Insurance

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1	http://www.legalapproach.in/case-details/jid/2986	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.					
2	http://www.legalapproach.in/case-details/jid/2988	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					

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		(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.					
3	http://www.legalapproach.in/case-details/jid/2143	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					
4	http://www.legalapproach.in/case-details/jid/2135	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,					
5	http://www.legalapproach.in/case-details/jid/2132	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					
6	http://www.legalapproach.in/case-details/jid/2121	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					

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7	http://www.legalapproach.in/case-details/jid/2057	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					
8	http://www.legalapproach.in/case-details/jid/2038	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.					
9	http://www.legalapproach.in/case-details/jid/2040	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					

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		enhanced amount from the date of filing of claim petition until the date of its actual payment. The parties shall bear their own costs.					
10	http://www.legalapproach.in/case-details/jid/2041	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.					
11	http://www.legalapproach.in/case-details/jid/2005	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.					
12	http://www.legalapproach.in/case-details/jid/1983	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,					

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		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.					
13	http://www.legalapproach.in/case-details/jid/1984	Indra Devi & Ors vs. Bagada Ram & Anr dated 2010-08-18 This is the claimant's appeal from a motor accident claim case					
14	http://www.legalapproach.in/case-details/jid/1979	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.					
15	http://www.legalapproach.in/case-details/jid/1953	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					

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		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).					
16	http://www.legalapproach.in/case-details/jid/1937	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').					
17	http://www.legalapproach.in/case-details/jid/1850	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					

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		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					

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		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					

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		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.					
18	http://www.legalapproach.in/case-details/jid/1826	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					

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		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.					
19	http://www.legalapproach.in/case-details/jid/1821	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.					
20	http://www.legalapproach.in/case-details/jid/1815	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					

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		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.					
21	http://www.legalapproach.in/case-details/jid/1799	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					

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		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.					
22	http://www.legalapproach.in/case-details/jid/1801	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					

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		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					

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		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.					
23	http://www.legalapproach.in/case-details/jid/1787	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					

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		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.					
24	http://www.legalapproach.in/case-details/jid/1777	M/s Hotel New Nalanda vs. Regional Director, E.S.I. Corporation dated 2009-07-15 In an inspection held the officers of the					

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		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					

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		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.					
25	http://www.legalapproach.in/case-details/jid/1765	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					

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		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.					

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26	http://www.legalapproach.in/case-details/jid/1766	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					

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		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.					
27	http://www.legalapproach.in/case-details/jid/1767	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					

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		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					

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		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.					
28	http://www.legalapproach.in/case-details/jid/1755	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					

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		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.					
29	http://www.legalapproach.in/case-details/jid/1746	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					

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		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.					
30	http://www.legalapproach.in/case-details/jid/1737	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					

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		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.					
31	http://www.legalapproach.in/case-details/jid/1680	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					

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		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.					
32	http://www.legalapproach.in/case-details/jid/1426	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					

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		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.					
33	http://www.legalapproach.in/case-details/jid/1409	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					

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		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					

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		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.					
34	http://www.legalapproach.in/case-details/jid/1391	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					

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		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.					
35	http://www.legalapproach.in/case-details/jid/1392	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.					
36	http://www.legalapproach.in/case-details/jid/1320	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.					

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		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.					
37		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					

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		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					