम 3, 2016 सीपीजे, 43 (यूटी चंडीगढ़)

एक मामले में उपभोक्ता ने दूकान से मिठाई खरीदी। घरमें जब खाने के लिए डब्बे को खोला गया तो एक मिठाई में लंबा बाल मिला। उपभोक्ता मिठाई खाने के बाद बीमार पड़ गया और अस्पताल में भर्ती होना पड़ा। दूकान वाले से इसकी शिकायत करने पर उसने इसकी जिम्मेदारी लेने से इनकार कर दिया। उपभोक्ता ने इसके बाद जिला उपभोक्ता फोरम में सेवा में कमी और अनुचित व्यापार व्यवहार के आधार पर मिठाई दूकान और उसको बनाने वाले के खिलाफ शिकायत दर्ज कराते हुए मुआवजे की मांग की। जिला फोरम में उपभोक्ता

ने मिठाई की रसीद, मिठाई में दूषित तत्व पाए जाने की लैब की रिपोर्ट और अस्पताल का बिल पेश किया। साथ ही यह भी कहा कि डब्बे पर लिखा गया था कि मिठाई अगले 10 दिन खराब नहीं होगी। मिठाई दूकान वाले ने इसमें किसी भी तरह की जिम्मेदारी लेने से

इनकार कर दिया। उसने अपनी दलील में कहा कि जिस तरह पैकेजिंग की जाती है उसमें कोई बाहरी तत्व उसमें नहीं आ सकता है। उसने आरोप लगाया कि उपभोक्ता ने जानबूझकर उसे परेशान करने के लिए झूठा आरोप लगाया है। जिला फोरम ने पाया कि लैब की रिपोर्ट में साफ लिखा गया था कि मिठाई खाने के लायक नहीं थी।अत: जिला उपभोक्ता फोरम ने मिठाई दूकान और उसे बनाने वाली कंपनी से कहा कि वह उपभोक्ता को मुआवजा के तौर पर 50 हजार रुपये और वाद खर्च के रूप में 7,500 रुपये का भुगातन करे। यह भी कहा कि यदि 30 दिन के भीतर राशि का भुगतान होने पर 12 फीसदी ब्याज भी दे। इसके बाद मिठाई दूकान वाले ने राज्य उपभोक्ता आयोग में अपील की जो खारिज हो गई।

बिना बताए टिकट किया रद इंडिगो एयरलाइंस पर जुर्माना

दिल्ली : उपभोक्ता को बिना सूचित किए वापसी की टिकट रद करने पर इंडिगो एयरलाइंस पर उपभोक्ता अदालत ने जुर्माना ठोका। अदालत ने कंपनी को पीड़ित परिवार का स्पाइस जेट व गो एयर के सफर में आया 39,380 रुपये का अतिरिक्त खर्च छह प्रतिशत ब्याज सहित चुकाने और साथ ही दस हजार मुआवजे के रूप में देने के निर्देश दिए। सैनी एंक्लेव स्थित जिला उपभोक्ता विवाद निवारण मंच के अध्यक्ष सुखदेव सिंह सहित डॉ. पीएन तिवारी व हरप्रीत कौर चर्या की पीठ इस निष्कर्ष पर पहुंची कि बिना उपभोक्ता को सूचित किए टिकट रद कर दिए गए। अदालत ने कहा कि 49,380 रुपये की धनराशि आरोपियों को चुकानी ही होगी। तीस दिन के भीतर रकम न देने पर नौ प्रतिशत ब्याज लगाया जाएगा।1अधिवक्ता सचेत शर्मा ने अदालत को बताया कि शाहदरा महराम मोहल्ला धोबीवाड़ा निवासी गुलशन कुमार ने परिवार सहित दिल्ली से कोची जाने के लिए 2013 में इंटरसाइट टूर एंड ट्रैवल्स से 62,484 रुपये में सात रात व आठ दिन का होलीडे पैकेज बुक कराया। गुलशन ने इंटरनेट जोन पर प्रवीन जैन से संपर्क कर इंडिगो एयरलाइंस की प्रस्थान व आगमन उड़ान शुल्क के रूप में 31,265 रुपये का भुगतान किया।1 इसमें

दिल्ली से कोची, कोची से हैदराबाद और हैदराबाद से दिल्ली टिकट बुक कराई गई थी। वापसी के दौरान वह कोची एयरपोर्ट पहुंचे, तो प्रवीन जैन ने उन्हें दो दिन पहले उनकी रिटर्न टिकट रद होने की जानकारी दी और पूछने पर कारण नहीं बताया।वैकल्पिक एयरलाइंस का लिया सहारा : पीड़ित परिवार को कोची से चेन्नई के लिए प्रवीन जैन से मजबूरन स्पाइसजेट एयरलाइंस की टिकट बुक करानी पड़ी, जिसपर दोबारा 31,825 रुयये का खर्च आया। इस दौरान उन्हें आठ घंटे चेन्नई एयरपोर्ट पर इंतजार करना पड़ा और फिर मुंबई से दिल्ली के लिए 22,179 रुपये खर्च करने पड़े।

Complaint pertaining to theft of electricity is not maintainable before consumer forum and in such circumstances revision petition is liable to be dismissed.

In the matter of Ram Mehar Singh (Petitioner/Complainant) Versus Uttari Haryana Bijli Vitran Ltd. (Respondent), Brief facts of the case are that complainant/petitioner was consumer of opposite party/ respondent. Opposite party issued bill on 05-09-2006 and demanded Rs.1,20,000/- as penalty, which is illegal. It was further submitted that his connection has been disconnected wrongly. Alleging deficiency on the part of opposite party, complainant filed complaint before District Forum. Opposite party resisted complaint and submitted that complainant's poultry farm was checked on 05.09.2006 and complainant was found stealing energy by taking direct supply, so meter was disconnected and demand was raised and prayed for dismissal of complaint. Learned District Forum after hearing both the parties dismissed complaint. Appeal filed by the complainant was dismissed by learned State Commission vide impugned order, against which this revision petition has been filed.

The petitioner submitted that no theft of electricity was proved against petitioner even then learned District Forum committed error in dismissing complaint and learned State Commission further committed error in dismissing appeal, hence revision petition be allowed and impugned order be set aside. On the other hand, learned counsel for the respondent submitted that as demand was raised on account of theft of electricity, complaint was not maintainable before Consumer Fora and order passed by learned State Commission is in accordance with law, hence revision petition be dismissed. Perusal of record reveals that demand was raised on account of alleged theft of electricity by the complainant. Complainant was found stealing energy by taking direct supply. In the light of judgment of Hon'ble Supreme Court in the case of U.P. Power Corporation Ltd. & Ors. Vs. Anis Ahmad, complaint pertaining to theft of electricity is not maintainable before Consumer Forum and in such circumstances revision petition is liable to be dismissed. Consequently, revision petition filed by the petitioner is dismissed with liberty to the petitioner to approach to the appropriate authority under Indian Electricity Act for Redressal of his grievance with no order as to costs.

Complainant paid by the insurance company on the account of accident of insured vehicle.

In the matter of Shri. Vishnu Singh (Petitioner/complainant) Versus IFFCO Tokio General Insurance Co. & Anr. (Respondent), Brief facts of the case are: The Complainant, Mr. Vishnu Singh, insured his Tavera Car with the OP/Respondent, for the period 07.06.2009 to 06.05.2010. Mr. Amrit, a friend of the Complainant, on 26.09.2009, took the vehicle along with his driver to Ambala, when the car met with an accident, while returning from Faridabad, on 27.06.2009.

All the occupants of the car, including the driver, died in the accident. FIR was registered with the Police Station Samalkha, District Panipat. The Complainant submitted the claim with the OP for the damages. The OP repudiated the claim on the ground that the Complainant was using the vehicle for hire and reward, which was against the terms and conditions of the insurance policy.Therefore, the Complainant filed the Complaint before the District Forum. The District Forum partly allowed the complaint and directed the OPs to pay Rs. 3,30,726/- to the Complainant, within 2 months and Rs.2,200/- as litigation expenses. Aggrieved by the order of the District forum, OPs filed the First Appeal

before the State Commission, which was allowed and dismissed the complaint. NCDRC consider, it as total loss and allow the compensation at the tune of IDV Rs. 4,40,968/-. Accordingly we direct the OP to pay Rs.4,40,968/- along with the interest @ 6% p.a. from the date of accident.

The order shall be complied within 90 days from the date of receipt of this order otherwise, it will carry interest @ 9% p. a. till its realization. Therefore, set aside the order passed by the State Commission and restore the order of District Forum. The revision petition is allowed. No order as to costs.

CESR & BILESHWAR KHAND UDYOG KHEDUT SAHAKARI MANDALI LTD. VERSUS IFFCO- TOKIO GENERAL INSURANCE CO. LTD.

It is settled law that contract of insurance is based upon good faith. It is the duty of the insurers and their agents to disclose all material facts within their knowledge since obligation of good faith applies to them equally with the assured [(Re. M/s. United India Insurance Co. Ltd Vs. M.K.J. Corporation, (1996) 6 SCC 428)].

If the insurance coverage was not extended even by taking additional premium for the damage caused by spontaneous combustion/natural heating which may not result in fire, it ought to have been clearly stated. Secondly, if the contract is vague, benefit should be given to the insured. The exclusion term of the insurance policy must be read down so as to serve the main purpose of the policy that is to indemnify the damage caused due to fire. [(B.V.Nagaraju Vs. M/s. Oriental Insurance Co. Ltd.) (1996) 4 SCC 648)]. Finally, it is to state that it is high time for the Insurance Company to have terms clearly defined in the insurance policy with a reasonable clarity and not to continue with the old forms which terms are vague**.**

Relying on the above, National Consumer Disputes Redressal Commission in an appeal O.P. No. 52 of 2004 by IFFCO-TOKIO General Insurance Co. Ltd. held **the Insurance Company deficient in service and is liable to pay damages suffered by the Complainant." "The insurance company is directed to pay to the complainant no.2 a sum of Rs.1,14,06,950/- with interest @ 10% from the date of report of the surveyor i.e. 29.03.2003 till the date of payment."** In the matter of Consumer Education and Research Society & Anr. (Complainants) versus IFFCO-TOKIO General Insurance Co. Ltd. (Opposite Parties), brief facts of the case are that the complainants have preferred this complaint under Section 2 (g) and 2 (r) and Section 21 of the Consumer Protection Act, 1986 with following prayers:

to pay the claim of the Rs.1,14,06,950/- with interest at the rate of 18% p.a. from 21.02.2003, till the date of payment; b. to pay Rs.50,000/- to the complainant no.2 towards mental agony and harassment; c. to pay Rs.50,000/- towards cost to each of the above complainants. The **(Bileshwar Khand Udyog Khedut Sahakari Mandali Ltd.)** complainant no.2 took insurance policy for a sum of Rs.2,25,00,000/- and paid premium of Rs.38,250/- to the opposite parties for insurance cover of the stock of molasses weighing 15000 metric ton against fire.

Besides, the complainant no.2 also paid additional premium of Rs.5,625/- for insurance cover against spontaneous combustion. The insurance policy was valid for the period 11.02.2003 to 10.02.2004 (midnight). On 21.02.2003, 9053

metric ton molasses stored in tank no.1 got burnt due to spontaneous combustion. The OP was immediately informed by telephone. On 23rd and 24th of February, 2003 M/s. Mehta and Padamsay (P) Ltd., appointed by the OP, conducted survey and assessed the loss caused due to spontaneous burning at Rs.1,14,06,958/-.

The insurance company repudiated the claim vide their letter dated 29.03.2003 stating that since the loss was not caused due to fire the OP was not liable to pay the claim in terms of the policy condition. The repudiation of the claim by the OP, according to the complainant, amounts to deficiency in service thus the complainant no.2 with the assistance of the complainant no.1 Society has filed the instant complaint. The OPs no.1 and 2 in their joint WS have raised preliminary objections that the complaint is not maintainable because the complainants are not 'Consumer' for the reason that Insurance Cover was obtained in relation to commercial activity; and that the complaint is bad for non-joinder of Gujarat State Cooperative Bank Limited, who has financial interest in the insured property and the policy is subject to the agreed bank clause. On merits, the factum of insurance, payment of premium by the complainant no.2 as alleged and the loss caused to the stock of molasses by spontaneous combustion as also the quantum of loss have not been denied. Only plea on merit taken by the OPs is that it has rightly repudiated the claim because there was no fire and the molasses got burnt due to spontaneous combustion.

Serving non-vegetarian food as vegetarian food to a person who does no eat non- vegetarian food is deficiency in service by the airlines. State Commission, Delhi in an appeal of Japan Airlines International Co. Ltd., upheld the decision of the District Forum

In the matter of **JAPAN AIRLINES INTERNATIONAL CO.LTD. (Appellant) versus N.R.AHUJA & ORS. (Respondents),** brief fact of the case are that The present first appeal No.407/10 (Arising out of the order dated 20.08.2009 passed by the District Forum, K.G.Marg, New Delhi Complaint Case no. CC-43/2006) has been filed by the appellant in State Commission against the order dt.20.08.2009 of the District Consumer Disputes Redressal Forum New Delhi, passed in complaint case no 43/06. The brief facts of the case are that the complainant/respondent no.1 along with his wife who is respondent no.2 approached OP no.2 complaint case i.e that is VK Travels and Tour to arrange air tickets for them for to and fro journey from Delhi to San Francisco via Narita/Tokyo and back with a special request that only such Airlines be chosen in whose flights Vegetarian meals are also served. The OP no.2 arranged the required tickets in OP no.1/Appellant Airlines for the said journey of the complainant/respondent with his wife and confirmed that their request for Vegetarian meal during the whole journey had been got registered with OP no.1/appellant Airlines. As per the submission made by the complainants in their complaint, during the journey from Delhi to San Francisco via Tokyo on 23.11.2004 and on return journey from San-Francisco to Tokyo on 21.01.2005 they were served Vegetarian meal. But during the journey from Narita/Tokyo to Delhi on 23.01.2005 the crew staff of the OP no.1/appellant Airlines do served the complainants with a packet/package each of Vegetarian food. The complainants had no occasion to suspect any wrong as they had on their previous journey were

Being served with Vegetarian food in similar looking packet/packages. The complainants started eating the food served to them from those packages/packets which appeared to them to be Vegetarian food only. But, they immediately started to feel uneasy and vomiting type feeling and realized that the food served was not vegetarian as some fish had been served to them. The complainant immediately enquired from one of the air hostesses and she hesitatingly confirmed that the food was in fact Non-Vegetarian having fish in the content. The complainant became very restless and depressed due to this and could not eat anything thereafter for nearly 3 to 4 hours. As the journey was very long the complainant made a request to the airhostess to serve

them some Vegetarian food as they were feeling very hungry, air hostess came after some time without any food packet and told them that no additional Vegetarian food packet is available as they receive the restricted supply as per the choices given to the Airlines. During the flight the complainants could not get anything for nine hours which was the approximate time taken by Airlines to reach Delhi in spite of the fact that even after making request to the crew staff to Serve them something vegetarian, nothing was served to the complainants/respondents no.1 & 2. This commission is of the view that the District Forum below has rightly held the Airlines deficient in providing services to the respondents. The agony of a person who does not eat Non-Vegetarian food and mistakenly due to negligence of someone eats the Non-

Vegetarian food can only be judged by putting oneself into their position and this agony can never be compensated with the amount of money. Accordingly the commission found nothing wrong in the judgment of the District Forum and upheld the same and dismissed the appeal on 27.02.2013 being without merit. No order as to cost.

Wrong blood transfusion is an error, which No Doctor/Hospital exercising ordinary skill would have made, and such an error is a sure instance of medical negligence and deficiency in service.

In the matter of Dr. Sunil Thakur (Appellant) Versus Gorachand Goswami & Ors. (Respondents), brief facts of the case are that Manick Lal Goswami (hereinafter referred to as the Patient) fell down from his bicycle while returning home from his office on 14.11.2000 and sustained injuries, which included a fracture in the neck of the femur. Respondent No.1, who was Patient's son, contacted Appellant-Dr. Sunil Thakur, who was a Consultant Orthopedic Surgeon attached to M/s Avenue Nursing Home on telephone the same night and who advised him to bring the Patient for medical examination the next day i.e. on 15.11.2000, where after an x-ray was taken confirming the fracture, patient was admitted in the Avenue Nursing Home and operated upon by the Appellant on 17.11.2000. Prior to the surgery, the Appellant advised that one bottle of blood would be required, which would be provided by the Avenue Nursing Home. Blood was accordingly supplied and transfused and the operation completed by 5.00 p.m.

However, blood transfusion continued even after the surgery. Soon after the blood transfusion, the Patient started frothing from the mouth and complained of difficulty in breathing and shivering. The next day, he could not urinate and his eyes were found to be deep yellow in color. Subsequently, a Nephrologist after examining the Patient advised that since he might need Dialysis and this facility was not available in the Avenue Nursing Home, the Patient be shifted to

Calcutta Medical Research Institute (CMRI), which was done. On request of CMRI to the Blood Bank attached to it, one bottle of blood of A+ group (being the blood group of the Patient) was supplied for the Patient's Dialysis.

However, the condition of the Patient continued to deteriorate and despite being put on a ventilator he passed away on 01.12.2000. As per the death certificate issued by CMRI, one of causes of death was attributed to the **"history of mismatched blood transfusion"**.

It was contended that while the blood group of the Patient was A+, the blood which was transfused to him at the Avenue Nursing Home on 17.11.2000 was of B+ group as per the report of the Blood Bank which supplied the blood based on an enclosed blood specimen sent with the requisition slip. It was also stated that the Patient's condition actually deteriorated following the transfusion of B+ blood while the Patient was under the treatment and care of the Appellant, which clearly reveals gross medical negligence as also deficiency in the treatment of the Patient on the part of the Appellant as also the Nursing Home.

Being aggrieved by the loss of his father, who was the sole earning member of the family, Respondent No.1 filed a complaint before the State Commission on grounds of medical negligence and The State Commission had directed Dr. Thakur to pay a compensation of Rs. 5,28,000 and Rs.10,000 as costs to the bereaved son. It had also directed the Avenue Nursing Home to pay Rs. 10,000 as compensation within 30 days from the date of the Order, failing which it would carry an interest of 12 percent per annum until payment. At the National Commission, the bereaved son pointed out that there was evidence on record that Dr. Thakur had signed the requisition slip on 16 November 2000 to the Blood Bank, stating that one unit of blood for the patient was required and a specimen blood sample was attached. **The requisition slip did not mention the blood group of the patient. The blood sample was cross-checked in the blood bank and found to be of B+ group and accordingly blood of B+ group was sent for transfusion.** It is clear from this that Dr. Thakur had signed the requisition slip without verifying whether the correct blood specimen had been sent and whether any blood group had been mentioned.

Citing its earlier judgments and those of the Supreme Court of India, the National Commission observed that **wrong blood transfusion is an error, which no doctor/hospital exercising ordinary skill would have made, and such an error is a sure instance of medical negligence.** It agreed with the findings of the State Commission that Dr. Thakur was guilty of medical negligence and upheld its verdict, directing Dr. Sunil Thakur to comply with the order passed by the State Commission and pay the awarded amount of Rs.5,38,000 (i.e. Rs. 5,28,000/- as compensation and Rs.10,000 as cost) to the bereaved son, Gorachand Goswami.