CASE LAWS

ON

TRANSPORT

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Consumer Case Laws Series– 3

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PREFACE

Transportation in today's world is as important as any other basic necessity. Transportation demands continue to increase rapidly as a result of population growth and changes in travel pattern and preferences. The whole process of day to day life, activities, growth and development depends on easy availability of means of communication and transport. Transportation of passengers as well as goods by rail, road or air has vastly improved over the last two decades and there is a major presence of private partners in road and air transportation. The freight transportation by railways is also planned to be opened for private sector.

Augmentation of travel and transport facilities has not kept pace with the high growth in demand either qualitatively or quantitatively. What society expects is a reliable, convenient, faster and safer movement of men and material. People also look forward to getting value for their money while hiring these services. However the track record of state-owned travel and transport setups in providing reliable and quality services is, at times, no better than profit-seeking tactics of private operators.

Domestic tourism sector is also growing at a fast pace both for inland as well as international destinations. This phenomenon has led to burgeoning growth of tour and travel agencies. A large number of people prefer to avail their services even at a higher price for the sake of convenience, hassle free lodging and boarding with travel. But on many an occasion these agencies make enticing promises in their publicity and advertisements, camouflaging vital information in fine print that often lead to consternation and dissatisfaction for tourists far away from their homes.

Grievances of consumers from transport and travel services are piling up in District consumer forums, state Commissions and national Commission. Redressal of these grievances has also brought to fore several original and innovative perspectives on benchmarks and standards for this segment of service.

The cases included in this complication are those adjudicated by the Supreme Court of India and National Consumer Disputes Rederessal Commission between 2000-2005. This brings a summary of almost all the leading consumer cases of this important service sector and reflects the expectations of courts as well as consumer from the transport sector. Here is a complication of some important cases for the benefit of consumers and information of other concerned people including service providers, consumer activists and legal practioners.

I am indeed grateful to the Department of Consumer Affairs, Government of India particularly Shri L. Mansingh, Secretary, for his abiding trust and confidence in the Institute and Mrs. Alka Sirohi, Additional Secretary, for her valuable suggestions and encouragement. I am also thankful to Mrs. Rinchen Tempo, Joint Secretary for her active support, help and advice. I shall be failing in my duty if I do not express my thanks to other officers of the Department, especially Shri G.N. Sreekumaran, Director (CWF) and other members of the Evaluation Committee and Monitoring Committee respectively

I express my heartfelt thanks to the management of IIPA especially His Excellency Shri T.N. Chaturvedi, Governor of Karnataka and Chairman, Executive Council, Dr. K. Malaisamy, Chairman Standing Committee and Shri B.C. Mathur, Honorary Treasure, IIPA for their keen interest encouragement and constructive suggestions. Dr. P.L. Sanjeev Reddy, Director, IIPA has always been supportive and helping. I am indeed thankful to him. I am also thankful to Shri Sunil Dutt, Publication Officer, for his keen interest in the publication to the series.

Before concluding, a word of sincere gratitude towards the Project Director Prof. S.S. Singh whose profound passion for the consumer movement is a source of inspiration for the whole team. Ms. Sapna Chadah, Assistant Professor associated with this project was actively involved with this compilation and rendered valuable suggestions for making the work comprehensive, I thank her for all the precious help. I have a special word of thanks and appreciation for Ms. Vandana Singh who worked in this project as Research Officer and rendered sincere efforts and help in compilation of this monograph.. I am also thankful to Shri Manohar Chauhan, IIPA Library, Shri Abhubav Walia, Shri Nitesh Aora and other secretariat staff working in the project for their willing support and help.

Rakesh Gupta

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EDITORIAL

Satisfaction of consumers, clients and customers in regards to quality of goods and services is a condition precedent for the success of functioning of the system and sub-systems of public governance. It has a direct impact on the system of governance and its legitimacy, credibility and accountability. The role of Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India in this regard is to evolve policies, law, schemes, programmes and to provide appropriate infrastructure, so that the rights and interests of the consumers can be better protected. Keeping in view this particular role, the Department of Consumer Affairs as a nodal institution has evolved a number of schemes and strategies to provide boost to the consumer movement in the country. As a part of this endeavour of the Department, the present Consultancy Project was assigned to Indian Institute of Public Administration, New Delhi. The activities under the Consultancy Project, inter alia, include publications of monographs on the topics of relevance for the benefit of general consumers. The present monograph is a part of series of such publications.

We are indeed grateful to the Department of Consumer Affairs particularly Shri L. Mansingh, Secretary, for his trust and confidence in the Institute and Mrs. Alka Sirohi, Additional Secretary, for her guidance, constant encouragement and active participation in the activities undertaken as a part of the Project. We are also thankful to Dr (Mrs.) Jayashree Gupta, Joint Secretary for her active support, help, advice and usefuf suggestions as Chairperson of the Monitoring Committee constituted under the Consultancy Project. Our thanks are due to other official of the Department especially Shri G.N. Sreekumaran, Deputy Secretary (CWF) and Shri K.V.S. Bhimarao, Deputy Secretary (Finance) and other members of the Evaluation Committee and the Monitoring Committee.

The Management of IIPA especially His Excellency Shri T.N. Chaturvedi, Governor of Karnataka and Chairman, Executive Council, Dr. K. Malaisamy, Vice-President and Chairman Standing Committee and Shri B.C. Mathur, Honorary Treasurer, IIPA for their keen interest, encouragement and constructive suggestions. We express our heartfelt and sincere thanks to them. Dr. P.L. Sanjeev Reddy, Director, IIPA, has always been supporting, helping, encouraging and guiding activities undertaken as a part of the Consultancy Assignment. We are indeed thankful to him. We would like to place on record our thanks and high appreciation for the sincere and timely

services provided by the Administration and Library, which helped us in the efficient performance of the activities under the Project. We are also thankful to Shri Sunil Dutt, Publication Officer, for his keen interest in the publications under the Project.

I wish to place on record our appreciation and thanks from the core of our heart to the author of the monographs Dr. Rakesh Gupta and Ms. Vandanapositive response to our request for contribution of the monograph.

S.S. Singh
Rakesh Gupta
Sapna Chadah

Mrs. M. Kanthimathi & Anr. Vs. Government of India, Ministry of Railways

1 (2003) CPJ 16 (NC)

Facts

The complainants were the petitioners before National Commission. Their complaint was that while traveling in the train some miscreants unauthorisedly entered the compartment in which complainant being husband and wife were traveling. Gold chain was snatched from the first complainant, wife of the second complainant and no assistance whatsoever was provided by the Railways Authorities. The compartment, in which the couple was traveling, was a reserved compartment. Complaining deficiency in service complaint was filed before the District Forum. District Forum after appreciation of the evidence, directed the respondent to pay a sum of Rs. 15,840/- towards value of the jewellery, Rs. 25/- towards sleeping berth change, Rs. 10,000/- as compensation and Rs. 500/- as cost.

Aggrieved from that order of District Forum opposite party – Railways went in for an appeal to the State Commission. Before the State Commission it was submitted that Railways could not be held responsible for loss in view of Section 100 of the Railways Act, 1989. State Commission after analyzing Section 100 of the Railways Act, 1989 reversed the order of District Forum. Hence, the present revision petition.

Issue

First, whether wearing of jewellery on body of person included in luggage? and secondly, whether there was negligence on part of the Railways?

Decision

The National Commission considered the State Commission's order. State Commission was of the view that Section 100 was in two parts. First part is relatable to loss, destruction, damage, deterioration or non-delivery of any luggage booked at the Railways of which receipt had been issued and second part is related to loss etc. of luggage carried on by the passenger in his charge. State Commission was of the view that it is second part of Railways Act, which applies to the present case. State Commission did not find any negligence on the part of the Railways. As regards unauthorized person entering the compartment State Commission observed that

the persons in the compartment would be capable of verifying as to the person who just entered into the compartment was a genuine passenger or not.

Rejecting the above reasoning National Commission held that it is too much to expect from the passengers in the compartment to perform such a duty. Such a course would be in effect so unreal if not illusory. Further, it was held that wearing of jewellery on the body of the person would be included in the term luggage being in his charge during travel in the Railways. There is nothing on record to controvert what the complainants alleged. Firstly, entry of unauthorized person was not blocked and secondly, after the crime no assistance was offered to the complainants by the Railways Authorities.

Thus, National Commission held that State Commission has not taken pragmatic view of the matter. Therefore, order of the State Commission set aside and order of District Forum restored. Railways authorities were held responsible for the loss to the petitioner.

Revision Petition allowed.

Hajarimal Moonat vs. Supdt. Post Offices Service Department

I (2003) CPJ 177 (NC)

Facts

This revision petition pertains to alleged deficiency on the part of the Railways. Complaint of the petitioner was that he booked six railways berths from Ratlam to Raipur and he had to change train at Bhopal. He had reservation throughout. He said that when he boarded the train at Bhopal for onward journey to Raipur there was no reserved berth for them. Later they had to board another train to complete their journey. It is also alleged that at the instance of the Ticket Collector that particular train was boarded. But he had to pay extra money for that and TTE also misbehaved with him. Complaint was dismissed by the District Forum on the ground that jurisdiction lay with the Railways Claims Tribunal.

However, on appeal State Commission held that there was deficiency in service and that District Forum had jurisdiction in the matter and awarded a sum of Rs. 1,000/- as compensation and Rs. 500/- as cost. But at the same time State Commission also directed refund of Rs. 312/- taken as excess fare. Still aggrieved, complainant has come for enhancement.

Issue

Whether there was deficiency in services by the Railways authority?

Decision

National Commission held that "We do not think in a case like this we have any occasion to exercise our jurisdiction under Clause (b) of Section 21 of the Consumer Protection Act. Rather what we find is that the complaint was dismissed in the first instance by the District Forum on 12.9.1994. Complainant filed yet another complaint for the same relief which was rejected by District Forum on 23.8.1995 as second complaint could not be filed. State Commission held that since appeal did not lie against the second order of the District Forum it took *suo motu* action on the first complaint which was dismissed on 12.9.1994 and it treated that as revision though it was quite barred by limitation. Be that as it may, there is no reason for us to interfere with the order passed by the State Commission". With this observation the revision petition was dismissed.

Revision Petitions dismissed

Union of India vs. Sanjiv Dilsukhrai Dave

I (2003) CPJ 196 (NC)

Facts

The respondents, Shri Sanjay Dilsukhrai Dave and Smt. Rupaben Sanjiv Dave, were traveling in S/3 reserved sleeper class in Girnar Express, Train No. 9945 on 24.2.1993 which was coming from Junagadh to Ahmedabad. They put their luggage, bags below their berth Nos. 13 and 16 respectively and they went to sleep. On the early morning of 25.2.1993 around 4.00 a.m. between Dandhuka and Dholka Stations some unknown miscreants entered the compartments and lifted one of the bags and ran away. The respondents aver that the conductor is under a duty to restrain unauthorized persons entering the compartment without any reservation. The conductor was not even present which facilitated unauthorized entry and theft. In this case they contended that there was deficiency in service on the part of the Western Railways, the complainants suffered a loss of Rs. 50,150/- which was the value of clothes and ornaments contained in the bag that was stolen.

District Forum returned the finding that there was deficiency in service on the part of the present petitioner and allowed the complaint and awarded Rs. 15,000/- by way of damages for pain, tension and loss of valuable ornaments along with interest @ 18% p.a. and costs of Rs. 1,000/-. State Commission in the appeal filed by the petitioner affirmed the same view of the District Forum and maintained the said order. Hence the present Revision Petition.

Issue

First, whether the Commission is having jurisdiction to entertain the complaint for the loss of goods? Secondly, whether there was deficiency in services?

Decision

The petitioners were not present in the State Commission at the time of final hearing and raised an issue before the National Commission that the case was taken up in their absence and they were not aware of the said date of final hearing. In the present petition they have reiterated all the arguments which were placed in the District Forum and prayed for allowing the revision petition and dismiss the complaint with costs.

It was contended by the petitioner that the passenger is to take care of his own luggage and articles carried out by him which are in his possession and only the

passengers are responsible for the loss of is belongings.

As regards the first issue, Under the Railways Act, 1989, "goods" and "luggage" are two different things defined separately under Clauses (19) and (23) respectively of Section 2 of the said Act. A plain reading of these clauses show that the word "luggage" means baggage carrying personal belongings of passengers. Further "luggage" can be either carried by passenger himself or entrust to the Railways Administration for carriage. "Goods" means containers, pallets or some articles of transport used to consolidate goods and animals. It appears that "goods" connotes material in the nature of merchandise and does not include personal effects or provisions under Section 13(1)(a) of the Railways Claims Tribunal Act. The Tribunal has jurisdiction to try disputes relating to the responsibility of Railways Administration as carrier in respect of claims of compensation for loss, destruction, damage or non-delivery of animals or goods entrusted to the Railways Administration carried by Railways. The words used by the Legislature in Section 13(1)(a)(i) are "goods" and has expressly and specifically included "luggage". Thus, under the above section, the Railways Claims Tribunal has jurisdiction to try and entertain the claim for loss etc. only of "goods entrusted" to Railways Administration for carriage by the Railways. In the present case, luggage was carried by the respondents themselves and was not entrusted to the Railways Administration for carriage by the Railways. Hence, in the absence of entrustment of luggage, the Railways Claims Tribunal has no jurisdiction to try and entertain the dispute involved in the present case.

Section 15 of the above Act bars the jurisdiction of the other Courts, as regards claims falling under Section 13 of the Act. The language of Section 13 dealing with the jurisdiction of the Claims Tribunal is explained and unambiguous and since the present case of loss of luggage is not covered by Section 13, the question of any baring of jurisdiction of general Courts under Section 15 of the RCT Act does not arise.

For second issue regarding deficiency in service the National Commission held that the TTE is particularly required to take special care in the night as brought out in Schedule, Nos. 16 and 17. Sl. No. 14 clearly casts a responsibility on him to ensure that the doors of the coach are kept latched when the train is on the move. In the present case, it is the contention of the respondent that the intruder came when the train was on the move in the night and this has not been seriously challenged. Admittedly, the TTE has failed in the performance of his duties, which lead to the incident of theft. The arguments of the petitioner that the rules nowhere provide that there should be a TTE for each sleeper coach cannot be accepted because, then, the impressive list of duties which would remain only on the paper, since they cannot

be effectively enforced.

The respondents also argued that the TTE was nowhere to be seen at the time of the incident. On behalf of the petitioners, this was denied and it was argued that the Head TTE Shri R.K. Gupta was in fact present and also tried to help the respondent. However, in the affidavit filed by the TTE Shri R.K. Gupta he had not denied that he was not in the coach when the theft by the intruder took place.

A major responsibility cast on the TTE in addition to examine the tickets is that of ensuring that no intruders enter the reserved compartments and the TTE was not available at the time of entry by the intruder. This is certainly a gross dereliction of duty, which resulted in deficiency in service to the respondents.

Taking into account the circumstances of the case, the National Commission uphold the order of the State Commission with the slight modification to the rate of interest. The State Commission awarded at 18%, which was reduced to 9%. No merit found in the present petition and it was dismissed accordingly. No order was given for costs.

Revision Petition dismissed.

General Manager, Southern Railways vs. A. Shamim

II (2003) CPJ 56 (NC)

Facts

The complainant is a lecturer and traveled in the Express Train No. 7029 on 6.11.1998 to Hyderabad from Kollam. Although she was booked with reservation in Coach No. 54 on that day, the TTE directed her to Coach No. 53, along with the co-traveller. She was carrying a suitcase having study material including bibliographic cards and an amount of Rs. 5,800/-. At about 9.00 p.m., a lady intruded into the compartment and other passengers protested and brought the same to the notice of TTE, but he did not do anything. She contended that at 9.45 p.m., she and her fellow passengers went to sleep in their respective berth and woke up at 2.20 a.m. To her surprise, she found that her suitcase was lying open at lavatory door of the compartment and the study materials were thrown out within and outside of the compartment. She found that the said lady was missing and on verifying the suitcase the 35 bibliographic cards, study material and one handbag containing Rs. 5,800/- were missing. She pulled the alarm chain but the train did not stop. Then she tried to give written complaint to the TTE and the Guard who were not willing to receive. Thereafter, she filed a police complaint U/Sec-379, IPC and also filed a complaint before District Forum, claiming Rs. one lakh as compensation. Opposite parties maintained that she is not a consumer and not entitled for any compensation. The District Forum has gone into all these various facts and appreciated the evidence led by the complainant and found opposite party to be deficient in their services and directed them to pay Rs. 20,000/- as compensation along with Rs. 1000/- as costs. This order was challenged by the opposite party before the State Commission. The State Commission went into the merits as to whether she was a consumer or not and came to the conclusion that she is a consumer and the complainant was successful in establishing the negligence of opposite party and consequently the view taken by the District Forum was upheld and the appeal of the opposite parties was set aside. Opposite party has come in for a revision petition before the National Commission.

Issue

Whether, complainant is a consumer or not?

Decision

The petitioner raised many issues such as to: (1) whether, the respondent's

reservation was in the compartment No. 54 or in 53; (2) whether, the evidence led by the respondent is to be believed or not; (3) whether, it is duty of railways under Sec. 100 to guard the luggage or not.

The above contentions have been reasoned out by the Forum below who returned concurrent findings that there is clear deficiency in service by the petitioner. They believed in the evidence placed by the respondent and the co-passengers. To rebut this, the petitioner did not produce any evidence be at the mechanic to deny the allegation of defective chain or be it the TTE or the guard who could have been examined to counter the contentions raised about the coach reservations, intruder entering the compartment and the care taken to ensure the safety of passenger and safeguard their interests in a reserved compartment. The petitioners have not led any evidence before National Commission to interfere in the findings of the Courts below. Thus, National Commission upheld the view that complainant is a consumer and railways are responsible to care and protect the passengers in the reserved compartment, the Commission dismissed the revision petition and directed the petitioner to pay Rs. 20,000/- with costs assessed at Rs. 3,000/- to the respondent.

Revision Petition dismissed.

South Eastern Railways vs. Yeshwant Tiwari & Others

11 (2003) CPJ 101 (NC)

Facts

Complaint against the railways was that when the complainant No.1 with his family traveled in the reserved compartment of Railways, water was not available in the toilet as the water pipe had broken resulting that there was no facility of water at all. The complainant said that he and his family suffered on that account it being the month of May. In spite of complaints nothing was done to repair the broken pipe. Other passengers had also complained. Facts alleged by the complainants in the complaint were not disputed by the Railways by giving particulars except in its written version it had mainly denied whatever the complainants said. Railways did not file any evidence of the train attendant or any other person to rebut the evidence led by the complainant. District Forum held in favour of the complainants and awarded Rs. 10,000/- as compensation. Railways went for appeal to the State Commission, which upheld the order of the District Forum. Hence, the Present Revision Petition.

Issue

Whether there was deficiency in service by the Railways?

Decision

The National Commission observed that there is concurrent finding by the lower Forums against the Railways. Moreover, it has not been denied that Railways was required to see the availability of water in the train. Thus, there was deficiency in services by the Railways. National Commission refused to exercise its jurisdiction under clause (b) of Section 21 of the Consumer Protection Act, 1986. Order of State Commission upheld, and Rs. 10,000/- awarded as compensation.

Revision petition dismissed.

The Dy. Chief Commercial Manager, Eastern Railways & Anr. vs. Dr. K.K. Sharma & Ors.

III (2003) CPJ 1 (NC)

Facts

The complainants are the University teachers who went to Calcutta for academic purpose. They were to return from Calcutta on 11.10.1995. On 12.9.1995, they purchased tickets for their return journey from Calcutta to New Delhi. However, the tickets were purchased from Shimla-Nos. 888957 (for 4 persons) and 888958 (for 2 persons). Telegrams were sent by Railways Authorities of Shimla to Railways Authorities of Howrah for reservation on the date of purchase of tickets. Reminders were sent to Howrah Railways Station on 16.9.1995 and 19.9.1995 for reservation. No response was received from Howrah Railways Authorities. The complainants went to Calcutta and thereafter made enquires at Howrah Railways Station on 4.10.1995. Unfortunately, they were told by the Howrah Railways Authorities that they had no information about the reservation of berths or the tickets bought by the complainants. Thereafter the complainants on three consecutive days went to the Howrah Railways Station but the Railways Authorities could not tell them anything about the status of reservation of the tickets purchased by them. The complainants on 8.10.1995 succeeded in contacting the D.G.M., Howrah Railways Station. It was discovered that the telegraphic information and reminders about the purchase of tickets and request for reservation sent from Shimla were received at Howrah Railways Station. However, no action was taken by the Railways Authorities for reservation in spite of the reminders. There is no dispute that the complainants purchased tickets for return journey from Howrah to New Delhi on 12.9.1999 more than a month earlier than the scheduled date of journey from Calcutta on 11.10.1995. No reason was given why reservation was not made on the tickets. The result was that they had to overstay for one day in Calcutta. No reservation was available in any train from Howrah to Delhi for the next few days due to Puja rush. The complainants had to travel to Delhi from Calcutta by Air. Thereafter the complainants have lodged a claim of Rs. 4,25,000/- as compensation on the ground of financial loss caused from non-reservation of tickets, mental torture, loss on account of forced air travel and loss on account of local traveling and also overstay in Calcutta. The District Forum dismissed the complaint. However, in appeal the State Commission reversed the order of District Forum and allowed the complaint. The State Commission held that the existence of remedy provided by Sections 13

and 15 of the Railways Claims Tribunal Act, 1987 did not take away the jurisdiction of the Consumer Courts to decide the question of deficiency in service. It was held by the State Commission that for deficiency in service as well as the claims arising out of mental torture, loss on account of forced overstay in Calcutta and loss on account of forced air travel etc. could not be claimed from Railways Tribunal. The jurisdiction of that Tribunal was very limited. With this observation the State Commission allowed the complaint. Against the order of State Commission present revision petition was filed.

Issue

First, whether the CPA have jurisdiction to entertain the complaint? Secondly, whether purchase of ticket give a right to reservation?

Decision

The National Commission agreed with the view expressed by the State Commission. Consumer Courts cannot supplant the jurisdiction of the Railways Tribunal of any other judicial or quasi-judicial body but can supplement the jurisdiction of these bodies in appropriate cases. It provides an additional remedy to a consumer.

The next point is that purchase of a ticket did not give a right to reservation to the complainants. There cannot be any dispute that the passenger is not entitled to get reservation as soon as he purchases a ticket but it is equally true that the Railways cannot decline to make reservation arbitrarily. The complainants have sent telegrams for reservation to Howrah Railways Station through the Shimla Railways Authorities. Three telegrams were sent from the Shimla Railways Office. Railways Authorities have not produced any proof to establish that reservation was done strictly on priority basis. There must be some reason for not giving reservation to the complainants who had purchased the tickets on 12.9.1995 even before reservation opened for 11.10.1995. The Railways Authority has not given any explanation in this regard. Moreover, the telegrams, which were sent, were not relief to dereliction of duty and deficiency in service cannot be disputed.

It was seriously contended before National Commission on behalf of the Railways Authorities that reservation is not given as a matter of right. That may be true. But the Railways have to act reasonably and not arbitrarily. The Commission failed to understand why Howrah Authorities could not say that there was a big rush and tickets were issued strictly on the basis of a priority list prepared. Those who had applied earlier got reservation earlier. The complainant's reservation could

not be considered because his application came too late.

That apart the petitioner sent two reminders by telegram through Shimla Railways Authority. There is no explanation why no response was sent to any of these telegrams regretting inability to provide reservation. It was argued before that the telegrams had not reached Howrah Station for which the postal department must bear responsibility. It is hardly believable that all the three telegrams sent by Railways from Shimla got lost. It was found from a fact by the State Commission that the telegrams had reached Howrah Station in due course. The Railways Authorities explained that there was a big pressure on reservation because of heavy rush from Calcutta, during Puja holidays. But why the complainants' application for reservation was not considered and why the reminders sent by complainant at Shimla went unanswered has not been explained.

Having considered all the facts of the case, the revision petition is dismissed. The orderof the State Commission does not call for any interference. This application is dismissed.

Revision Petition dismissed.

Ms. B. Pushpakanthi & Anr. vs. General Manager, Southern Railways

III (2003) CPJ 3 (NC)

Facts

The facts briefly stated are that the complainants are the old couple, the husband is at 77 years and the wife is at 73 years. The wife is a heart patient. They had reserved two berths for journey from Madras to Karur on 18th April, 1994, and also obtained confirmed reservation for the return journey on 24th April, 1994 from Karur to Madras Central by the Kochin Express. While the journey from Madras Central to Karur was as scheduled and uneventful, it was not so on their return journey and they were faced with problems. The first problem was that they found their names were missing from the reservation chart and on contacting the Railways officials they were informed that they had no reservation. On their producing the confirmed reservation tickets issued by the Railways for that very day by that very train, they were asked to take seats in Cabin-A but not in Cabin-B, which was the coupe originally reserved for them. After the train had got into motion the TTE on being asked to provide accommodation to the old couple failed to do so which lead to some heated exchange of words between them. The TTE as alleged, did not care for their predicament and left them with one berth in Cabin-A. This whole episode caused mental strain and inconvenience to the old couple, and it is further alleged that the wife (the first complainant) became emotionally upset and sick as a consequence of this. On reaching Madras the complainants gave notice to the respondents, the Railways, and in return, they only received a letter from the Additional General Manager of the Railways regretting for the inconvenience caused to them, but did not deal with their claim for refund and compensation for inconvenience. Having failed to get redressal of their grievances the complainants filed a complaint before the District Forum under the Consumer Protection Act. The respondents contested the claim of the complainant and their plea before the District Forum was that there was an urgent message for provision of the coupe for VVIP at the last minute and as such the coupe allotted to the complainants had to be cancelled and given to the VVIP. Neither particulars of the VVIP are mentioned nor any chart to show or even the message whereby the coupe was requisitioned was produced or brought on record by the Railways. They denied that the health condition of the complainant No. 1 was the direct cause of sudden cancellation or the change of allotment of reservation. They also stated that as the

accommodation to the couple had to be cancelled, the TTE incharge, in an effort to alleviate their hardship, allotted to the couple one berth. The Railways did not plead any other defence nor did they refer to any rule in their reply which could justify their action.

The District Forum, after taking into all the documents and records including the confirmed reservation ticket found deficiency in service and directed refund of fare and costs of Rs. 250/-, apart from Rs. 10,000/- towards compensation.

In their appeal the State Commission has set aside the order of the District Forum. Hence, the present Revision petition.

Issue

First, whether the confirm reservation gives right to reserved accommodation? Secondly, whether there was deficiency in service?

Decision

Before State Commission the Southern Railways for the first time relied upon the Rule 306 and contended that the Railways do not guarantee reserved accommodation. The Railways have not pleaded any *force* or any internal or external emergency, which may compel the State to resort to the extreme action of essential supplies etc. The Railways have also not shown any rule which allows them to cancel the confirmed reservation of a citizen to accommodate any VVIP.

The said Rule neither deals with cancellation of the reserved accommodation nor does it give Railways unbridled powers to cancel confirmed reservations. Moreover, the said Rule only protects Railways against any argument that the Railways are bound to guarantee reserved accommodation. It is very interesting to note that no endorsement or indication is printed on the face of or at the back of the tickets that even confirmed reserved seats can be denied to the passengers holding confirmed ticket issued by the Railways nor is there any indication of or reference to Rule 306 on the face of or back of the ticket. Impliedly, it is contended that the said rule be read as a condition of the contract between the parties. Moreover, it is not the case of the Railways' inability to guarantee reservation. It is a contract of carriage and in every contract parties have to be *ad idem*. There is no evidence that at any time the complainants were made aware of or put on notice of such a right of the carrier (i.e. Railways) as has been for the first time pleaded in appeal. Having given confirmed reservation on a particular train and the passenger reporting on that train at the given time and place, he could not have been deprived of accommodation except for special reasons beyond the control of the Railways, as

have been noticed above. No rule has been brought to the notice, which enabled the Railways to cancel the confirmed reservation tickets or any passenger only to accommodate some other passenger in his place nor is any rule pointed out whereby any VVIP passenger can deprive another *bona fide* passenger holding confirmed reservation of his right. Such deprivation of confirmed booking at the eleventh hour has been rightly held to be amounting to deficiency in service by the District Forum. Moreover, as already noticed, no plea based on Rule 306 was ever raised before the District Forum nor any such argument was advanced, nor did the Railways in their reply to the complaint raised any such plea. The plea appears to be only an after-thought and Railways are also estopped from raising this plea for the first time in appeal. Therefore, National Commission held that the State Commission has erred in setting aside the order of the District Forum. The order of the State Commission is, therefore, set aside and findings of the District Forum regarding deficiency in service are confirmed. However, both the complainants having completed journey by the same train, therefore, cannot claim full refund of the entire fare. At best, they could ask for return of the reservation money or charges for reservation. For the inconvenience and the harassment faced by them during the journey they have rightly been compensated by the District Forum. Order of the District Forum modified only to the extent of quashing refund of full fare. Rest of the order of the District Forum is confirmed. The Railways will also pay costs of this revision petition, which are assessed at Rs. 2,000/-. The revision petition is disposed of as above.

Revision Petition disposed of.

Sumatidevi M. Dhanwatay vs. Union of India

11 (2004) CPJ 27 (SC)

Facts

The appellant traveled by 1st Class, A.C. berth from Nagpur to Bombay by Howrah-Bombay Mail. She was carrying her luggage which included gold, pearl, silver and diamond jewellery and other valuable valued at Rs.1,11,7561/-. While she was traveling, some unauthorized passengers assaulted her and her valuables were taken away forcibly. This incident occurred on 4-12-1991. Thousand of persons entered into the compartment and assaulted the passengers, including the appellant. She said crowd was so violent that they broke the doors, window bars, glass panels, seating berth and toilets etc. This apart, the crowd committed so many other illegal acts of assaulting the bona fide passengers. They molested the women and even raped the young girl passengers. The appellant pulled the alarm chain three times, as a result of which, the train stopped at lagatpuri station. She, along with other bona fide passengers got down at that station. She approached the Railways Authorities for protection, but without any assistance. On reaching Bombay, she lodged a complaint with the police about the incident. The appellant also approached the State Commission, Maharashtra and claimed compensation of Rs. 9,32,250/-. The State Commission, after considering the material that was placed before it allowed the claim of the appellant and awarded the total compensation of Rs. 1,41,756/-. The Railways Administration aggrieved by the order filed an appeal before the National Commission. The National Commission set aside the order of State Commission. Hence the present appeal.

Issue

First, whether there was deficiency in service on the part of Railways Administration, when an unruly mob entered into the railways compartment and caused damage on the person and property of passengers? Second, whether in such situation complaint can be entertained under the CPA? Thirdly, whether the commission have jurisdiction to entertain the case.

Decision

The averment made in the complaint that the appellant traveled by train on that day when the incident happened, is admitted. However, the Railways Administration denied its responsibility as to the theft of luggage of the appellant and the injuries suffered by her. The only contention of the Railways Administration

was that it was not responsible for the loss of luggage and injuries caused to the appellant. The State Commission, on consideration of the facts and circumstances, has recorded that having regard to the past experience, the Railways administrators did not take reasonable steps to avoid such incident. It is also recorded in the order of the State Commission that regarding the allegations of injuries suffered by the appellant and the loss caused to her luggage, the Railways Administration had not been able to controvert effectively. The State Commission has categorically recorded a finding that there was deficiency in service on the part of the Railways on the date of incident. The Railways was well aware of the impending contingency that would happen and they failed to take precaution and preventive measures. Inspite of their prior knowledge they had not made any effort or devised measures to curb lawlessness indulged in by the ticket-less travelers. Having recorded such finding, the compensation was awarded to the appellant by State Commission. However, strangely, the National Commission, without noticing the facts of the case, without dislodging the reasons recorded by the State Commission and without giving reasons, upset the order of the State Commission, simply stating that the finding of the State Commission could not be upheld that there was a deficiency in service on the part of the Railways Administration. It may be added that the National Commission itself has observed in the impugned order that "However we cannot part with this order without expressing our concern about the total absence of any steps having taken by the concerned Railways Administration to mobilize adequate police force sufficiently before hand when the occurrences of such mob-violence on stations en-route Nagpur to Bombay on Ambedkar Day has been a recording phenomenon every year".

This observation of the National Commission also supports the position that there has been negligence on the part of the Railways Administration.

This apart, the Railways Administration did not raise any issue as to the maintainability of the complaint or jurisdiction of the State Commission to deal with the complaint. Even otherwise, under Sec.3 of the CPA, the complaint could be entertained by the State Commission in the absence of any such plea taken by the Railways Administration, as to the jurisdiction to entertain the complaint.

Thus, the Supreme Court held that the impugned order passed by the National Commission couldn't be sustained. No good reasons given by the National Commission to upset the order passed by the State Commission, as already observed. Under the circumstances, the appeal is entitled to succeed. Impugned order set aside. Order of State Commission restored. The respondent directed to pay the Rs. 5000/- to the appellant towards cost.

—Appeal allowed with cost

Savitri Awasthi vs. General Manager, Northern Railways

III (2005) CPJ 28 (NC)

Facts

Complainant was traveling from Kharagpur to New Delhi on 12.12.1994 in Neelanchal Express. On reaching Delhi she found on 13.12.1994 that one briefcase containing valuables was missing. Complaint was lodged with the Railways Police and also with the Railways Authorities and when no reply was forthcoming, a complaint filed before the District Forum, who upon hearing the parties dismissed the complaint taking advantage of Section 100 of the Indian Railways Act, 1989. The appeal against the order was also dismissed by the State Commission, hence the revision petition.

Issue

Whether there was deficiency in service?

Decision

The National Commission observed that it is not in dispute as per material on record, i.e. journey ticket, that the complainant was traveling in ordinary 3rd class compartment and it is well known position that there is no attendant or in-charge of that compartment, in such a situation the protection of the belonging on a running train have to be taken care by the passengers themselves. Hence the National Commission not inclined to interfere with the order passed by both the lower Forums. In a case like this either the baggage should have been booked or taken care by the passenger herself. No illegality or infirmity found in the order of lower Forums. Revision petition is devoid of merit, hence dismissed.

Revision Petition Dismissed.

Chairman, Railway Board & Anr. Vs. P.S.R.K. Timaji Rao & Ors.

IV (2004) CPJ 55 (NC)

Facts

The respondent Nos. 1,2 & 3 had made reservations and were to travel from Palasa to secundrabad by an express train. Bogies in which they had the reservations bearing coach No.S-9 was not located and it was raining very heavily, they had to undergo large amount of difficulty in getting into the train. Thus, alleging deficiency in service, a complaint was filed before the District Forum. The District Forum after hearing the parties allowed the complaint and directed the opposite parties to provide number plates to the sleeper coaches on all express trains within 30 days from the date of the order. An appeal filed against this order by the petitioner was dismissed in limnie by the State Commission. Hence, this Revision Petition.

Issue

Whether there was deficiency in services?

Decision

National Commission held that the Railways is a public sector monopoly and engaged in primary public service of transporting all kind of people. It cannot be the case of the Railways that they will paste the bogy number on a piece of paper affixed to a compartment or write the coach number with chalk. Needless to say that they are susceptible to vagaries of nature not to say human beings as well. For the convenience of the people as directed by the State Commission the painted number plates could be put up on the slots or grooves provided outside each compartments, which will immensely facilitate quality service provided to the commuting public. It should become the duty of the Railways to own its responsibility to change the coach number as and when train is created/united or rejoined. It is not disputed that such 'changes' take place at major halting stations or junction stations only. To further facilitate the cause of the 'public' petitioner should undertake the responsibility to change the coach number in a non-tampering and easily discernible manner in a sequential order so as to facilitate the common man to go up to the right coach without much inconvenience. Thus, no ground to interfere found in the order of State Commission. However, instead of 30 days 3 months were given to implement the order. Order of the State Commission upheld.

Revision Petition dismissed.

Union of India, Northern Railways & Ors. vs. Satya Narain Singhal

III (2005) CPJ 50 (NC)

Facts

Petitioner was the opposite party before the District Forum, where the respondent/complainant had filed a complaint alleging deficiency in service by the petitioner.

Brief facts of the case are that the respondent/complainant on 13.5.2000 purchased a ticket to travel by train Haryana Express from Rewari to Sarai Rohilla, Delhi and paid Rs. 29 as the fare. Since the distance between these two places is 78 kms. and there was more than 10 stops en route, hence according to the complainant this is a passenger train and he should have been charged the fare applicable for passenger train and not express train. Thus, alleging deficiency in service, a complaint was filed and the District Forum, upon critically analyzing the material on record brought in by the parties, directed the petitioner to charge the fare applicable for passenger train and also awarded a cost of Rs. 100/-. In an appeal filed by the petitioner before the State Commission, it was dismissed both as being barred by limitation as well as on merits, hence this revision petition before us.

Issue

First, whether the consumer forum have jurisdiction to classify the trains as express or passenger trains? Secondly, whether charging fare of Express train was justified?

Decision

The contention of the petitioner is that the consumer Forum does not have the jurisdiction to classify the trains as express or passenger trains. There was apprehension in the mind of the petitioner that this right rests with the Government and Railways Board. The National Commission has observed that the operative part of the order passed by the District Forum has only directed the petitioner to retain only fare of passenger train charges and refund the difference between the passenger train and express train (Haryana Express) as charged from the respondent/ complainant along with awarded cost of Rs. 100. At no stage, any direction has been passed by both the lower Forums below to classify or categories any train as express or otherwise. The learned Counsel for the petitioner was candid enough to admit

that they are willing to pay the directed amount. This alone is what both the lower Forums have directed. No other relief being sought. Thus, no merit found in the present petition. The order passed by both the lower Forums was upheld. The revision petition is dismissed. No order as to costs.

Revision Petition dismissed.

Divisional Railways Manager & Anr. vs. Abhishankar Adhikari

IV (2006) CPJ 79 (NC)

Facts

The complainant/respondent was traveling on 4th September, 2001 by Delhi-Kalka Mail in AC-3 Tier Coach. At about 5.45 a.m. he was the only passenger in his coupe, when he left his berth for brushing his teeth and washing his mouth at the wash-basin provided in the coach. But, when he came back to his birth he found that his VIP Trolley Suitcase, containing one camera, one cell phone, Rs. 5,500/- in cash and some other belongings, was missing. He draws the attention of the coach attendant who took it in a very casual manner. He lodged a complaint with GRPS, Howrah. According to the complainant, the loss of the suitcase was caused by the entry of unauthorized persons into the coach. As such the coach attendant and other employees of the railways-opposite party and its employees were deficient to the matter of rendering proper services to the complainant.

The opposite party contested the case and alleged that the loss was due to negligence of the complainant and the Railways was not responsible. The District Forum directed the opposite party to pay a sum of Rs. 40,000/- towards loss of the luggage and a sum of Rs. 5,000/- towards mental agonies, worries and harassment and a sum of Rs. 1,000/- as costs with 8 percent interest p.a. in case the payment was not made within 30 days.

An appeal was filed before the State Commission. The State Commission while allowing the appeal partly, directed the petitioner to pay compensation of Rs. 10,000/- and a cost of Rs. 1,000/-. Against this order present Revision Petition is filed.

Issue

First, whether complaint against loss of luggage is covered under the purview of CPA? Secondly whether the quantum of compensation is appropriate?

Decision

It may be mentioned that every railways passenger is a consumer in terms of Section 3 of the Consumer Protection Act (in short the 'Act'). Jurisdiction of the Consumer Fora is not ousted in such matter for the loss of luggage is not covered by section 13 of the Railways Claims Tribunal Act, 1987.

Before discussing the facts of this case the National Commission first appreciate the duties of a coach attendant as noted in the Ambreesh K. Kagzi, Bombay vs. The General Manager, Western Railways, Bombay (R.P. No. 3121 of 2003):

(i) Ensuring that all internal fittings of the coach are in working order.

(ii) Assisting the conductor in accommodating passengers boarding en route.

(iii) Preventing entry of unauthorized persons in the coach.

(iv) Helping ticket checking staff in checking passenger's tickets.

(v) Assisting passengers in arranging food.

(vi) Locking the compartment securely when the train is in motion and the vestibule doors at night.

(vii) Attending to minor electrical/mechanical faults and calling in maintenance staff to attend to major repairs.

(viii) Arranging supply of Bed rolls.

(ix) Ensuring that bathrooms/compartments are cleaned regularly.

(x) To conduct check against carrying of inflammable articles in the coaches provided. If such goods are detected he shall bring it to the notice of the ticket checking staff on the train.

The TTE attached to the coach was supposed to be very vigilant about entry of any one other than the reserved ticket holders. He is required to prevent even a relative of the passenger to enter into the coach. He is supposed to ensure that unscrupulous persons like hawkers, beggars, etc, do not enter into the coach. He is supposed to ensure that coach attendant follows instructions to prevent entry of the outsiders into the coach, by locking the doors of the compartment while the train is in motion and vestibule doors at night.

The lame excuse that some other passengers might have taken away while leaving the train and the coach attendant could not check is just neither convincing nor appealing, if coach attendant would remain vigilant and take care of the passenger at night no such incident could have occurred. A passenger of AC-II tier is not supposed to carry his luggage to the washbasin if he goes to brush his teeth or to bathroom in case of need. To serve this very purpose, particularly, between 22 hours and 6.00 hours TTE is supposed to ensure that no person other than the reserved ticket holder enters in the coach. If no outsider was allowed, then either the coach attendant or other staff of railways himself committed theft by removing VIP Trolley suitcase of the complainant or connived in its theft. Otherwise, theft could not have taken place between 5.45 a.m. and 5.50 a.m., particularly, when there

was no other passenger in the coupe. The railways have not produced any evidence if any passenger could have alighted between 5.45 a.m. to 5.50 a.m. The submission that complainant did not lock the coupe before going to washbasin was rightly rejected for coupes could be locked only from inside and not from outside. Accordingly, the railways officials, viz. TTE and coach attendant were negligent in rendering services on behalf of the railways and as such the petitioner was rightly held deficient in services.

As regards compensation, the complainant had filed affidavit in support of his claim for a sum of Rs. 50,000/-. The State Commission virtually took a slightly conservative view while holding that the complainant had not produced any independent evidence for the purpose of assessing the damages and compensation, etc. But, in this regard one has to take note that the common men do not preserve the bills of each and every item to pile up unnecessary papers expecting that some day a theft may take place and he would be required to produce those documents. In ordinary course his affidavit should be accepted and acted upon keeping some margin of exaggeration of claims. In such a situation, one has also to keep in mind probable depreciated value of the articles lost. In this matter instead of Rs. 40,000/- , the State Commission has just awarded Rs. 10,000/- for the stolen suitcase and contents thereof as well as for harassment and mental agony with cost of Rs. 1,000/-. The compensation is not on higher side.

In view of the aforesaid discussion, no force found in this revision petition and the same is dismissed. Order of State Commission restored.

Revision Petition dismissed.

Prestigehm-Polycontainersi Ltd. vs. American President Lines Ltd. & Anr.

I (2001) CPJ 17 (SC)

Facts

The appeal is filed under Section 23 of the Consumer Protection Act, 1986, against the order of the National Consumer Commission, dismissing the complaint on the ground that the complainant failed to inform the Commission about the outcome of the decision of the foreign Court before which certain dispute was pending. The order, which is a short one, reads:

"It has been stated on behalf of the complainant that they are unable to inform about the outcome of the decision of the foreign Court about the dispute. The Counsel for the complainant was specifically asked this question on the various dates of hearing. It has been informed by the Counsel appearing for the complainant that their client is not in touch with them. In that view of the matter, the complaint is dismissed."

Against this order present appeal was filed before the Supreme Court?

Issue

Whether the matter was decided on merit by the National Commission?

Decision

Notice was issued to the respondents to show cause why the matter should not be remanded to the National Commission for considering the question of liability of the carrier of goods by sea (respondents herein), as distinct from liability of the buyers.

Learned Counsel for the appellant submits that due to a communication gap between the appellant and its Counsel, the requisite information could not be placed before the Commission when the case was taken up. He further submits that in the meantime, the requisite information has been received and indeed it is a part of the record in this case.

From the order under challenge it is clear that the Commission has not considered the case on merits. It is also not stated in the order now the information regarding outcome of the decision of the foreign Court is relevant for adjudication of the dispute raised in the case. In the facts and circumstances National Commission

is of the view that the matter should be decided on merit. Accordingly, the appeal is allowed. The order passed on 5th July, 2000 in Original Petition No. 279 of 1992 is set aside. The matter is remanded back to the National Commission Disputes Redressal Commission for disposal in accordance with law, after giving opportunity of hearing to the parties.

Since the matter was delayed before the Commission on account of the default committed by the appellant in furnishing the requisite information the appellant shall pay a sum of Rs. 5,000/- (Rupees five thousand only) as costs to the respondent No.1.

Appeal allowed.

Gemcraft Engineering Company (Pvt.) Ltd. vs. K.K. Satyanarayana & Anr.

III (2001) CPJ 18 (NC)

Facts

The petitioner represented to the complainant that he was selling TAFE tractor, trailers and other accessories. On the representation of the petitioner, the complainant purchased a tractor, trailer and front bumper. The complainant found that the trailer was not manufactured by the respondent No.2, TAFE, but it was locally made by a sister concern of the petitioner. He filed a complaint before the District Forum seeking direction to the petitioner to take back the tractor supplied to the complainant and also refund the price of the trailer and front bumper. The District Forum after appraisal of the material placed on record, returned the finding that the petitioner supplied a sub-standard non-TAFE trailer to the complainant though the complainant paid the amount in respect of TAFE trailer. The District Forum directed the petitioner to take back the trailer and deliver a standard trailer of TAFE Co. or refund the amount of Rs. 51,538.36 with interest @ of 15% p.m. from 28th March, 1992 till payment. The petitioner was further directed to refund Rs. 10,699.75 being the price of the tiller and front bumper with interest.

Aggrieved by the order of the District Forum, the petitioner filed an appeal before the State Commission, Karnataka. The State Commission, after taking into consideration the relevant contentions of the parties and perusing the order of the District Forum and the materials on record, affirmed the order of the District Forum. It was observed by the State Commission that the complainant wanted a trailer manufactured by TAFE and the petitioner who was the dealer of the TAFE had agreed to supply the trailer manufactured by the TAFE and that he had not delivered the trailer manufactured by the TAFE.

Being not satisfied with the order of the State Commission, the petitioner has filed this revision petition.

Issue

Whether there was supply of wrong articles to the complainant?

Decision

It was urged by the petitioner that both the Fora below went wrong in holding that the Petitioner had not supplied the trailer of TAFE.

National Commission after perusal of the record held that the contention raised on behalf of the petitioner is devoid of merit. Both the Fora below have examined this point. They found that the trailer supplied by the petitioner was not of TAFE make. This is a question of fact concluded by both the Fora below. The finding is based on the appraisal of the material placed on record. No illegality or infirmity found in the order passed by the State Commission. The revision petition is dismissed. However, since there is no representation on behalf of the respondent No. 1, the Commission directed the parties to bear their own costs.

Revision Petition dismissed.

Dhillon Exports Pvt. Ltd & Anr. vs. Air India & Anr.

I (2003) CPJ 142 (NC)

Facts

There are two opposite parties. Both are international air carriers. Complainants say both these carriers had back to back arrangement for transporting the cargo by air. Complainants say that they had obtained orders from a Japanese Firm M/s. First Research Company Ltd. for Psyllium Husk (Isabgol). The value of the order was US $88.300 and the order was received on 26.9.1994. On 10.10.1994 complainants sent two consignments of 850 bottles of Psyllium Husk by air to Tokyo. Air India, sent these consignments on 16.10.1994 and on 20.10.1994, which was received at Tokyo airport.

Consignee was the Sumitomo Bank Ltd. and cargo could be released to the purchaser only on production of the documents after it makes payment to the Bank. Complainants alleged that without proper instructions Japan Airlines released the Cargo on 24.10.1994 to First Research Co. Ltd. without receiving the payment. Thus, in short, alleging deficiency in service this complaint has been filed holding both the airlines jointly and severally responsible. Particulars of the claim was US $ 1,63,726.00 equivalent to Rs. 55,38,8510/-.

Issue

Whether releasing of consignment without production of documents would amount to deficiency in service?

Decision

Japan Airlines contended that under a mistaken belief in order to avoid demurrage Japan Airlines released the consignment. However, that is its own responsibility and nothing has been shown that it could so release the consignments under any law. But when there was a protest from the complainants it made attempts to retrieve the consignment and was successful to do so inspite of its own paying 1.00 million Yen to the First Research Company Ltd. Thereafter, it is the fault of the complainant in not giving proper instructions to the Japan Airlines and Air India in taking no steps for its disposal. Thus it was found that even though Japan Airlines was initially deficient in service in releasing the consignment contrary to the instructions of the complainants yet it took all the steps to retrieve the consignment and it waited for instructions of the complainants, which they failed

to give. For that either Air India or Japan Airlines cannot be held responsible. But then for being deficient in service in releasing the consignment without receiving payment thus putting the complainants to spend unnecessary for the visit of Tokyo and for the mental tension and harassment suffered had to be compensated. Moreover complainants are also entitled to interest on the value of the consignment from 1.11.1994 to 25.3.1995 (i.e. about the time consignments were released and then retrieved). There is no evidence on record brought by the complainants to show as to what expense they incurred on the visits to Tokyo by their representative and how they are claiming interest @ 24% per annum. Taking the rate of interest at 18% per annum and the period of about 4 months and the expenses incurred on visits to Tokyo National Commission were of the view that a sum of Rs. 2.00 lakhs will meet the ends of justice. At the stage subsequent to 25.3.1995 the complainants were the ones who are wholly responsible for the loss of the consignments.

Japan Airlines had claimed US $ 4,36,638/- towards demurrage for holding on the consignment awaiting instruction of the complainants. It had, therefore, made a claim of US $ 3,48,638.00 (demurrage US $ 4,36,,638 (¯) US $ 88,000, being the price of the consignment. The claim for demurrage though arises out of the same transaction, however, National Commission would not like to go into the question of award of any demurrage and expenses in these proceedings as claimed by Japan Airlines. In these circumstances, Commission also refused to go into the question if any compensation is to be awarded in favour of the complainants for loss of consignment and, therefore, would relegate the parties to seek their remedy elsewhere when claim and counter-claim arising out of the same transaction can be sorted out. Therefore, the complaint is allowed only to the extent of award of damages of Rs. 2.00 lakh on account of deficiency in service as aforesaid against the opposite parties.

Complaint allowed.

Tomorrow Antiques vs. Alitalia Cargo & Ors.

III (2003) CPJ 155 (NC)

Facts

1. M/s Tomorrow Antiques, after getting an order from D.D. Sales of New York, USA for 1025 Pairs of cotton gents Dhotis, handed over this consignment to respondent No.3 M/s Fourways Movers (P) Ltd. on 4th of October, 1994, who is an IATA agent, for onward dispatch to New York for which a 'House Airway Bill No. 842' was prepared by the Agent, (respondent No.3), than a carting order was prepared by respondent No.1 which indicates the dispatch of this consignment on 6.10.1994 by Flight AZ 1905 with a rider 'cargo accepted subject to space'. Master Airways Bill was prepared on 4.10.1994. It is the contention of the complainant that there was a commitment about the arrival of consignment in New York, on or before 10.10.1994 whereas it did not reach there till 20.10.1994, which resulted in cancellation of order by the importer causing loss to both the parties for which this complaint has been filed claiming Rs. 24.80 lakh as compensation.

2. M/s Dilawari Exporters after getting an order from D.D. Sales of New York, USA for 2050 pairs of cotton gents Dhotis, 150 sets of cotton ladies Ghagra-Choli, 150 pieces of Dupattas, handed over the consignment to respondent No.3. M/s Fairways Movers (P) Ltd. on 4.10.1994 for onward dispatch to New York for which a 'House Airway Bill No. 841' was prepared by the agent (respondent No.3), a carting order was than prepared by respondent No.1, which indicates its dispatch on 6.10.1994 by Flight AZ – 1905 with a rider 'cargo accepted subject to space'. It is the contention of the complainant that inspite of clear understanding between the parties that the consignment shall reach New York before 10.10.1994, the consignment reached its destination only on 20.10.1994, while in between i.e. on 16.10.1994, the importer, on account of non-receipt of consignment by due date, cancelled the export order and claimed damages. Alleging deficiency in service on the part of respondents the complainant approached the National Commission.

Since the basic facts are same, respondents are the same and are being contested through the same lawyers, the National Commission went on to decide both the cases through a single order.

Issue

First, whether delay in delivery of consignment would amount to deficiency in services; Secondly whether the complainant had locus standi to file the complaint.

Decision

National Commission before going into the main issue of delay in delivery dealt with the second issue i.e. privities of contract. First point raised by the respondent is that there has been no privity of contract between the parties i.e. complainants and the first respondent. For bringing merit in his case the complainant has tried to build his case by stating that respondent No. 3 accepted the consignment on behalf of respondent No.2 who in turn had accepted the consignment on behalf of respondent No.1, thus, establishing relationship of principal and agent(s), hence complainant's depositing the goods with respondent No.3 binds the respondent No.1 and he becomes a party to the contract.

The National Commission after perusal of materials on record held that "it is not disputed by the parties that Airway Bill alone is a contract between the parties. Firstly, consideration of Part III, Chapter II of Schedule II of the Air Act does not even remotely refer to any other document except Airway Bill. It is found that on the Airway Bill which happens to be prima facie evidence of conclusion of contract of the receipt of cargo and the conditions of carriage, the name of the shipper is shown as Fourway Movers Pvt. Ltd., (opposite party no. 3), and not that of the complainant, nor is there any evidence/indication of any such capacity of the respondent No.3 on the Airways Bill. Therefore, it will not be possible to read in the Airway Bill what is not set out or indicated therein. It is for this reason that National Commission tends to agree with respondent No.1 and accept its plea that the complainant has no locus standi to file the present complaint against respondent No.1, i.e., the Airline. Things would have been different if at the time of booking the cargo, respondent No.3 had issued a communication to respondent No.1 that he was acting as agent of the complainant. The complainant has not claimed any relief against respondent No.3. Therefore, even though there may be a case against respondent No.1 on merits, the case would fail for want of locus standi of the complainant to file this complaint. There is a lot that can be said on merits, but in view of the want of locus standi in favour of the complainant, the National Commission has not gone into that. Hence complaint dismissed.

Complaint Dismissed.

Shakumbhri Exports vs. Leif Heegh & Co. and Ors.

11 (2004) CPJ 28 (NC)

Facts

The complainant Shakumbhri Exports, is a partnership firm exporting handloom products, they entered into a contract on 11-6-1994 for supply of handloom, durries and floor covering to 3rd O.P. for a price of US$ 39,437/-. The goods were shipped through the 2nd O.P., M/s Forbes Gokak Ltd., Bombay who is the agent in India of the 1st O.P., M/s Leif Heegh & Co. The shipment of these handloom products was carried by vessel 'Hough Carin' covered by bill of lading No. 054 dated 11-6-1994. The La Salle National Bank, Chicago was shown as the consignee in the Bill of lading. The party to be notified is M/s Hayem & Co., the 3rd O.P. The delivery of the consignment was to be made against documents, and the documents were to be released by La Salle Bank only on payment being made to the said Bank by M/s Hayem & Co. When the complainant did not receive the payment for goods shipped, they made inquiries on 1-2-1995 with the 2nd O.P. about the fate of the consignment. The 2nd O.P., vide his fax message dated 3-2-1995 informed the complainant that the goods were released and delivered to the party on 27-7-1994. However, since no payments were received, the complainant persisted with further inquires and ask for the Original Bill of lading. The 2nd O.P., suddenly changed his stand and vide his fax message dated 25-4-1995 now informed that the goods could not be cleared as the consignee did not surrender the Original Bill of Lading and that the goods were still lying unclaimed at the docks. Later they had disposed of the goods by auction without the permission of the complainant. Under these circumstances the complainant approached the National Commission alleging deficiency in service on the part of the opposite parties and claimed Rs. 23,19,749/-.

Issue

First, whether the National Commission have jurisdiction to entertain the complaint? and Secondly, whether there was deficiency in services?

Decision

Regarding the issue of jurisdiction, the National Commission held that the norms expected by both the parties and the practical approach i.e. when an agent on behalf of the principal shipping company has entered into a contract in India, namely by way of issuing a bill of Lading in India, the courts in India will certainly

have the jurisdiction under section 20 of the Code of Civil Procedure, 1908. Further, merely because of the fact that O.P. No.1 is a foreign company registered in a foreign country, it cannot be argued that the complaint in question cannot be entertain by this commission. On their own showing the O.P. No.1, has admitted specifically that they are represented in India by their agent namely "Forbes Gokak Ltd.," which is a registered company under the Companies Act, 1956. Therefore, whatever transaction has taken place between the complainant and O.P. No.1st, it has to be deemed that part of the transaction in question has taken place substantially within the territorial limits of India, the O.P. No.2, has its registered office at Bombay and works for gain from the said establishment. The Bill of Lading issued, is a combined transport document which covers all modes of transport ranging from road to sea to air and hence the O.P. No.2 can be sued in India by the consignor and the commission has jurisdiction to hear the case.

Regarding, second issue the commission held that the facts in this case are that the notified party refused to receive the goods by producing the original bill of lading. On 25-4-1995, O.P. No.2, informed the complainant by fax "No original bill surrendered by your consignee and therefore, cargo still pending and un-cleared, kindly advice as to what to do with the shipment". The complainant replied on 1-5-1995 asking as to why contradictory statements are being made by O.P. No.2 but did not reply to the specific query as to "what to do with the shipment". The O.P. again on 26-5-1995 faxed a message regarding fate of consignment.

It is seen that the complainant did not send any specific reply to O.P. No.2, covering this aspect. It can be interpreted under the circumstances that O.P.1 & 2, took all reasonable steps to deliver the consignment and only when it was refused and further the complainant also did not give any instructions for the disposal of the same that they had disposed of the same by auction.

The complainant tried to build his case essentially on the basis that in the fax message dated 3-2-1995 and 27-3-1995, O.P. No.2 informed him that the consignment was cleared after receiving the Bill and later changed his version. The National Commission believe that this is a genuine mistake, as agreed by O.P. No.2 in the course of business involving events in two countries and especially when many consignments between the same parties are involved, it is possible for some mistakes to creep in.

With these above discussions and observations, National Commission did not find that there is any deficiency of service on the part of O.P. No.1 & 2. Therefore, no merit found in the complaint and dismissed the same No order as to costs.

Complaint dismissed

Jaypee Exports Ltd. vs. Evergreen Marine Corporation

III (2004) CPJ 54 (NC)

Facts

The complainant Jaypee Export Ltd. is a recognized export house exporting garments from India. He had entrusted the respondent No.1 for carriage of about 300 packets of garments from Delhi to Miami, USA after complying with the required formalities. However, on arrival of the shipment at Miami, the consignee did not take steps to release the goods. When respondent No.1 brought this to the notice of the complainant, the complainant identified another buyer in Durban, South Africa and advised respondent No.1 to deliver the shipment to respondent No.2 i.e. P&O containers Ltd. for carrying the same from Miami to Durban. Accordingly, respondent No.2 agreed to carry the consignment to Durban and issued a Bill of Lading. The Bill of Lading showed that the consignee was NED Bank, Durban and the party to be notified was Carington Trading Pvt. Ltd, Durban.

The standard procedure in export shipment is that the consignee would forward the original Bill of Lading through his local Bank to the Bank's, Branch/ Associates at the destination, the carrier would notify the arrival of shipment to the notified party which is Carington Trading Pvt. Ltd. Who in turn would make payment to the consignee Bank, which is NED bank who in turn would hand over the original Bill of lading to the notified party. The notified party would present the original Bill of lading to the carrier to get the goods released.

It is alleged in the complaint that standard procedure was not followed and consignment released without presentation of original Bill of Lading. When complainant failed to get the payment and any proper information about the shipment, he filed this complaint alleging deficiency in service on the part of respondents.

Issue

First, whether the National Commission have territorial jurisdiction to decide the case? And Secondly, whether there was deficiency in service?

Decision

Regarding territorial jurisdiction the National Commission, observed that the Bill of Lading clearly shows the name of the complainant i.e. Jaypee Exports Ltd, B-261, Naraina Industrial Area, New Delhi as the "Shipper/Exporter". The Bill of Lading

further shows that the goods were received from the previous carrier, at Miami and were being exported in Bond. Thus there is no force in the argument that there is no privity of contract between the complainant and respondent No.2. It is true that respondent No.2 received physical delivery of goods from respondent No.1 but it cannot be denied that in handling the goods respondent No.1 was acting on behalf of the complainant. Secondly, the agent of the respondent No.2 has an office in India at New Delhi, and has put in an appearance before National Commission. Further, by virtue of Section 11 of the CPA, a complaint can be instituted in the National Commission since the complainants as well as the agent of the respondent No.2 have their business offices at New Delhi. Thus, the commission has jurisdiction to decide the case.

For second issue, the main argument of the complainant is that according to the Bill of Lading the consignee is NED Bank and without the production of the Original Bill of Lading, the consignment should not have been handled over to the notified party or his agent or any one else. In this case admittedly the consignment was sent into a bonded warehouse on instructions of 'Sea Land Air', agents of the notified party. It is argued that 'Sea Land Air' had no authority to receive the goods, and respondent No.2 had no authority to handover the goods to him. It is also argued that subsequent event like non-payment of customs duty within time, and the consequent auctioning of the goods by the Customs Department have no relevance to his case against respondent No.2. On the other hand the argument of the respondent No.2 is that the goods were moved into the bonded warehouse on instruction from 'Sea Land Air', agent of the ultimate consignee. Thereafter the customs authorities seized the goods and ultimately auctioned them, as import was illegal.

National Commission, after considering all arguments and materials on record held that nowhere it appears from the notices of the Customs Authorities that the import of goods was illegal but the goods were seized and auctioned for non-removal from the bonded warehouse within the permissible time limit and for non-payment of custom duties. Whatever, may be the real circumstances of the seizure by the customs, respondent No.2 has not satisfactorily answered as to how he could deliver the goods to 'Sea Land Air' admittedly the agent of the notified party without informing the consignee 'NED Bank' and without presentation of the original Bill of Lading. Thus, there is a clear deficiency in service by the respondent No.2. The National Commission ordered to pay the price of the consigned goods i.e. US $75,537.26 and Rs. 10,000 as cost to the complainant.

Complaint allowed.

Air India vs. SVNR Exports

IV (2004) CPJ 59 (NC)

Facts

SVNR Exports, complainant sent a consignment comprising 14 cartons of leather garments weighing 430 kg to Moscow through Air India on 21.12.1992. The value of the goods was US $ 16,000. The consignee was the Northern European Financial Company (SVRO Finance) and the notified party was Aero Navagasia, Moscow. The air bill and other documents were sent through Union Bank of India to the consignee Bank. The delivery was to be made to the notified parties on payment. The payment was received in time. Subsequently, M/s Crup Exports, the commission agent informed that the payment of the bill would be made by 15.2.1993. On 22.2.1993 the opposite party Airways also informed that as per the communication received from their Moscow office, the shipment was delivered to the consignee Evro Finance on 12.1.1993. The complainant would "understand" that the goods had not been delivered to Evro Finance. The complainant filed a claim for value of consignment i.e. Rs. 4,56,000/- with interest and compensation of Rs. 1 lakh. The State commission after considering the material on record allowed the complaint and held opposite party liable for deficiency in service. Aggrieved by the order opposite party filed present appeal.

Issue

Whether there was deficiency in service or not?

Decision

From the affidavit filed and other evidence on record it cannot be said that there was any endorsement made by Evro Finance authorizing delivery of the consignment. There is a letter of Evro Finance on record, which reads as under:

Astt. Mayor (S. Chattopadhyay).

Dear Sir,

By request of air client "AERONAVAGASIA", Moscow, hereby we inform you that we are in position to release payment to KRUPS Exports Pvt. Ltd. against presentation of documents under Addendum No. TRS/AER/007/92 dated 20.3.1992 to the contract No. TRS/AER/007/92 dated 10.6.1992.

Best regards,

S. Lykov

Deputy general direction"

National Commission said that if Evro Finance is giving above information to the complainant then it could not be presumed that they have authorized the delivery of the consignment to Mr. Siling, Aero Navagasia, Moscow. It is mentioned on invoice that the terms of delivery and payment against document as is evident from invoice, Air Way Bill does not indicate at all that there was any endorsement. It would exclude all possibilities of any endorsement of Evro Finance. This would lead to draw an inference that without having any valid endorsement the goods were delivered. Thus, the appellant had delivered the consignment without any authority from Evro Finance as claimed by the respondent/complainant. The appellant were deficient in service and are liable to compensate the complainant by paying a sum equal to the value of the shipment. No interference made by the National Commission in the order of State Commission except the reduction in the rate of interest from 12% to 9%.

Appeal disposed of.

Target Cargo Carriers & Anr. vs. Aroma Organics Pvt. Ltd. & Anr.

II (2005) CPJ 30 (NC)

Facts

The Hindustan Organic Chemicals Ltd. has booked 9.44 Mts, of acetone through the petitioners before the O.P. No. 612 of 1997, for being delivered to respondent No.1 / complainant No.1 at Bombay. There was short delivery for which certificate was issued by the petitioners. Consignment was insured with respondent No.2/ complainant No.2. On claim being made, the respondent No.2 settled it for a sum of Rs. 65,770/-. In consideration of having received this amount, the respondent No.1 executed letter of subrogation and special power of attorney in favour of respondent No.2 authorising it to receive the damages from the petitioners. In O.P. No. 613 of 1997, quantity of acetone booked with the petitioners for transportation from Baroda to Kochi was 9.580 Mts. There was also short delivery for which certificate was issued by the petitioners. Respondent No.2 settled the claim for Rs. 2,70,680/-. On receipt of this amount, the respondent No.1 executed letter of subrogation and special power of attorney to the said effect in favour of respondent No.2. Though complaints were resisted by the petitioner but they were allowed by the District Forum in the manner noticed above and the order of District Forum was affirmed in appeals filed by the petitioner by the State Commission. Aggrieved by the order present revision petition filed.

Issued

First, Whether the complainant is a consumer within the meaning of CPA? Secondly, whether the term subrogation instead of assignment would make any difference?

Decision

It was argued by the petitioner that after execution of aforesaid two documents, the respondent No.1 ceased to have any right to recover compensation for the shortage of two consignments and respondent No.2 was not a 'consumer' within the meaning of CPA, as the service, namely, the transportation of consignment had already been availed of by respondent No.1. Complaint jointly filed by the respondents was, thus, not maintainable. In Oberoi Forwarding Agency's case, the Supreme Court has noticed distinction between subrogation and assignment.

Subrogation is the substitution of one person for another and an insurer exercising right of subrogation against third party must do it in the name of assured. It being a case of subrogation and not assignment, the complaint was maintainable by the respondent. To be noted that the amounts awarded by District Forum was as assessed by the Surveyor. There is, thus, no illegality or jurisdictional error in the orders passed by Fora below warranting interference in revisional jurisdiction u/s 21(b) of the Act. Accordingly, revision petition is dismissed with cost of Rs. 7.500/- to the respondents.

Revision petition dismissed.

Sri Meenakshi vs. American President Lines Ltd. & Anr.

III (2005) CPJ 82 (NC)

Facts

Petitioner booked respondent No. 1, carrier a consignment of books to be taken to Dubai on 14.9.1992, Respondent No. 2 was the agent and name of which had been subsequently changed as respondent No. 3, Original bill of lading and other documents were forwarded through Central Bank of India to Union National Bank, Dubai for collection of payment. Despite two extensions of two months each granted to Al-Ketab Stationery, consignee, it could not get the licence renewed. Petitioner went to Dubai in May, 1993 and fixed up alternative buyer-M/s Al Khamri Commercial Enterprises. Original bill of lading, etc. were thereafter recalled by the Central Bank of India. On 11.8.1993 petitioner wrote to the respondents for changing the name of said alternative buyer. By the letter dated 21.10.1993 respondents informed the petitioner that consignment was duly delivered to AI-Ketab Stationery on 15.3.1993. Alleging deficiency in service complaint was filed by the petitioner seeking direction to the respondents to pay amount of Rs. 2,68,243.20 being value of consignment in question, Rs. 7,341.63 being amount of freight, Rs. 25,000/- towards mental agony and Rs. 1,04,598/- towards interest, totaling Rs. 4,05,182.83. Complaint was contested by filing joint written version by respondent Nos. 1 and 2. Respondent No. 3 filed separate written version. Booking of consignment with respondent No. 1 and receipt of letter dated 11.8.1992 from the petitioner for altering the name of consignee were not disputed. However, it was alleged that original bill of lading was non-negotiable and direct and therefore, respondents were under an obligation to deliver the consignment to the identified consignee without production of original bill of lading and making inquiry whether payment was made to the petitioner or not. Further, Complaint was alleged to be barred by limitation under Clause 3 of para 6 of Article III of Schedule II of the Indian Carriage of Goods by Sea Act, 1925 (for short "the Act").

However, District Forum directed respondents/opposite parties to pay jointly and severally to the petitioner/complainant Rs. 2,68,243.20 being the value of consignment, Rs. 7,247.65 towards freight charges and Rs. 10,000/- by way of compensation and cost. In an appeal State Commission set aside the order of District Forum and allowed the appeal. Hence the present revision petition.

Issue

First, whether complaint was barred under Clause 3 of para 6 of Article III of

Schedule II of the Act? Secondly, whether delivery of consignment in to Al-Ketab Stationery on 15.3.1993 without production of original bill of lading, etc. would amount to deficiency in service?

Decision

For first issue the National Commission relied on Clause 3 of para 6 of Article III of Schedule II of the Indian Carriage of Goods by Sea Act, 1925

Said Clause 3 reads as under:

"In any event, the carrier and the shipper shall be discharged from all liabilities in respect of loss or damage unless it is brought within one year after delivery of the goods or the date when the goods should have been delivered."

As can be seen from the order of State Commission the complaint was filed on 13.10.1995. The National Commission held that said limitation provided under the Indian Carriage of Goods by Sea Act, 1925, is applicable before Consumer Fora it being a Special Act. Since complaint was admittedly filed beyond the period of one year from date of delivery of consignment. It was barred by time as rightly held by the State Commission.

Coming to second issue, bill of lading (copy at page 23) would show that it was non-negotiable and straight and not "*to Order*". There seem to be no instructions from the petitioner to the respondents that delivery of consignment was to be made to the consignee only on production of original bill of lading and payment of the value of consignment by him. There was thus, no deficiency in service on the part of respondents in handling over the consignment to the said consignee without production of original bill of lading and ensuring payment of the value of consignment by it. There is no illegality or jurisdictional error in the order passed by State Commission warranting interference in revisional jurisdiction under Section 21(b) of C.P. Act, 1986. Accordingly, revision petition is dismissed. No order as to cost.

Revision Petition dismissed.

Malti Exports vs. Natvar Parikh Industries Ltd. & Anr.

II (2005) CPJ 120 (NC)

Facts

Complainant is doing business in the name and style of Malti Exports and is engaged in the business of manufacturing sale and export of carpets and allied items. Opposite party No. 1 is engaged in the business of clearing, forwarding and shipping agents and *mter alia* engaged in the business of providing services for transportation of goods by sea. Opposite party No. 2 is the agent of opposite party No. 1, namely, Natpar Lines.

It is submitted that one Rossweiner Teppichfabrik Traugott Bauch GmbH, Germany, had placed an order to the complainant for purchase of carpets. The buyer specifically stipulated shipment through the opposite party in its order. Therefore, the complainant paid ocean freight amounting to Rs. 51,328/- for shipment of the consignment for which a receipt dated October 4, 1996 was issued by the opposite party. Ocean bill of lading is dated 4.10.1996.

It was also agreed that the delivery of the said consignment to the foreign buyer was to be made after negotiation of documents through the Bank. The complainant's Bank is State Bank of India, Bhadhoi and the purchaser's Bank is Volksbank Ochtrup eG, Germany. As per the terms and conditions, the foreign buyers could only take delivery of the consignment by presenting the original bill of lading which the foreign buyer was to obtain from its foreign Bank after furnishing the Bank guarantee in the sum of DM 58,474.56 being the value of the said consignment.

It has been pointed out that as per the terms of bill of lading which was a document of title, it was made clear that the goods were to be delivered to the order of the consignee subject to his making the payment or providing a Bank guarantee by way of negotiations with the Bank, namely, Volksbank Ochtrup eG, Germany.

It is alleged that in breach of the said condition, the opposite party wrongfully delivered the consignment to the foreign buyer without the production of original documents and the foreign buyer had not given any Bank guarantee or made any payment in respect of the consignment.

It is contended that because of the wrongful delivery of the consignment in breach of the condition and without obtaining the original bill of lading, opposite party No. 1 acted negligently and, therefore, they are liable to pay the loss suffered by the complainant. It is stated that consignment was worth DM 58,474.56 and the

same in Indian Rupees works out to Rs. 14,61,850/-. It is, therefore, prayed that opposite parties are liable to pay the said amount with interest and damage, in all, Rs. 22,31,485/- with interest @ 18% p.a.

Issue

First, whether there was deficiency in service by the opposite party in delivery of consignment? Secondly, what should be the quantum of damages?

Decision

Undisputedly, the complainant had handed over the goods for shipment to the opposite parties for which Ocean Bill of Lading No. 0724 dated 4.10.1996 was given to the complainant. In the said bill, in the column for consignee¯44 ˜$%÷¨ Unto Order˜$%÷¨ and in the column for Notify Party-44 ˜$%÷¨ M/s. Roseweiner Teppichfabrik Traugott Bauch GmBh ˜$%÷¨ are mentioned. It is pointed out that the complainant despatched the documents with regard to shipment in question to its Bankers on 10. 10. 1996. The bill of lading specifically provides: "in witness whereof one (i) original bill of lading has been signed if not otherwise stated above, the same being accomplished the other(s), if any, to be void. If required by the carrier one (1) original bill of lading must be surrendered duly endorsed in exchange for the goods or delivery orders".

The complainant dispatched documents with regard to the goods in question to its banker, "The Manager, I.B.D., State Bank of India, Bhadohi – 221401' with a specific statement to negotiate the documents with buyers Bank by courier and credit the proceeds into their current account under advice to them after purchasing the above bill.

Thereafter by letter dated 20th November, 1996, the opposite party No. 2, received a communication from Wm.H.Muller and Co., Zwelgniederiazsungder internet-Muller (Deutsciand) GmbH 20457 Hamburg, which, *inter alia* states "ICSU 176.575-9 B/L No. 07242 discharged 5.11.1996 ex. "Rajiv Gandhi" voy. 020 *delivered against original B/L*. 5.11.1996. This would clearly reveal that information was conveyed to opposite party No. 2, NPIL, Mumbai, that goods were despatched against original bill of lading on 5.11.1996.

Hence, in view of the aforesaid communication the Manager, State Bank of India, wrote a letter dated 26.11.1996 to the foreign Bank, Volksbank Ochtrup eG Post Fach 1347, 48602 Ochtrup, Germany, which reads as under:

"Dear Sir,

We have been informed by Drawer, Malti Exports, Bhadohi that Drawee Roseweinel Teppichfabrik had received the delivery of goods against original B/L.

But, till today we have not received the Bank guarantee of captioned collection as per over tenor.

Kindly send the Bank guarantee immediately and confirm it to us by FAX".

Thereafter, on 28.11.1996 the complainant sent a fax message to M/s. NPIL, Mumbai, to sent the message of confirmation with regard to *inter alia*, delivery of the goods against original bill of lading dated 5.11.1996 i.e., the goods in question.

Again, on 29.11.1996, the complainant wrote a letter to M/s. NPIL., Mumbai, stating that they were informed on 21.9.1996 by fax that consignment was delivered to the buyer against original bill of lading of 5.11.1996. However, their Bank has informed that original bill of lading was still lying with them. Therefore, sent the confirmation (i) consignment is actually delivered against original bill of lading; (2) copy of the original BL against which the consignment was delivered to the buyer. Thereafter, on 3.12.1996, the complainant sent a notice informing the shipper that the goods shipped were valued at DM 58,474.56 and that the goods were to be delivered against the original bill of lading and the original documents were to be delivered against payment/Bank guarantee negotiated through the Bank. The Banker at Germany has informed that the original documents were still lying with them.

After receipt of the said letter, M/s. NPIL., *inter alia* replied as under:

"…… *As per our contract with our agents in Hamburg, our agents are only authorized by us to give delivery only against surrendering of original B/L. Bill of lading).*

We are already in the process of investigating the facts of the case and also issued notice to our agents in Hamburg."

Thereafter, the shipper, M/S. NPIL., sent talefax message on 17.12.1996 taking apparently a contradictory stand informing that there was a dispute between the complainant and the consignee.

Thereafter, the complainant through its attorney, Abacus Legal Group, sent a registered letter dated 20.12.1996 informing that the communication dated 17th December, 1996 was Comouflage, misconceived and was an attempt to camaflouge the true and correct facts. In any case even if there was any dispute between the complainant and the consignee, the carrier has nothing to do with it. Therefore, for any breach of the contract of carriage the shipper would be liable for all the claims.

It was reiterated that the goods could be delivered only on presentation of bill of lading or in the alternative on valid Bank guarantee.

The complainant has also produced on record a letter written by the foreign Bank, Volksbank Ochtrup eG, Germany to the State Bank of India, Bhadohi, stating that "we refer to our letter dated 29.1.1997/14.101997/26.11.1996. The drawee has not paid the above mentioned collection. We still hold the documents at your disposal, but we will return them to you on 21.3.1997 if we get no instructions from you." A copy of this letter was marked to the Malti Exports, with endorsement.: "Please give your disposal instructions for the documents."

It appears that thereafter the opposite parties have taken a different stand to the effect that the consignment was delivered to the notified party.

This is apparently an inconsistent and frivolous stand taken by the opposite parties. It is sought to be stated that the consignment was delivered to the notified party; the amount claimed for the carpet rolls was US $ 16,984/- and the goods were received by the consignee in the presence of Mr. Barnwal of M/s. Malti Exports.

From the aforesaid evidence on record, it is apparent that the goods were delivered by the opposite party, Shipper, without having the original bill of lading. However, the opposite party informed that the goods were delivered against the original bill of lading dated 5.11.1996. On further inquiry by the complainant, it was found that the goods were delivered without presenting the original bill of lading as the Bank at Germany had informed that the original bill of lading was still lying with them.

After the receipt of the notice from the complainant, the opposite party again reiterated that as per the contract their agent in Hamburg was only authorized to give delivery against surrender of original bill.

Thereafter, to the legal notice issued by the Advocate, a reply was sent stating that there was a dispute between the consignor and the consignee; that the consignee was not willing to take delivery of the cargo; and that the buyer had obtained a stay order from Germany Court disallowing the shipper to act on the cargo until the matter was resolved between M/s. Malti Exports and the consignee. This also would reveal that the initial stand taken by the opposite party that goods were delivered on presentation of original bill of lading was a false plea. Further, this plea of stay order from the Court in Germany is not supported by any document. In any set of circumstances, if there was a stay order by the Germany Court, there is nothing on record to show that there was any subsequent order passed by the Court to deliver the goods to the notified party.

This would also reveal that the goods were delivered by the shipper or his agent at Hamburg without obtaining the original bill of lading, as agreed. In this view of the matter, it is apparent that there is total deficiency on the part of the carrier.

Quantum of damages

The carrier (opposite party Nos. 1 and 2) are liable to reimburse the loss suffered by the complainant. The question is about quantum of damages. It has been pointed out that as per the invoice, which was sent along with the bill of lading the value mentioned therein is DM 58,474.56. Further, it is specifically mentioned i.e numbers of packages or Shipping Units: 144 Rolls; Description of Goods and Pkgs : Indian Handknitted Woollen Carpets (1719.89 sq. Mts) (1728 Pcs.): Gross Weight : Gr. Wt. 7945.00, Net Wt. 7657.00.

Taking the loss suffered by the complainant, the complainant is entitled to have the amount of DM 58,474.56. But, it was contended that as per the Carriage by Sea Act, 1925, the complainant is entitled to 100 Pounds per packet. In any case, even if there is any doubt, with regard to invoice under the Indian Carriage of Goods by Sea Act, 1925, the shipper, i.e., opposite party Nos. 1 & 2, would be liable to pay damages as per the schedule under the Act.

There is a specific condition for carriers' responsibility. Clauses (iii)(a), (b), (c) and (d), read thus. In this view of the bare reading of Clause (iii)(d) makes it clear that the words shipping unit shall mean each physical unit or a piece of cargo not shipped in a package. Admittedly, the goods are not shipped in bulk. Hence, National Commission have accepted that at least there were 144 packages (carpet rolls), which were delivered to the carrier for shipment.

In this view of the matter, the opposite party Nos. 1 & 2 (carrier) would be liable to pay DM 58,474.56, which was equal to Rs. 14,61,850/- as claimed by the complainant. However considering the maximum limit prescribed under the rules, the complainant cannot get more than 100 pounds per package or unit. Hence, in the present case, he is entitled to the amount upto 144 packages x 100 pounds, which comes to 14,400 pounds. He is also entitled to interest @ of 6% p.a. from the date of the complaint. The value of the pound shall be calculated as per the market price as on 18th March, 2005. In the result, the complaint is allowed. The opposite parties are also directed to pay costs assessed at Rs. 10,000/-.

Complaint allowed.

TNT India Pvt. Ltd. vs. Ramesh Sawalkar

IV (2005) CPJ 207 (NC)

Facts

Petitioner was the opposite party before the District Forum, where the respondent/complainant had filed a complaint against the petitioner.

The respondent sent certain material using the services of the petitioner. The material was not delivered, thus, alleging deficiency in service, a complaint was filed before the District Forum, which allowed the complaint and directed the petitioner to pay Rs. 4,746 being the cost of the material as also awarded certain other relief including cost of Rs. 500. Aggrieved by this order, an appeal was filed before the State Commission, who by a cryptic order dismissed this appeal.

Aggrieved by this order, the revision petition has been filed before National Commission.

Issue

Whether there was deficiency in service?

Decision

The communication, on which the State Commission relied, is as follows:

"We are in receipt of the notice under reference. We regret our inability to appear in the matter on the hearing date, i.e., 6th October, 2004 and request you to kindly pass the orders on the merits of the case on the basis of our memorandum of appeal.

We have without prejudice to our rights in the appeal pending before this Hon'ble Commission, complied with the order of the District Forum and effected payment of Rs. 8,900 [Rs. 8,652 plus Rs. 248 towards interest @ 9% from 1.11.2003 till 31.5.2004 on Rs. 4,746] to Mr. Ramesh Sawalkar by pay order bearing No. 463877 dated 24.5.2004 drawn on BNP Paribas, Indore]. Copy of our letter dated 31.5.2004 to Mr. Ramesh Sawalkar is attached herewith."

A plain reading of this will make it clear that the money was deposited without prejudice to the rights in the appeal pending before the State Commission. National Commission observed that the State Commission misread this communication dated 4.10.2004 and dismissed the complaint as having satisfied the decree passed by the District Forum, whereas that was not the intent, as per the contents of letter

dated 4.10.2004. The petitioner remained absent despite notice and also not removed the defects, which he was directed to remove *vide* Commission's letter dated 1.6.2005. After considering the material on record and order passed by the District Forum it is clear that the petitioner admits that the consignment was not delivered but he wishes to state that the relief given by the District Forum exceeds the term of agreement, i.e., the receipt issued by them, which stipulates that in case of loss the petitioner shall be liable to pay only 20 US$ per kilo, and in this case admittedly as per receipt the weight of the consignment was 2 kg., hence the complainant was entitled to equivalent of 40 US$ only. As held severally, the document cannot be said to be an agreement between the parties, as this receipt does not bear the signature of the complainant. Terms and conditions of the receipt would have been binding on the complainant only if he had signed this. In the document filed before the National Commission by the petitioner no signature of the complainant present to make it binding on him, hence no merit in this plea were found and the order of District Forum was upheld.

Revision Petition dismissed.

Accounts Officer, Indian Airlines vs. N.L. Lakhanpal

III (2001) CPJ 43 (NC)

Facts

In the present case, complainant had purchased Indian Airlines ticket which he said was stolen along with his pouch containing money. On denial of payment from the Indian Airlines he filed a compliant before the District Forum. District Forum said that theft is not the same thing as lost and on that ground it tried to make a difference to a lost ticket and the ticket stolen. Aggrieved by the order the petitioner approached the State Commission, which upheld the order of District Forum and directed the Air India to reimburse the money. Hence the present Revision Petition.

Issue

Whether Air India is liable to reimburse the money for theft of ticket?

Decision

In the case of Indian Airlines Ltd. v. N.N. Kini & Anr., II (2001) CPJ 56 (NC) [Revision Petition No. 432/1997] the National Commission have held that in view of the Regulation 8 of Indian Airlines Cancellation and Refund Regulations (1985) no refund is admissible in the absence of original tickets.

Following the judgment National Commission held "we do not think it carries the matter any further". Regulation is specific that refund is permissible only when original ticket is produced. Thus, revision petition is allowed, order of District Forum and State Commission set aside and complaint is dismissed. There was no order as to cost.

Revision Petition allowed.

Indian Airlines Ltd. vs. N.N. Kini & Anr.

II (2002) CPJ 56 (NC)

Facts

Complainant first respondent purchased two tickets of Indian Airlines from the second respondent, a travel agent, for Bombay, for himself and his wife in March, 1992. He paid Rs. 11,840/- for the two tickets. Complainant and his wife traveled to Calcutta by scheduled flight of the Indian Airlines. For return journey he got both the tickets confirmed by March 30, 1992. On the same day, however, he found that both the tickets were lost. He immediately notified this fact in writing to the Indian Airlines City Office, Calcutta with a view to prevent any possible misuse of the air tickets. A police complaint on the instructions of the Duty Officer of the Indian Airlines was also lodged. Complainant was not issued duplicate tickets in lieu of the lost tickets. He was given two new air tickets though under the same old PNR number. He was, however, required to pay Rs. 5,920/- towards these two tickets from Calcutta to Bombay. Indian Airlines refused to refund the amount of the lost tickets. Thus complainant filed a complaint before the District Forum seeking refund of the value of the two tickets, which were lost, Complainant also claimed Rs. 2,500/- towards compensation for loss of time, energy, mental anguish etc.

District Forum came to the conclusion that the fact of lost ticket was immediately notified to the concerned Authorities and thus lost tickets had not been traced or used for such long period it was appropriate to ask the Indian Airlines to refund value of the two tickets to the complainant. District Forum also awarded Rs. 500/- to the complainant as compensation and cost of the complaint.

In appeal by the Indian Airlines the State Commission upheld the order of the District Forum. Hence, the present revision petition.

Issue

Whether complainant is entitled to get the refund in lieu of lost tickets?

Decision

The Indian Airlines submitted that it was mentioned on the jacket of the ticket that no refund was permissible against lost ticket. On the cover page in small print it is written: “Ensure safe custody of your ticket. No refund is permissible against lost ticket”.

Indian Airlines in the exercise of powers conferred upon it by Section 45 of the Air Corporation Act, 1953 framed regulations called the Indian Airlines Cancellation

and Refund Regulations (1985), which came into force from 15th September, 1984. There are 21 regulations. For the purpose of this case it would be appropriate to refer to Regulations 2 and 8, which are as follows:

"Cancellation will be acted upon only when the ticket is actually tendered at the booking office for cancellation except in the case of passengers residing outside the Station, who may cancel their bookings by letter or telegram but not by telephone. In respect of bookings outside the station, confirmation to the requesting station, agent or airline by the station of employment shall be deemed to be conformation of passage to the passenger for purposes of calculating the cancellation charges. Refund will be made only against documents surrendered and no claim will be entertained against lost documents".

In fact, these statutory provisions were not brought to the notice by the petitioner either before the District Forum or the State Commission. There is thus statutory bar on the refund of lost tickets. Refund is permissible only if original tickets are produced. In the face of statutory bar the District Forum and the State Commission were erred in directing refund of the lost air tickets.

Before concluding, the National Commission said that "we may observe that the Indian Airlines Cancellation and Refund Regulations allowing refund only if the original tickets are produced would appear to be rather archaic in today's situation when there is explosion in communication and spread of vast computer net work in the country. It was submitted that Airlines tickets are not transferable. Airlines cannot get unjust enrichment at the cost of the passenger who lost his ticket and which has not been misused for a long period. Indian Airlines in the present case has fixed validity of air tickets for six months. But for the statutory regulations we would certainly have struck down the condition that refund is not permissible on a lost ticket of all time. It will certainly appear to be unfair trade practice and condition of no refund in case of loss is arbitrary. We are told in the year 1992 a person had no choice except to travel by Indian Airlines. For the present, we are not saying anything on small print which appears on the face of the ticket that no refund is permissible for lost ticket. There are methods even to save any loss that may cause to Indian Airlines for misuse of the tickets, if any. It is not for us to suggest to the Indian Airlines what method it should adopt for the purpose".

With these observations this petition is allowed and the order of the District Forum and State Commission are set aside and the complaint dismissed. There will be no order as to cost.

Petition allowed.

Rajinder Pal Jaura (NRI) vs. Secretary, Union of India & Anr.

1 (2003) CPJ 24 (NC)

Facts

Complainant, a Non-Resident Indian living in Canada, came to India on 11.8.1997 by Air India flight originating from Toronto. According to him he had a confirmed ticket to go back to Toronto on 30.8.1997 by Air India flight No.189 starting at 11.20 p.m. Complainant was in fact holding an open ticket for going back to Canada. However, when the complainant reached at the airport on 30.8.1997 to board the flight he was given a boarding pass after he had checked in and completed all the formalities. However, before he could board the flight he was told that the aircraft was full and complainant could not be accommodated in the flight. It was contended that complainant had a very important business meeting in Toronto at 10.00 a.m. on 31.5.1997. Complainant conveyed about the meeting to Air India, but nothing happened. Complainant said that there was exchange of hot words with the result he suffered a shock and also suffered chest pain and heart trouble. He was removed to Centure Hotel by Air India. Later complainant was put in another flight by Air India on 31.8.1997 at 3.00 a.m. from Delhi to Mumbai from where he was put in another flight of Air India by which the complainant traveled to London. There at the London Airport he was shifted to Air Canada flight going to Toronto. This was done by the officials of Air India. Complainant reached Toronto late in the evening of 31.8.1997 whereas the meeting which he was to attend was at 10.00 a.m. Claiming deficiency in service complainant filed a complaint and sought Rs.60 lakh as damages.

Issue

Whether there was deficiency in service?

Decision

From the materials on record the National Commission observed that since the complainant could not be accommodated in the Air India flight on 30.8.1997 he was accommodated at Centure Hotel at New Delhi and later put on to the next available Air India flight, to reach Toronto on 31.8.1997 though late in the evening. As to illness there was no evidence on record and for the meeting at Toronto, the documents produced was appeared to be self-serving document. Further, claim for

such damages is too remote to attract any compensation. Air India is right in its submission that if the meeting was so important then why did the complainant wait and choose the flight which was to reach Toronto in the early morning of 31.8.1997 and when the meeting was stated to be at 10.00 a.m. Authorized Representative of the complainant and his brother-in-law had referred to a newspaper cutting of the Indian Express dated March 10, 2000 wherein a report had been carried that paid passengers in the Air India were off-loaded to accommodate three passengers of the relatives of the pilots of Air India. National Commission did not comment on this report appearing in the Indian Express though it highlights serious anomaly in the operation of aircrafts of Air India. In the present case, however, nothing had been alleged that complainant was off-loaded to accommodate any relative of the pilot or any free ticket holder. Admittedly, no amount of compensation till this date has been awarded to the complainant. There was no justification for the Air India to provide payment of DBC even if the complainant had not asked for it. But then while denying boarding to a confirmed ticket holder on the aircraft Air India takes shelter behind the international practice of over booking, it should also follow the international practice of paying DBC. National Commission accordingly directed Air India to pay Rs.15,000/- alongwith interest as compensation and Rs.5,000/- as cost.

Complaint Allowed

Manager, Air India Ltd. & Anr. vs. Moideen Kutty & Ors.

1 (2003) CPJ 65 (NC)

Facts

Complainant an Indian National was employed in Saudi Arabia since 15.5.1990. He took leave from his employer there and came to India. Before leaving Saudi Arabia complainant obtained re-entry endorsement. He was to return Saudi Arabia within two months period, which expired, on 23.9.1992. His visa to enter Saudi Arabia was to expire on this day. It was alleged by the complainant that in spite of his having confirmed ticket to travel from Bombay to Riyadh of the appellants-Air India, he was not provided a seat in the aircraft leaving on 21.9.1992 or even on 23.9.1992 with the result he lost his job, which he could have continued for a further period of one year and nine months. Complainant said that he suffered great shock and mental agony the way he was treated by Air India. He fell unconscious in front of the counter of Air India when he was denied seat in the aircraft leaving for Riyadh and his prospect of losing his job. He was even hospitalized. He had to incur expenses for travel from his hometown Kerala to Bombay and back and also for stay in Bombay.

Complaining deficiency in service he filed a complaint before the State Commission. According to the complainant he is entitled to the compensation of Rs. 22,16,002.00 but he is limiting his claim of Rs. 10.00 lakhs within the jurisdiction of the State Commission. State Commission by the impugned order awarded him Rs. 2,52,000/-. Aggrieved by the order the Opposite party filed present appeal.

Issue

First, whether Kerala State Consumer Disputes Redressal Commission has jurisdiction to entertain the complaint; secondly, whether there was deficiency in service on the part of Air India and their agents in not providing seat to the complainant; and thirdly, to what relief complainant was entitled to.

Decision

For first issue it was observed that confirmed ticket for travel by aircraft of Air India from Bombay to Riyadh was purchased by the complainant at Ottappalam in Kerala from agents of the Air India who was having its head office in Coimbatore in the State of Tamil Nadu. Thus cause of action arose in State of Kerala and State Commission rightly held that it had jurisdiction in the matter.

For second issue, it is not disputed that complainant was having a confirmed ticket to travel by the aircraft of Air India by the flight at AI-821 for travel form Bombay to Riyadh on 21.9.1992. Complainant reached Bombay with his luggage. To his utter surprise he was told by the officials at the counter that his name was not in the list of passengers in flight No.821. Complainant explained to the officials of Air India of his plight and consequences of his not reaching Riyadh before 23.9.1992. They told him that he could fly by another flight of Air India on 23.9.1992, the flight was having No. AI-815. Complainant reached airport four hours before the flight time on 23.9.1992. Again he was informed by the officials at the counter that his name was only in the waiting list. They said that there was some confusion because of the Computer failure at Coimbatore and that one other person of the same name Moideenkutty, though from Calicut was given a seat in the aircraft and that non-provision of seat to the complainant was on account of a bona fide mistake which occurred due to failure of their Computer System.

The complainant also could not be provided with a seat on the 23rd September, because the flight was over-booked and though his name had been included in the wait-list, no seat was available, because of lack of cancellation and fall-outs.

There is extreme deficiency in service on the part of Air India and it is rightly so held by the State Commission. This action of Air India-appellants had not only caused the complainant to lose his job but also made him suffer a great deal of shock and mental agony and expense. Perhaps award of compensation for salary and for the remaining period of contract of service by the State Commission amounting to Rs.2,16,000/- might not have been very correct but then the award of damages for mental tension and other expenses incurred by the complainant as awarded by the State Commission are too meager. Complainant had wanted Rs. 5.00 lakhs for shock and mental agony and the State Commission awarded only Rs. 10,000/-. One can understand the condition of the complainant at that time when one puts himself in the place of the complainant.

In the circumstances National Commission refused to interfere with the award of damages calculated on the basis of salary for the whole remaining period of employment of the complainant. This appeal fails and is dismissed with costs of Rs.10,000/-.

Appeal dismissed

Chandi Prasad Bhatt vs. British Airways

I (2003) CPJ 169 (NC)

Facts

Complainant, who was to go to Mexico to attend an international conference between 13.4.1996 and 22.4.1996, had a confirmed ticket of British Airways departing from Indira Gandhi International Airport on 13.4.1996 at 12.30 a.m. Because of overbooking of the aircraft, complainant was denied boarding. Alleging deficiency in service the complainant approached National Commission and has made a claim for Rs. 25.00 lakh as compensation as he said that he suffered loss and injury to his professional standing and reputation in the international community and also for the mental anguish, harassment and inconvenience he suffered on that account.

Issue

Whether there was deficiency in service?

Decision

From the materials on record it appears that when complainant was denied boarding, he immediately left the airport and sent a notice through his legal adviser to the opposite party British Airways on 13.4.1996 which was received by the British Airways on the same day. Complainant was flown by the British Airways on the night of 14.4.1996, the aircraft departing at 12.30 a.m.

In the notice the complainant required the British Airways to ensure that he is allowed to catch flight "to-night or tomorrow" to travel to Mexico via London. It is stated by British Airways that though the complainant was holding economy class, he was upgraded to 'J Class' (Executive Class) which was done with a view to compensate him of his being denied boarding and as a gesture of goodwill for the inconvenience caused to him. It has been further stated by British Airways that when in the circumstances of overbooking a passenger is denied boarding he is accommodated in a Hotel and facilities of food, drinks and telephones are provided. Since there was no request from the complainant for any of these facilities in the alternative British Airways paid Pound Sterling 150 as denied boarding compensation to the passengers.

National Commission opined that the payment of Pound Sterling 150 could only be the alternative. The international practice is to provide both Hotel accommodation, etc. and to fly out the passengers on the first available flight and

apart from that to pay compensation ranging US $ 300 to $ 400. Passenger who is denied boarding should be offered Hotel accommodation, etc. and also paid compensation and it is not that it should be done only on his request. A passenger may decline Hotel accommodation, etc. but he should be apprised of the offer.

In the present case complainant is certainly entitled to one day's Hotel accommodation and also compensation of Sterling 200 which will be equivalent to US $ ranging between $ 300 & $ 400. Since the Commission has not been told as to what would be the cost of one day's stay in a Hotel in Delhi and other charges which the passenger might have to incur, a sum of Rs. 5,000/- was fixed as proper expenses for that purpose. Further a total sum of Rs. 22,500/- as compensation was awarded to meet the ends of justice. Accordingly, complaint allowed to this extent with cost of Rs. 5,000/-.

Complaint allowed.

Mohinderjit Singh Sethi vs. Indian Airlines

II (2006) CPJ 205 (NC)

Facts

Petitioner was the complainant before the State Commission alleging deficiency in service by the respondent Indian Airlines. Petitioner/complainant sought compensation of Rs. two lakh. Petitioner and his family had confirmed tickets for travel by the respondent Airlines for 2.7.1994, which was Saturday, from Leh to Chandigarh. They had gone to Leh for holidaying. Complainant had bought five tickets from Chandigarh Office of the Airlines on 22.6.1994. On 30.6.1994, as advised petitioner checked the local office of the Airlines about his booking for his flight back to Chandigarh on 2.7.1994. He was shocked to learn that there was no flight from Leh to Chandigarh on 2.7.1994 and that there was a flight to Chandigarh a day earlier i.e. on 1.7.1994. According to the respondent, petitioner approached the local office of the Airlines at Leh on 28.6.1994 for reconfirmation of his tickets and he was informed that there is no flight on 2.7.1994 and in case petitioner desired to travel on 1.7.1994 seats could be confirmed for the flight on that day. It is also contended by the Airlines that the petitioner was, however, not prepared to accept its proposal to fly on 1.7.1994. Petitioner with his family did travel on 2.7.1994 from Leh to Jammu. He surrendered his tickets from Leh to Chandigarh and got the tickets from Leh to Jammu. He got the balance amount due on the tickets. From Jammu to Chandigarh family of the petitioner had to travel by Car, for which petitioner-sought reimbursement of his claim for Rs. 3,500/-, which was duly paid by the respondent purely as a gesture of goodwill. However, it is contended by the petitioner that his plans for holidays were totally upset causing a great deal of inconvenience, harassment and mental tension. Thus it is alleged that though petitioner was having confirmed tickets for a flight on 2.7.1994 and when there was no flight on that day and the tickets had been confirmed as far back on 22.6.1994, it amounts to a clear case of negligence on the part of the Airlines and also amounts to deficiency in service entitling him to get compensation for the harassment and mental agony undergone by him and his family members.

District Forum after considering the rival contentions of the parties and examining the record came to the conclusion that no deficiency in service could be attributed to the Airlines in rendering him proper service. State Commission, however, held otherwise and awarded compensation of Rs. 15,000/- to the petitioner. Petitioner wants enhancement of the amount of compensation and for that purpose he has approached the National Commission.

Issues

Whether issuing of confirmed tickets for 2.7.1994 would amount to deficiency in service? Secondly, whether Notification issued by the Central Government under the rules and regulations, which, are operative in view of the provision of, Air Corporations (Transfer & Undertakings and Repeal) Act which protects the Airlines from any such claim or compensation on account of change in schedule of its flight would be available to Airlines?

Decision

"The schedules of Indian Airlines are subject to change without notice". This fact is printed on schedule of Indian Airlines issued from time-to-time. The schedule of flight from Leh to Chandigarh was also changed from Saturday to Friday and all passengers booked for the above said flight for 2.7.1994 were transferred to that of 1.7.1994 automatically which includes the booking of complainant and his family.

Further, on the ticket jacket of Indian Airlines, it is printed that the company is not liable for any change reproduced above and this is also in the knowledge of the complainant. From the Ticket Jacket Contract, the complainant is stopped from filing the present complaint. However, National Commission held that it is not the situation in the case in hand. Here, though the change in schedule had come as far back in April, 1994 yet the confirmed tickets were issued to the petitioner for 2.7.1994 when there was no such flight. The respondent, Airlines admits that it was due to inadvertence but that has certainly caused suffering to the petitioner and his family members.

During the course of pendency of this petition, four affidavits were filed by the four family members of the petitioner who had gone with him to Leh. They were not parties in the complaint filed by the petitioner in the District Forum. Hence, National Commission did not take notice of the affidavits filed at later stage.

However, stand of the petitioner was favoured by the State Commission and it was held that there was deficiency in service on the part of the Airlines and that had caused harassment and inconvenience to the petitioner. But then petitioner has also offered no explanation as to why he could not advance his departure by one day. By considering all these factors National Commission held that it is not a fit case for exercising jurisdiction under Clause (b) of Section 21 of the CPA, 1986. Thus, revision petition dismissed by the National Commission.

Revision Petition Dismissed.

Geeta Jethani & Ors. Geeta Jethani & Ors. vs. Airport Authority of India & Ors.

III (2004) CPJ 106 (NC)

Facts

Complainant No.1 is the mother of the deceased, Jyotsna, and was residing in Dubai, Complainant No.2 is the grandfather of Jyotsna, and father of the injured complainant No.3 Rajesh, working in Dubai. The opposite party No.1, the AAI, is a Government body responsible for managing Indira Gandhi International Airport (IGI Airport) at New Delhi. It charges Airport Tax from passengers for providing various services at the Airport. Opposite Party No.2, OTIS Elevators, is a company engaged in the manufacture and maintenance of Lifts and Escalators.

It is contended that on the night of 12/13.12.1999, the complainant and the other family members traveled by Air India Flight No. AI-720 from Dubai to New Delhi. They came to India, as the Jethani family had organized Indian wedding on 17.12.1999 for recently married Rajesh Jethani and Vera Jethani (Russian Wife) at Jodhpur. After the flight landed at Delhi, they came to Arrival Terminal of the East Wing of the Airport at about 2.55 a.m. It is the say of the complainant that Parmanand Jethani, Rajesh Jethani and Jyotsna Jethani used the escalator along with other persons. When they were half way down on the escalator, Parmanand Jethani heard shouts from the bottom to run upstairs as there was a gap at the base of the escalator. It transpired that there was a gapping hole between the comb plates, groove of the final step and the landing platform. People had no way to disembark from the moving escalator without risking falling over and into the gaping hole. Some passengers who were on escalator tried to run back up, i.e., against the direction of escalator which was going down. Some passengers tripped and fell down on the escalator. As Rajesh and Jyotsna were near the base of the escalator, they were sucked into the gapping hole. Jyotsna slipped in, while Rajesh's feet also got sucked in. It is their say that Parmanand heard the screams of his little granddaughter and saw her back and flailing legs as she cried for freedom. The comb plate sliced through that flesh on her face. Her head and upper body were trapped. She was crushed, however, Rajesh managed to pull out his profusely bleeding legs from the gap.

Complainant and others watched the horror with their eyes and tried desperately to pull Jyotsna out of the gap but they could not do so. They shouted and screamed for help and assistance. They pleaded that someone should stop the

escalator. However, no personnel either from the Immigation or Customs Department or the AAI came over to help. No attendant from the OTIS to manage the escalator was present. There was no emergency assistance of any kind. There was no medical assistance of any kind available to meet the emergency. After an hour, a doctor finally came and declared Jyotsna dead. Rajesh was compelled to go the private Nursing Home where several stitches were put and he was treated.

Thereafter, police came and took away the dead body of Jyotsna for post-mortem. At about 3.55 a.m., FIR for the offence punishable under Sections 304A/337 of the IPC was registered.

It is contended that complainants were compelled to watch in a helpless position the horrifying death of their daughter aged about $7^{1/}2$ years. Opposite Parties failed to render any assistance immediately. It is contended that the escalator was not properly maintained nor any assistance or any person to manage the same was kept. After some time, Union Minister of State for Civil Aviation visited the Airport and offered Rs.5 lakh as compensation to Geeta Jethani, the mother of deceased. That was not accepted by the crying mother who asked the Minister whether he could bring back her daughter, if she gave him Rs.10 lakhs or even Rs.1 crore. Thereafter, as per the newspaper report, they came to know that a three-member Committee was appointed for investigating the incident. It is submitted that complainants came to know in February 2000 that the Committee had submitted its report holding the airport management and staff on duty squarely responsible along with the manufacturer of OTIS for poor maintenance of the escalator and the staff for 'lacking alertness and sensitivity'.

It is contended that by criminal acts of the opposite parties, the family has lost Jyotsna and, therefore, claimed the compensation as stated above for an amount of Rs.1,40,00,000/-, i.e., about 3 lakh dollars, with interest @24% per annum from 13.12.1999 also for injury to complainant No.3 Rajesh Jethai, uncle of the deceased. A sum of Rs.6 lakhs is claimed for loss of business and Rs.4 lakhs for wasted expenditure incurred by the complainants in organizing wedding of Rajesh Jethani, which was required to be cancelled, for which purpose the Jethani family came to India.

Issues

First, when on the same fact matter is pending in the court of Additional Chief Metropolitan Magistrate, Patiala House, whether the forum have the jurisdiction to entertain the matter? Secondly, no service was undertaken by opposite party No.1, therefore, there was no question of failure or deficiency at the door of opposite party No. 1. Complainant has not hired or availed of any services for consideration

from the AAI. Under these circumstances whether complaint is maintainable? Thirdly, the CPA is an additional legislation to the existing law and not in abrogation or substitution thereof. The liability with respect to the incidents arising in the course of embarkation or disembarkation of the Aircraft qua the Air passengers is governed by Carriage by Air Act, 1972. Thus, whether the complaint is maintainable under CPA?

Decision

Before discussing the contentions raised by the parties, it would be worthwhile to refer the some findings portion of the report on "Accident Escalator at IGI Airport" given by High Level Inquiry Committee, known as Jain Committee, appointed by the Government of India, Ministry of Civil Aviation. The relevant portion thereof is as under:

"…The escalator accident on the 12th/13th December, 1999, at Indira Gandhi International Airport (Terminal II) was unprecedented. Innumerable similar and other models of escalators have been installed and are working across the world for decades but it is reported that such an accident, in which, a human being was chewed up by the machine, had not ever occurred anywhere else. An escalator installed at an international airport, which is subjected to intensive use particularly during peak hours of traffic, is a very heavy-duty machine. It is, therefore, obvious that the accident has taken place under exceptional and extraordinary circumstances.

The aforesaid report leaves no doubt with regard to deficiency in service by the AAI in maintaining, supervising and sensitivity in handling the situation on the part of the staff. In view of the aforesaid finding of the Inquiry Committee, the contention of the learned Counsel for the AAI that on routine check on 3.12.1999 the officials on duty have not found any defect in various electrical installations including the escalator, is not required to be discussed. On the contrary, this would reveal with routine check of electrical installations was itself casual and improper.

For highlighting the deficiency in service the findings of the said report can be further summarized as under:

(1) The escalator was purchased from M/s. OTIS India Ltd. in 1985 and installed in 1986. The OTIS was required to do with preventive as well as callback maintenance under the supervision of the engineering staff of the AAI. It was found that maintenance of escalator was not being done in a satisfactory manner.

(2) The contracting of the maintenance work has not been done timely. There

was no contract of maintenance of escalator between the parties and there was poor supervision by the AAI.

(3) OTIS did not do maintenance work in a responsible way. Vital parts of the escalator had not been opened for checkup for a long time by the OTIS.

(4) The quality of the engineering personnel of OTIS and the supervisory staff of the AAI was not satisfactory.

(5) Improper documentation of maintenance work.

(6) The engineering staff handling the escalator in the AAI were never trained to handle the equipment either with the OTIS or anywhere else.

(7) Technical examination of the equipment shows that due to negligence in maintenance a hole was created in which some passengers fell and sustained injuries and the girl died.

(8) Even some lifts installed at the airport were not in working condition on several occasions.

(9) The escalator was not upgraded though there is increase in passenger traffic by 85% and it was subjected to intensive usage during peak hours. It was not equipped with safety features that were provided for in the later models of equipment.

(10) Lack of alertness and sensitivity in handling the situation on the part of the staff present at the time of accident.

(11) As per Mr. Bindra, an official of AAI, he did not see at the spot either Doctor, Police or any official of AAI, and even the senior officers did not give any direction or instruction to manage the situation with least possible loss to humans. It shows lack of comprehension on the part of the AAI staff.

(12) Absence of the concerned staff at the escalator to switch it off in case of calamity, has really aggravated the situation and this has been the prime reason for the tragedy.

(13) Because of communication gap, the technical/operational staff did not reach the spot in time.

(14) Stand-by support communication system was out of order for three months prior to the accident and this fact was not within the knowledge of the seniors.

(15) The concerned authorities had not planned any mock exercises to meet with the contingencies.

(16) Inaction in not extracting the trapped deceased for about 25 minutes was callous and reprehensible.

After considering the aforesaid report National Commission agreed that report of the Committee may not be conclusive in judicial and quasi-judicial adjudication but at the same time, considering undisputed facts about negligence it ill behaves the AAI which is a statutory corporation, inter alia, constituted for maintenance of runway and passenger facilities. The report is exhaustive on all aspects, after recording the evidence of number of the witnesses and after having spot inspection.

Secondly, it should be well understood that under the Consumer Protection Act, 1986, the Commission has to decide the matters *de hors* of all technicalities developed under civil/criminal jurisprudence. This is obvious because the procedure prescribed under the C.P. Act does not provide for application of Evidence Act or the Civil Procedure Code. The dispute is to be decided on the yardstick of reasonable probability on the basis of facts brought on record.

For the same reason, the Commission also reject the contention raised by the learned Counsel for the AAI that as the criminal matter is pending before the Additional Chief Metropolitan Magistrate, Patiala House, these proceedings may not be adjudicated. Criminal proceedings are to be decided on the basis of the Evidence Act as well 'procedural' laws, such as Criminal Procedure Code and other such relevant provisions. Standard of proof is altogether different in criminal matters. The judgment in the Consumer Forum, *qua* deficiency in service rendered by the AAI, is not binding on the criminal prosecution.

Apart from the inquiry report, the principle of *res ipsa loquitur* (the events speak for themselves) is eminently applicable in the instant case. Learned Counsel for the AAI submitted that complainant cannot be said to be consumer as no service was undertaken by the opposite party No.1 *qua* the complainants who landed at the airport from Dubai by Air India.

The aforesaid contention is without any substance, in view of the statutory duty cast on the AAI under Airport Authority of India Act, 1994, which, *inter alia*, requires the Authority to manage the airports, to provide air traffic service and air transport service, air safety service, to regulate entry and exit of passengers and visitors at the airports, to provide transport facilities to the passengers traveling by air and to have due regard for safety of such service.

For fixing quantum of compensation National Commission have taken into account factors such as age of the deceased, income, occupation, future prospects, life expectancy, the minimum expected income or the income of the parents, or, in the alternative, the minimum standard prescribed for paying compensation to the passengers under any statutory provisions.

The complainant has claimed**:**

1. For harassment, mental torture Rs.1,40,00,000/-

2. For loss of income due to stay in India for pursuing the case after the tragedy (@ Rs. 60.000/- p.m.) Rs.6,00,000/-

3. Wasteful expenditure on account of abrupt stoppage of the marriage due to tragedy, which includes the traveling expenses incurred by the relatives of the complainant who have come from Russia Rs.4,00,000/-

It is also contended that in the United States tortuous acts such as these would have resulted in million of dollars in damages being awarded against the opposite parties.

For the purpose of assessing the damage reliance made upon the Schedule-II, provided in the Carriage by Air Act, 1972. Section 4 of the said Act, provides that rules contained in Second Schedule, shall, subject to the provisions of this Act, in relation to any carriage by air to which those rules (Carriage by Air Act) apply, irrespective of the nationality of the aircraft performing the carriage. Section 5(1), provides that notwithstanding anything contained in the Fatal Accidents Act, 1855 or any other enactment or rule in force in any part of India, the rules contained in the First Schedule and in the Second Schedule shall, in all cases to which those rules apply, determine the liability of the carrier in respect of death of a passenger. Rule 17 of Schedule II provides that the carrier is liable for damage sustained in the event of death or wounding of a passenger or any other bodily injury suffered by a passenger in the accident, which took place on-board of the aircraft or in the course of any operations of embarking or disembarking. Rule 22(1) further provides that in the carriage of persons the liability of the carrier for each passenger is limited to the sum of Rs.2,50,000 Francs.

On the basis of the aforesaid Act and the Schedule, liability of the AAI assessed to pay a compensation equivalent to 2,50,000 Francs. No doubt, it is to be made clear that liability prescribed under the Act is for the carrier and not for the AAI, but, considering the fact that for embarking or disembarking a passenger is required to use the airport which is maintained by the AAI. The assessment of damages on that basis would be just and proper.

It is true that there is no evidence on record for assessing the quantum of damages as stated above, when Rs.5 lakhs were offered by the Hon'ble Minister on the spot, the same was not accepted by the aggrieved mother. It has been pointed out that complainant No.2 was earning $1,400 per month. If we take minimum earning of the minor at $1,400 then yearly income can safely be assessed at $16,800,

applying the standard multiplier of 18 years because of the young age of the child the said amount comes to $3,02,400. After taking 1/3rd amount in consideration of the expenses which the victim had incurred towards maintaining herself, had she been alive, the amount comes to approximately $2 lakhs. This would be in conformity with the Second Schedule of the Motor Vehicles Act, which provides for compensation in cases of fatal accidents. Instead of rupees, calculation is on the basis at Dollars.

So, the question is whether national Commission should adopt the minimum compensation prescribed under the Carriage by Air Act or on the basis of the Schedule prescribed under the Motor Vehicle Act. Loss of child to the parents is irreversible and no amount of money could compensate the parents. Further, there can be no exact or uniform rule for measuring the value of human life. But, having regard to the environment from which the child was brought compensation is required to be determined. Hence, it would be just and proper to adopt the criteria under the Carriage by Air Act, because, admittedly, the complainants were Non-resident Indians and they were coming from Dubai to India for celebration of marriage of complainant No.3.

Hence, opposite party No.1 (AAI) is directed to pay 2,50,000 French Francs or its equivalent in rupees as on today, along with interest @ of 10% per annum from January 1, 2000 till the date of payment. The amount shall be paid within a period of four weeks from today.

Complaint is disposed of accordingly. There shall be no order as to costs.

Complaint disposed of.

Kedar Das vs. Jalaj Motor Transport Co. & Ors.

III (2000) CPJ 11 (NC)

Facts

The complainant hired the services of respondent, i.e. transporter to carry the consignment from Delhi to Jodhpur. As the goods were not delivered to the complainant, he filed a complaint before the District Forum, Jodhpur claiming from the respondent the value of goods, i.e. Rs. 11,702/- alongwith interest @ 18%. The complaint was contested on behalf of the transporter on various ground *inter alia* that the Jodhpur District Forum had no jurisdiction to entertain the complaint. The District Forum after considering the material placed on record, allowed the complaint and directed the transporter to pay the value of the goods, i.e. Rs. 11,702/- with interest @ 18%. The amount of Rs. 2,500/- was also awarded by way of compensation for traveling expenses, business loss, and mental distress. The District Forum returned the finding that the District Forum, Jodhpur had the jurisdiction to entertain the complaint.

The carrier being dissatisfied with the order of the District Forum approached the State Commission by way of an appeal. The appeal filed by the carrier was allowed by the State Commission by the impugned order. The State Commission dismissed the complaint on the ground that the District Forum, Jodhpur had no jurisdiction to entertain the complaint, as there was a condition in the Goods Receipt, which provided that Jaipur Courts alone will have jurisdiction in respect of claims and matters arising under the consignment of goods entrusted for transportation. The complainant has assailed the order of the State Commission by filing this revision petition.

Issue

First, whether the District Forum, Jodhpur have jurisdiction to entertain the complaint? Second, whether the award of compensation of Rs. 2500/. was reasonable?

Decision

National Commission are of the opinion that as the matters pertains to the year 1993 and moreover the amount involved in this case is very meager, i.e. only Rs. 11,000/- and odd, the Commission was not inclined to deal with it and record any finding on the point of jurisdiction and leave the question of jurisdiction open and reserve the right of the carrier to take it up in other appropriate cases. On merits, it

was contended on behalf of the carrier that the goods were destroyed in a fire and the fire did not take place on account of an act of negligence on the part of the carrier. It was for the complainant to prove that the fire in which the goods were destroyed was on account of negligence on the part of the carrier. The onus was on the complainant and he failed to discharge the burden by adducing any cogent and reliable evidence. As such no liability can be fastened upon the carrier.

The next contention raised on behalf of the carrier is that the District Forum wrongly awarded a sum of Rs. 2,500/- by way of compensation for traveling expenses, business loss and mental distress. The claimant was awarded interest @ 18% p.a. by way of compensation. Further, it is observed that the compensation to the tune of Rs. 2,500/- was unwarranted. So, the order of the District Forum was set aside so far it relates to the award of Rs. 2,500/- by way of compensation. Rest of the order of the District Forum is maintained. In the result, the revision petition allowed and order of the State Commission was set aside. Thus, the order of the District Forum restored with the modification to the extent indicated above. The revision petition is disposed of in the above terms.

Revision Petition disposed of.

Patel Roadways Ltd. vs. Birla Yamaha Ltd.

1 (2000) CPJ 42 (SC)

Facts

The respondent M/s. Birla Yamaha Ltd. booked 237 consignments containing 267 generator sets at Ghaziabad in the State of Uttar Pradesh, with the appellant M/s Patel Roadways Ltd. for transportation. The freight charges were duly paid by the consignor to the carrier and necessary lorry receipt was issued by the latter in favour of the former. The goods booked by the respondent were destroyed in a fire, which took place in the godown of the appellant shortly after booking of the consignments. The respondent made a claim for the value of the goods for refund of freight charges and compensation for the loss. Some correspondence between the parties followed. Since no satisfactory solution was arrived between them the respondent filed a petition before the National Consumer Disputes Redressal Commission in 1994. The respondent claimed Rs. 56,00,799/- along with interest. The said sum comprised 50,78,231/- as cost of 267 generator sets. Rs.22,568/- as freight charges and Rs.5,00,000/- as general and special damages on account of harassment and undue loss of time. It was alleged in the complaint that the carrier having accepted the responsibility of transportation of the consignments and safe delivery of goods failed to deliver the same. Thus, there was deficiency in the service to be rendered by the appellant as carrier.

The Commission on assessment of the materials on record held that the respondent was entitled to receive from the appellant Rs.51,00,799/- i.e. Rs.50,78,231/- towards cost of the generator sets and Rs.22,568/- being the refund of freight charges. The Commission rejected the claim of Rs.5,00,000/- towards general and special damages. The Commission in its order placed reliance on the provision in Section 9 of the Carriers Act to hold that the appellant are deficient in the performance of their service as common carrier, as the goods entrusted have not been at all delivered in accordance with the contract of carriage for consideration evidenced by the receipts. The Commission also held that Section 9 relieves the complainant from the burden of showing that the loss or non-delivery was owing to any negligence or criminal act and that the loss to the goods sent is prima facie evidence of negligence. Feeling aggrieved by the said order the appellant filed this appeal under Section 23 of the Consumer Protection Act.

Issue

Whether Section 9 of the Carriers Act, 1865 is applicable to a proceeding under the Consumer Protection Act, 1986?

Decision

From the various decisions of different High Courts in Akhil Chandra Sah & others *vs.* India General Navigation & Railways Co., Vol. XXI (1915) Cal. LJ 565, Rivers Steam Navigation Co. Ltd. *vs.* State of Assam, AIR 1962 Assam 110, Kerela Transport Company *vs.* Konna nath Textile, 1983 KLT 480, it is clear that the liability of a common carrier under the Carriers Act is that of an insurer. This position is made further clear by the provision in Section 9 of the Act in which it is specifically laid down that in a case of claim of damage for loss or deterioration of goods entrusted to a carrier it is not necessary for the plaintiff to establish negligence. Even assuming that the general principle in cases of tortuous liability is that the party who alleges negligence against the other must prove the same, the said principle has no application to a case covered under the Carriers Act. This is also the position notwithstanding a special contract between the parties. These principles have held the field over a considerable length of time and have been crystallized into accepted position of law. No good reason has been brought to the notice of National Commission to persuade them to make a departure from the accepted position. Therefore the National Commission reiterate the position of law noticed above and the consequential position that follows that the respondents herein having failed to establish negligence on the part of the appellant, their claim for damages should be rejected, cannot be accepted.

The question that remains to be considered is whether the principles of law discussed in the preceding paragraph is applicable in a proceeding before the consumer disputes redressal agency, particularly in the National Commission. In this regard the contention of appellant is that the use of the term "suit" in Section 9 of the Carriers Act shows that the provision is applicable only to cases filed in Civil Court and does not extend to proceedings before the National Commission which is a forum and which is to decide complaints by consumers following a summary procedure. Elucidating the point it was submitted by the appellant that in a proceeding before the National Commission the general principle that the burden to prove negligence lies on the party alleging negligence should be applicable though the position may be different in a suit filed in a Civil Court.

The term "suit" has not been defined in the Carriers Act nor it is provided in the said Act that the term "suit" will have the same meaning as in the Civil Procedure Code. Therefore, the ordinary dictionary meaning of the term will have to be taken for ascertaining its meaning. In P. Ramanatha Alyar's Law Lexicon 1997 Edition some of the references of the term are:

"Suit – Prosecution of pursuit of some claim, demand or request, the act of suing, the process by which one endeavours to gain an end or object; attempt to attain a certain result; the act of suing; the process by which one gains an end or object, an action or process for the recovery of a right or claim, the prosecution of some demand in a Court of Justice; any proceedings in a Court of Justice in which plaintiff pursues his remedy to recover a right or claim; the mode and manner adopted by law to redress civil injuries; a proceeding of an ordinary civil kind, whether they arise in a suit or miscellaneous proceedings.

Suit Action, "Suit" is a term of wider signification than action; it may include proceedings on a petition."

(Emphasis supplied)

From the above it is clear that the term "suit" is a generic term taking within its sweep all proceedings initiated by a party for realization of a right vested in him under law. The meaning of the term "suit" also depends on the context of its user, which in turn, amongst other things, depends on the Act or the Rule in which it is used. No doubt the proceeding before a National Commission is ordinarily a summary proceeding and in an appropriate case where the Commission feels that the issues raised by the parties are too contentious to be decided in a summary proceeding it may refer the parties to a Civil Court. That does not mean that the proceeding before the Commission is to be decided ignoring the express statutory provisions of the Carriers Act (Section 9), in which a claim is made against a common carrier as defined in the said Act. Accepting such a contention would defeat the object and purpose for which the Consumer Protection Act was enacted. Thus National Commission held that a proceeding before the National Commission comes within the term "suit". Accordingly, the contention of appellant was rejected in this regard.

Appellant also raised a contention on the amount awarded by the National Commission under the impugned order. He urged that the respondent by its conduct led the appellant to believe that the goods entrusted for transportation are insured and having been led by such representation the appellant had not insured the goods. According to appellant it is an important circumstance, which should be taken as a mitigating factor for quantification of the damage.

In the impugned order the National Commission taking note of the stipulations in the delivery receipt which was signed by both the parties, confined the amount of damages to the value of the consignment destroyed / not delivered. Apex Court is of view that this contention needs no in-depth consideration for the reason that

there is no material placed to show that at the time of booking of the consignment any representation as stated by appellant was given by the respondent to the appellant. Respondent pointed out that the question regarding insuring the consignment was raised after the incident of non-delivery or loss of the consignment took place when the respondent asked the appellant to issue a certificate of non-delivery of the consignments. Then the respondent ascertained though it had insured all its consignments in bulk the amount stated in the policy had been exceeded by the date the consignments in question were booked, and therefore the insurance policy was not of any avail so far as non-delivery / loss of the consignments in question is concerned. It follows that this contention raised by appellant is also to be rejected.

On the discussion in the foregoing paragraphs all the contentions raised on behalf of the appellant having been negated and thus the appeal is dismissed. There will, however, be no order as to costs.

Appeal dismissed.

Nath Bros. Exim Internatinal Ltd. vs. Best Roadways Ltd.

1 (2000) CPJ 25 (SC)

Facts

The appellant had booked a consignment of 77 packets of mulberry/natural silk garments with the respondent for being carried from Noida (UP) to Bombay to be delivered to M/s Jeena & Co., who was the clearing agents of the appellant. The consignment was to be exported to the United Kingdom as the appellant had imported raw silk free of custom duty for manufacture of garments, to be exported back to the United Kingdom. The goods along with copies of invoice No. NBI-7493 dated 9-3-1994 were entrusted to the respondent who issued Consignment Note No. 52330 dated 11-3-1994 to the appellant. Since the consignment was not delivered at Bombay, the appellant wrote a letter to the respondent on 21st of March 1994, mentioning the non-delivery of consignment. On March 24 1994, the appellant received a letter dated March 19, 1994, from the respondent through which he came to know that the consignment, which was stored at godown in Bhiwandi, was completely destroyed by fire. After serving legal notice on the respondent and after considering its reply, the appellant filed a claim petition before the National Commission for the recovery of a sum of Rs. 36,12,874.60 alongwith interest of the rate of 18 percent p.a. besides costs.

The case was contested by the respondent who filed a written statement in which it was pleaded that the goods, entrusted to them, were carried by them with due care and were stored in a godown at Bhiwandi on the instructions of the consignee, who had indicated in their letter dated 14-3-1994 that since the shipment was to take place from CFS Kalamboli, the consignment may be unloaded at Bhiwandi. The respondent further pleaded that there was no negligence on there part nor was there any deficiency in service. It was stated that the fire had suddenly broken out in the adjacent warehouse from where it spread to the godown where the appellant's consignment was kept and, therefore, that consignment was also destroyed. The respondent also pleaded that the goods were carried at "OWNER'S RULE" and since special premium was not paid, they were not responsible for the loss caused by the fire. The National Commission by the impugned judgment dated September 2 1996, dismissed the claim of petitioner. Hence the present appeal.

Issue

First, whether respondent is a 'carrier' within the meaning of Carriers Act, 1865?

And secondly, whether there was deficiency in service?

Decision

The liability of a carrier to whom the goods are entrusted for carriage is that of an insurer and is absolute in terms, in the sense that the carrier has to deliver the goods safely, undamaged and without loss at the destination, indicated by the consignor. So long as the goods are in the custody of the carrier, it is the duty of the carrier to take due care as he would have taken of his own goods and he would be liable if any loss or damage was caused to the goods on account of his own negligence or criminal act or that of his agent and servants. The Apex Court interpreted the term 'owner risk' in the following way.

"OWNER'S RISK" in the realm of commerce has a positive meaning. It is understood in the sense that the carrier would not be liable for damage or loss to the goods if it were not caused on account of carrier's own negligence or the negligence of its servants and agents. In *Burtan v. English*, (1883) 12 Q.B.D.218, and again in *Wade v. Cockerline,* (1905) 10 Com. Cas.47, it was held that inspite of the goods having been booked at "OWNER'S RISK" it would not absolve the carrier of its liability and it would be liable for the loss or damage to the goods during trans-shipment of carriage.

The contention of the learned Counsel for the respondent that since the goods were booked at "OWNER'S RISK" the respondent would not be liable for any loss of those goods, is not acceptable to the appellant who contends that the liability of the carrier can be restricted, there has to be an agreement in writing as contemplated by Section 6 of the Act, which has to be signed by the owner of the goods, and since the Consignment Note, even if it is to be treated to be an agreement between the parties, is not signed by the owner or the appellant, there was no contract between the parties within the meaning of Section 6 of the Act and, therefore, inspite of the mention in the Consignment Note that the goods would be carried at "OWNER'S RISK", the liability of the carrier would not be restricted and it would still be liable for the loss caused to the undelivered goods at Bhiwandi by the outbreak of fire in the godown where they were stored.

As per Section 6 of the Carriers Act, a common carrier can limit his liability not by means of public notice but by entering into a special contract. If there is no special contract, the liability of carrier remains absolute. It is not the case of parties here that they had entered into any special contract or the consignment note bears the signatures of the complainant in token of their acceptance that the goods were booked at owner's risk. The agreement/contract becomes binding when the parties

so agree and execute such contract. The complainant has not signed any document/ contract wherein the complainant has accepted the goods were booked at the owner's risk. It is submitted that even where the goods were carried at "OWNER'S RISK", the carrier is not absolved from its liability for loss of or damage to the goods due to his negligence or criminal acts. Section 9 of the Carriers Act provides that the common carriers are liable for the loss if caused to the goods entrusted to the carriers and is the duty of the carriers to carry the goods to the destination.

In view of the above, there did not arise a controversy between them which would have the effect of restricting the liability of the respondent in carrying the goods in question to Bombay for delivery to Ms Jeena & Co. This question has not been answered in clear terms by the National Commission and a positive finding, whether or not there existed a special contract between the parties within the meaning of Section 6 of the Act, has not been recorded. The Commission, after considering various provisions of the Act came to the conclusion that even if the goods were carried at "OWNER'S RISK", the carrier would not be fully absolved of his liability to pay compensation if the loss was occasioned on account of his negligence or the negligence of his servants and agents. The Commission, to this extent, is right and, therefore, a positive finding on the existence of a special contract is not insisted upon but what is now questioned is the finding of the Commission on the question of negligence.

The Commission held that since the goods were diverted to Bhiwandi by the consignee, Messrs Jeena & Co., to whom the goods were to be delivered, and they were destroyed by the fire which initially broke out in the adjacent godown and subsequently spread to their own godown, the respondent would not be liable as he had taken all possible care which was expected of him as carrier. As per Apex Court this is not the correct approach.

The goods, according to the learned Counsel for the respondent, had reached the destination, but when the consignee was informed that the goods have arrived, the carrier was instructed by the consignee, Meesrs Jeena & Co., to unload the consignment at Bhiwandi as the shipment of the 77 packages, which were delivered to the carrier by the appellant, was to take place at C.F.S. Kalamboli (Nhava Sheva Port). It is contended that the consignee was the agent of the appellant and the goods were to be delivered to him and if the consignee, on information that the goods have arrived at Bombay, diverted the carrier to Bhiwandi for unloading the goods there, the carrier shall be deemed to have delivered the goods to the consignee, namely, Messrs Jeena & Co. and the carrier cannot be held liable for any loss caused to the goods after delivery thereof to the consignee. Whether or not Messrs Jeena &

Co. had directed the respondent to unload the goods at Bhiwandi is a question of serious dispute between the parties.

In the Claim Petition also, the appellant did not say a word about diversion of goods at the instance of Messrs Jeena & Co. But, when the respondent filed his Written Statement and pleaded that the goods had been diverted to Bhiwandi on the written instructions of Messrs Jeena & Co., the appellant raised a dispute about that question in his rejoinder.

In view of the above pleadings, a serious dispute had arisen between the parties as to the genuineness of the letter dated 14th March, 1994. It was said to be written by Messrs Jeena & Co., to the respondent to unload the goods at Bhiwandi instead of delivering the consignment at Bombay.

The National Commission did not advert itself to these questions and disposed of the whole matter observing, *inter alia*, as under:

The carrier has, however, pointed out that they had taken the consignment, as per the instructions of the petitioner, and informed the consignee that the goods were ready for delivery at Bombay, but the consignee directed them to unload the said consignment of 77 packages at Bhiwandi. The diversion of the consignment to Bhiwandi was thus made at the direction of the consignee himself. In this regard, the opposite party has produced a letter from M/s. Jeena & Co., dated 14th March, 1994 which reads as follows:

"This has a reference to the information given by you regarding arrival of 77 packages at Mulund Check Post of M/s Nath Brothers, Exim International Ltd., New Delhi, booked by you under your G.C. No.42330 dated 11.3.1994 Ex Delhi to Bombay. In this connection we hereby advise you to unload the said consignment of 77 packages of the above party at Bhiwandi as the shipment of the same will take place at CFS, Kalamboli (Nhava Sheva Port)."

The argument of the opposite party, the carriers, is that on these specific instructions from the consignee and freight forwarder M/s. Jeena & Co., Bombay, the said consignment was unloaded and stored at Bhiwandi. That was done according to them, since the consignment was to be shipped from Nhava Sheva Port and not from Bombay Port and, therefore, the consignee diverted the consignment from Mulund Check Post to Bhiwandi, which was nearer to Nhava Sheva Port, and at the same time also avoided the octroi duty which had to be paid, had the delivery been taken at Mulund Check Post when the consignment reached there. The goods were stored at Bhiwandi in godown Nos. 5 & 6, Wadi Compound, Anjur Village, Anjurphate, outside the octroi limits of Greater Bombay alongwith

other export consignments, the total value of which, according to the opposite party, was more than Rs. two crore and all of which were to be shipped from Nhava Sheva Port across the creek of the Greater Bombay. All those goods were destroyed around noon on 16.3.1994 because of a huge fire and explosion that occurred in the adjoining godown No. 7 belonging to Shri Rati Bhai where drums containing hazardous chemicals were stored. The fire spread to the opposite party's godown Nos. 5 & 6 as well as other adjoining godowns. In spite of all efforts by the fire-fighting engines, the fire could not be controlled in time. The accidental fire was reported to the Police Station, Bhiwandi, and an FIR was also lodged on the 16th March, 1994 itself.

The Police prepared a Panchanama in front of independent witnesses and the Fire Brigades of Bhiwandi and Nizampur Nagar Parishad confirmed this accidental fire. This fire was also reported in the newspapers on 16th & 17th March, 1994.

It is not the case of the petitioner that the carrier did not take adequate precautions or steps to save the goods from the loss by the fire. On the other hand, it has been successfully proved by the carrier that the consignment of the petitioner was diverted from Mulund Check Post to Bhiwandi, on the specific instructions of the consignee and further that the loss was caused by fire, which was beyond their control. It has been mentioned by them that they took due care, within their capacity and now they have lodged a claim on the owner of the adjoining godown from where the fire started.

The above findings show that the National Commission acted upon the letter dated 14th march, 1994 of Messrs Jeena & Co. without deciding the question whether it was genuine and was at all issued by Messrs Jeena & Co. as the appellant had contended that the letter was forged or was produced collusively. Since the above aspects have not been considered and decided by the Commission, we cannot upheld the judgment of the National Commission. The appeal is consequently allowed, the impugned judgment dated 2.9.1996 passed by the National Commission is set aside and the case is remanded to the Commission for disposal afresh in the light of the observations made above and in accordance with law.

Appeal allowed.

Prakash Road Lines Ltd. vs. R.S. Chandel

III (2004) CPJ 10 (NC)

Facts

The complainant/respondent booked a consignment consisting of five trunks, two bags and a cycle at Chandigarh office of the petitioner vide consignment Note No. 19997460 dated 9-4-2001 for delivering the same at Bangalore. Although the consignment was delivered at Bangalore but the complainant found that household goods were completely damaged. He addressed several letters and brought these facts to the notice of the opposite party but it was ignored and hence he filed the complaint with the District Forum, Bangalore. District Forum after going through all the materials on record held that the opposite party was deficient in service and allowed the complaint. The compensation of Rs. 40,000/- was granted and the State Commission has upheld the order. Hence, the present Revision Petition.

Issue

First, whether in absence of disclosure of content of trunk and gunny bag the petitioner can be made liable for damage? Secondly, whether there was deficiency in service when goods were carried at owner's risk? Thirdly, whether the claim was exaggerated?

Decision

The National Commission after considering the materials on record held that there is no material irregularity in the order of the State Commission. When the consignment arrived at Bangalore it was opened in the presence of the agent of the petitioner and it was noticed that the damage were caused to the television, sewing machine, crockery items, plastic, iron, VCR and other items. Considering the fact that the complainant was shifting residence from Chandigarh to Bangalore, the content of the consignment is anticipated and no need of formal disclosure of the items required. All items were his personal possession and although they are used, a claim for damages that was awarded as Rs. 40,000/- does not seem any exaggerated amount or a false claim. It is the responsibility of the petitioner being a reputed transporter to take care and caution while transporting the goods. When the respondent brought to the notice of the petitioner regarding the damages caused to his personal belongings, the petitioner did not respond to the demand at that relevant time which amounts to deficiency in service. Thus, in the absence of any

material irregularity or jurisdictional error, in the order of the State Commission the National Commission abstains from interfering in the impugned order in revisional jurisdiction under Section 21(b) of the CPA. Order of State Commission upheld. Deficiency in service found and petitioner held liable for the loss.

Revision Petition Dismissed.

Safe Packers & Movers vs. P. Ramachandra Murthy

I (2005) CPJ 93 (NC)

Facts

The opposite party, petitioner, Packers & Movers were handed over 40 packets by the respondent/complainant to be transferred from Secundrabad to Gandhidham. The lorry carrying these goods met with an accident en-route and from the place of accident, it had to be carried in another vehicle. Complainant received some of the packages in damaged condition for which he claimed damages from the petitioner. District Forum after hearing both parties awarded Rs. 15.155/- as relief and Rs. 15,000/- as compensation. Against the order of District Forum the Opposite Party field an appeal with some delay. The appellant authority State Commission dismissed the appeal as being time barred as well as on merit. Aggrieved by the order the O.P. filed this revision petition.

Issue

Whether there was deficiency in services?

Decision

Before National Commission the revision petitioner argued the facts namely that goods were delivered intact, complainant took 27 days to bring the discrepancy of damage in goods to the notice of the petitioner, District Forum & State Commission have not taken into consideration the depreciated value of the goods, that goods were packed by the complainant and were kept in the garage for two months implying that goods could have been damaged during this period of storage. He has charged only Rs. 8,600/- as cost of transportation and to penalize him for more shall harm him. All these questions of fact have been gone into by the lower fora. No question of law has been raised before National Commission showing that there is any illegality or irregularity in the order passed by the State Commission. Thus, no ground found to interfere with the well reasoned order of the State Commission. Impugned order upheld.

Revision petition dismissed.

Navata Road Transport Regular Parcel Service & Ors. vs. Tirumala Fertilizers

II (2005) CPJ 83 (NC)

Facts

The complainant, M/s. Sri Tirumala Fertilizers, an authorized dealer of M/s. Southern Pesticides Corporation Ltd., filed O.P. No. 810 of 1994 before the District Forum, East Godavari District at Kakinada, contending that it had booked, for transport of consignment of excess stock of fertilizers to the manufacturing company, through (petitioner No. 1 in revision) M/s. Navata Road Transport Regular Parcel Service (hereinafter called the 'carrier') on 4.4.1993 from Mandapet to Kavvur. For this the petitioner issued a waybill-dated 4.4.1993 in which value of the stock was mentioned as Rs. 1,12,712/- and collected Rs. 177/- towards freight charges. As the goods were not delivered, the complaint was filed to recover the amount of Rs. 1,12,712/- with interest and costs.

That complaint was dismissed by the District Forum by order-dated 4.9.1999 by holding that the matter cannot be dealt with in a summary manner and permitted the parties to approach the Civil Court.

Against that judgment and order the complainant preferred First Appeal No. 207 of 2002. The said appeal was allowed. The State Commission arrived at the conclusion that as the petitioners did not inform the complainant immediately and waited for more than 5 months, there was deficiency on the part of the carrier and hence directed the petitioner to pay a sum of Rs. 1,12.712/- with interest at the rate of 12% p.a. Hence, this revision.

Issue

First, whether the matter can be dealt by Consumer Forum? Secondly, whether there was deficiency in service?

Decision

National Commission observed that from the facts, which are brought on record, it is apparent that the order passed by the State Commission cannot be sustained. The reasons are as under:

(a) From the said Commissioner's report, it is apparent that items, which were sent back, were having expiry date prior to its consignment. It is, therefore, apparent

that as there was dispute between the complainant and the consignee, the consignee has not taken the delivery of the goods..

(b) In any set of circumstances, it was for the consignor to take reasonable and appropriate steps within reasonable time for seeing that the consignee takes the delivery of the goods, or for return of the said goods.

Admittedly, the distance between the two places is only 35 kms. and any of the representative of the consignor could have visited the place within an hour. It was not necessary for them to wait for 5 months till the carrier gave notice on 17th September 1993. In any set of circumstances, it was for the complainant to file appropriate application for return of the goods which were found lying with the carrier at least before the District Forum. That types of application was also not filed by the complainant.

(c) It cannot be held that the carrier is required to pursue consignor and/or consignee. Further, the carrier's godown cannot be used for storing the goods in case of dispute between the consignor and the consignee.

(d) The consignee has not bothered to take the consignment by producing L.R. or informing the carrier about the said consignment. The carrier has also produced on record registered acknowledgement dated 17.7.1993 a letter written to the consignee. It is also pointed out that the consignee was contacted by the carrier's local agent.

The complainant was from the beginning knowing about the condition and nature of the goods, particularly having expiry date and, therefore, the same were sent back to manufacturer. As per the Commissioner's report 80% of the stock was useless as most of the pesticides were having expiry date even by the time of booking the consignment.

(e) Further, it was difficult for the carrier to store the pesticides for 8 months as the owners of the building in the neighbourhood objected because of stinking smell. It is the say of the carrier that on 21.3.1994. The complainant agreed to take back the goods, but, after physical inspection, after nearly a year, as the stock was found not in good condition, he orally informed that he would abandon the goods. However, after some time he filed a complaint. It is nothing but fraud.

Hence, the impugned order dated 7.6.2002 passed by the State Commission was set aside. The order passed by the District Forum is restored. There shall be no order as to costs.

Revision Petition allowed.

Mehsana Agro Auto Machinery Pvt. Ltd. vs. Baldevbhai M. Patel

I (2001) CPJ 28 (NC)

Facts

The respondent in this appeal was complainant before the State Commission. He booked a car known as Premier Padmini 137-D with the appellant, a dealer, and deposited a sum of Rs. 15,000/- by demand draft on 13.11.1991. The appellant, on realization of the demand draft issued priority card in respect of the car booked by the complainant. On 27.5.1992 the appellant informed the complainant that the car, which he had booked, was available for delivery and called upon him to pay the balance amount of Rs. 1,62,336/- together with required documents. This letter, according to the respondent was received by him in August, 1992. He paid the balance of Rs. 1,62,336/- by way of demand draft together with necessary documents on 29.8.1992. The premier Automobiles Ltd. delivered the car to the appellant on 20.3.1992. The appellant called upon the complainant to take delivery of the car on total payment of Rs. 1,95,520/- and storage and handling charges of Rs. 2,537/-. The grievance of the complainant is that he was liable to pay only Rs. 1,77,336/- and not Rs. 1,95,520/- as demanded by the appellant for the price of the car. He had already paid a total amount of Rs. 1,77,336/-. There was no question of paying any additional amount of the car as demanded by the appellant. The liability to pay handling charges of Rs. 2,537/- was denied. However, in order to avoid delay in delivery of the car, the complainant paid Rs. 20,741/- to the respondent under protest by letter dated 20th May, 1993. The grievance of the complainant was that he was not liable to pay the increased price of the car as he had promptly paid the total price of the car on 29.8.1992 on receipt of the communication from the appellant. The State Commission, after analyzing the material placed on record came to the conclusion that the appellant was guilty of deficiency in service and unfair trade practice and was liable to pay interest @ 15% p.a. on the amount of Rs. 1,77,336/- from 2.9.1992 to 16.3.1992 for wrongly retaining the said amount and paying it to the manufacturer. The appellant was also liable to pay Rs. 18,184/- being the difference in the price of the car. Aggrieved by the order of the State Commission, this appeal has been filed.

Issue

First, whether the complainant was liable to pay the increased price of the car? Secondly, whether there was deficiency in service and unfair trade practice?

Decision

It was contended on behalf of the appellant that there was no deficiency on the part of the appellant. The appellant received the amount from the complainant on 3.9.1992 and the amount was forwarded to the manufacturer within 2/3 days thereafter. There was no delay in remitting the amount to the manufacturer. The seniority was strictly maintained and it was not the case of the complainant that anybody below him in the seniority was given priority when the car was delivered to him. The appellant received the car from the manufacturer on 20th March, which was delivered to the complainant on 29th March. There was no delay on the part of the appellant in delivering the car. On the other hand, it was contended on behalf of the respondent that there was deficiency on the part of the appellant in not delivering the car in time. In the meantime, the price of the car was increased to Rs. 18,184/-. The appellant was responsible for the delay in delivering the car, which caused him a loss of Rs. 18,184/-

The National Commission has considered the relevant contentions of the parties. The contention raised on behalf of the appellant is that the complainant/ respondent paid the full price of the car on 2.9.1992. It is not the case of the complainant that anybody who paid the full price after 2.9.1992 was given delivery of the car prior to him. It is settled law that the price, which is prevalent on the date of the delivery of the car, has to be paid by the buyer. The price of the car on the date of delivery was Rs. 1,92,500/-, which the complainant had to pay. The complainant could succeed only if it was proved on the record that anybody who was below him in the seniority list was given delivery of the car prior to him. This has not been established on record. Moreover, it is also find from the record that this was not the case set up by the complainant. In view of this, the National Commission held that the State Commission took a wrong view in attributing the deficiency to the appellant. So far as the award of interest awarded to the complainant by the State Commission on the amount Rs. 1,77,335/- is concerned, it is upheld. Thus, the respondent is not entitled to the refund of Rs. 18,184/-, but is entitled to interest @ 15% p.a. on Rs. 1,77,336/- from 1.9.1992 to 16.3.1993 as awarded by the State Commission. The appeal is allowed to the extent indicated above with no order as for costs.

Appeal allowed.

Smt. A.R. Geetha vs. Oriental Insurance Co. Ltd.

III (2001) CPJ 47 (NC)

Facts

Complainant before the District Forum is the petitioner before National Commission. She was having a maxicab, which met with an accident. The driver of the vehicle at that time was holding a license to drive a light motor vehicle. The claim of the petitioner was denied by the respondent-Insurance Company on the ground that the driver was not holding license to drive maxicab. Though the District Forum held in favour of the petitioner, in appeal (filed by the respondent) the order of the District Forum was reversed and the complaint dismissed. Aggrieved, petitioner has come to this Commission.

Issue

Whether Maxicab would be a transport vehicle?

Decision

Section 3 of the Motor Vehicles Act, 1988 (for short 'Act') requires a driving license. The relevant part of the section is:

"Necessity for driving license – (1) No person shall drive a motor vehicle in any public place unless he holds an effective driving license issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle [other than [a motor cab or motor cycle] hired for his own use or rented under any scheme made under Sub-section (2) of Section 75] unless his driving license specially entitles him so to do."

Sub-section (1) of Section 10 deals with as to what is the form and contents of licenses to drive. National Commission referred to Section 10 of the Act before its amendment in 1994. Section 10 at that time reads as under:

"Form and contents of licenses to drive – (1) Every learner's license and driving license, except a driving license issued under Section 18, shall be in such form and shall contain such information as may be prescribed by the Central Government. (2) A learner's license or, as the case may be, driving license shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely, -

(a) motor cycle without gear;

(b) motor cycle with gear;

(c) invalid carriage;

(d) light motor vehicle;

(e) medium goods vehicle;

(f) medium passenger motor vehicle;

(g) heavy goods vehicle;

(h) heavy passenger motor vehicle;

(i) road roller;

(j) motor vehicle of a specified description."

Section 3 uses the expression transport vehicle. This expression does not find mention in Section 10 and was introduced only after amendment of Section 10 in 1994.

Section 2(47) describes the 'transport vehicle', which means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. If new definition of public service vehicle [Section 2(35)] is referred it means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carrier. Light motor vehicle is also defined in Section 2(21) as under:

"light motor vehicle means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed [7500] kilograms."

Maxicab also finds mention in Section 2(22) and it means any motor vehicle constructed or adapted to carry more than six passenger, but not more than twelve passengers, excluding the driver, for hire or reward.

After considering the definitions of various expressions National Commission held that maxicab, which met with an accident, was having the unladen weight of 1500 kilograms. Any argument not needed to hold that it would be a transport vehicle. That being so the driver was having effective driving license within the meaning of Section 3 of the Act. Therefore, petition is allowed and order of the State Commission was set aside. Order of District Forum restored. Petitioner will be entitled to cost, which we assess at Rs. 2,000/-.

Petition allowed with costs.

Jose Philip Mampillil vs. Premier Automobiles Ltd. & Anther

1 (2004) CPJ 9 (SC)

Facts

The appellant had placed an order for purchase of a Premier 1.38 diesal car manufactured by the 1st respondent, the full price was paid by the appellant. The 2nd respondent was the Dealer of the 1st respondent at Kottayum. When the appellant went to take delivery of the car he found defects in the paint of car. He, therefore, complained to 2nd respondent. 2nd respondent promised to rectify the defects and called him again after some days. The appellant went after some days. But he found that the defects had not been cured. Therefore, he was not willing to take delivery of the car. However, he was persuaded to take delivery of the car on the assurance that all defects would be cured. At this stage, it was also noticed that the piston rings of the engine were defective and that there was heavy leakage of oil. Thereafter, the car was repeatedly sent to the dealer for repairs. Each time it was returned claiming that the defects have been cured. However, in fact the defects were not cured.

The appellant, therefore, filed a complaint before the District Forum claiming that there should be an order directing the respondent to take back the car and to replace it with a brand new defect-less car or refund the total value with interest. The District Forum appointed a Commissioner to inspect the car. The Commissioner in his report has set out that a large number of defects were found in the car. The District Forum acting on this report directed repair of the car free of cost and replacement of the engine.

Both the appellant and the Respondent went in appeal to the State Commission. The State Commission dismissed the appeal of the appellant and in the appeal of the respondent, came to the conclusion that there was no need to replace the engine, but directed repair of the car free of cost. The appellant then filed a revision petition before the National Commission, which has been summarily dismissed. Hence the present appeal.

Issue

Whether a defective car was supplied?

Decision

Apex Court held that it is shameful that a defective car was sought to be sold as

a brand new car. It is further regrettable that, instead of acknowledging the defects, the 1st respondent chose to deny liability and has contested this matter. For this failure in service the appellant is entitled to the following reliefs :

(a) The appellant will get the car repaired from any reputed garage or mechanic, at Kottayam, of his choice. A notice will be given by registered post with acknowledgement due to the 1st and 2nd respondents intimating them the name and address of the garage where the car has been given for repairs. Within a week of receipt of the notice they shall inspect the car. The repair work will then be done and the cost thereof will be paid by the respondents. The liability to pay the repair cost will be joint and several of both the respondents. The 2nd respondent is being held jointly liable as it was the duty of the 2nd respondent to have refused to deliver a defective car and in any case to have properly repaired the car during the warranty period. It is clarified that the Garage to whom the car is given will decide what repair work is to be carried out. Undoubtedly the work of complete overhaul of engine and full body paint with necessary tin work on the body must be carried out. It will not be open to the respondents to disputes the nature of the work of repairs to be carried out. The purpose of granting them inspection is merely to enable them to know that the car has been given to a Garage for repairs and not for the purpose of enabling them to dispute the nature of the work required to be done.

(b) After the car is got repaired the appellant shall, before taking delivery of the car, give a notice to the respondents that the repairs are carried out. They shall within a week of the receipt of that notice inspect the car to ensure that the work claimed to have been done has been done. They shall then forthwith pay the amount claimed by the Garage for repairs. The appellant shall be entitled that the liability to pay is, as stated above, joint and several. In the event of the amount not being paid forthwith, the District Forum shall ensure execution expeditiously and immediately, if necessary, by making 2nd respondent pay initially. It will then before the 2nd respondent to claim reimbursement from the 1st respondent, if in law they are entitled to do so.

(c) There is no doubt that the appellant has had to suffer mental agony in taking delivery of a defective car after having paid for a brand new car and in taking the car again and again to the dealer for repairs. For this mental agony and torture, we direct that the appellant shall be entitled to a sum of Rs. 40,000/-. The liability to pay this amount shall also be joint and several of both the respondents. This amount is to be paid within a period of one month from today. The District Forum shall ensure payment, if necessary, by execution.

(d) 1st respondent had unnecessarily filed an appeal before the State Forum. 1st respondent is, therefore, responsible for the expenses incurred by the appellant in having to contest the matter all the way to this Court. The appellant claims that he has spent more than Rs. 3,00,000/- by way of legal expenses. He however has no proof that he has spent so much amount. He, however, would have spent at least Rs. 50,000/-. We, therefore, direct the 1st respondent to pay to the appellant by way of costs a sum of Rs. 50,000/-. The same is to be paid within one month from today. The District Forum has to ensure payment, if necessary, by execution.

With these directions the appeal stands disposed of.

Appeal disposed of

Ashok Leyland Ltd. vs. Prabhulal Maru & Ors.

IV (2004) CPJ 38 (NC)

Facts

The appellant Ashok Leyland is the manufacturer and Shri Prabhulal Maru is the respondent No.1 who purchased Ashok Leyland chasis with engine for a bus being Model "Comet Minor" ALPSV 31/15 WB 142, fitted with HINO 4D engine, 5 speed synchromesh Gear Box, tool kit, without front structure for Rs.3,55,478.55 from respondent No.2, who is the authorized dealer of the appellant. The main grievance is that the respondent No.2 had wrongly delivered a vehicle passenger chasis and engine wheel base having 126" instead of 142" and also without supplying proper documents such as operators hand book and the warranty card. It is further alleged that when the vehicle was put on the road it started giving various mechanical problems such as high oil consumption, defective clutch and that there was structural defect such as gear box was found to be a 6 plate gear box and differential was found to be high. It is also alleged that although the vehicle was delivered on 2.9.1993, the registration was affected only on 6.12.1993 i.e. after 3 months. The respondent No.1 claimed Rs.15,00,175/- under various heads. The State Commission directed the appellant to refund to the respondent No.1 a sum of Rs.5,55,498/- together with interest and also a sum of Rs. 10,000/- as compensation. Against this order appeal was filed in the National Commission.

Issue

First, Did the appellant supply a chasis with 126" wheel base instead of that of a wheel base of 142"? Secondly, whether operators Hand Book and warranty card were supplied? And thirdly, is there any evidence that defective Vehicle was supplied?

Decision

In deciding the first issue the National Commission observed that the State Commission relied on the fact that on 12.1.1994, the dealer who sold the vehicle himself gave a report that the wheel base was found to be 126". However, the appellant argued that the certificate of Registration is issued by the Registering Authority only after the vehicle is purchased for inspection before such authority and all particulars including that of the wheel base are verified and entered in the Registration Certificate. The Registration Certificate placed on record clearly states that the wheel base is of 142". The National Commission considered it clinching

evidence and decided the first issue in favour of appellant since their record and the certificate show that the wheel base of the vehicle was of 142".

For second issue it was contended by the respondent that the appellant did not supply the vehicle along with the document. Appellant contended that the Gate Pass No.17990 dated 1.9.1993, which clearly specified that the wheel base was of 142" and further recorded the supply of all documents vide Gate Pass given by their Regional Sales Office, which include tool kit and other documents, which have been received by the driver of the respondent No.1. The complainant has not produced any evidence on record to prove that his driver never received the documents as mentioned in the Gate Pass. Thus, National Commissin rejected the allegation of non-supply of documents. Further, it is averred by respondent No.1 that the vehicle was plying from 21.12.1993 till 10.7.1995 i.e. for a total of 565 days till it met with an accident on 11.7.1995. The claim is that the vehicle has warranty for 420 days and it was under repair for 145 days. On the other hand appellant contended that respondent No.1 admittedly never brought the vehicle to the workshop of their dealer for carrying out the mandatory free services and hence the onus of establishing the fact that the vehicle was not handled by a person other than the authorized dealer of the appellant is solely upon the respondent No.1. Further, the respondent No.1 had not made a single complaint about manufacturing defect during the subsistence of the warranty. Thus, no case of deficiency in services or manufacturing defect were found. Order of State Commission set aside and complaint was dismissed by the National Commission.

Appeal Allowed.

Sooraj Automobiles Ltd. vs. Satpal Sharma & Ors.

III (2005) CPJ 26 (NC)

Facts

The complainant had purchased a three-wheeler from M/s Sooraj Automobiles Ltd., Saharanpur for a sum of Rs. 67,000/- on 5.6.1995 through their authorized dealer M/s Karnal Motors. The complainant had found that the vehicle was defective in its battery, bearings, paint and the front wheel. Other reasons adduced by the complainant for filing the complaint are charging Rs. 7,000/- extra and delay in delivery of the vehicle by 3 months. The District Forum directed the O.P. to refund the amount of 67,000/- and Rs. 5000/- awarded as compensation and cost of litigation. Against this order the opposite party, local dealer went in appeal before State Commission and the order of District Forum was modified. It was ordered that the complainant is entitled to recover the amount awarded to him from respondent Sooraj Automobiles and not from the local dealer i.e. Karnal Motors. Against this order, Sooraj Automobiles has come up in revision.

Issue

Whether there was manufacturing defects and who will be liable to pay the compensation.

Decision

It is found that the complaint was filed within 15 days of the purchase of the vehicle and complainant had made the following clear-cut statement in his complaint.

" The vehicle delivered by the respondent to the complainant, after a long delay is defective. The following defects are there in the said vehicle:

(a) After delivery of the vehicle, there are cracks in the painting of the said vehicle. The look of the vehicle became worse.

(b) That the two bearings of the front wheel were broken within 15 days from the date of delivery of the vehicle. The cut out of the said vehicle was also defective and was lying with the respondent.

(c) The battery of the vehicle in question is also lying with the respondent".

This has been corroborated by the report of the mechanic after inspection of the vehicle. This has not been specifically denied by the manufacturer in his written

statement. Hence, there is no need to proceed as per Section 13-C of the CPA. Accordingly, the National Commission does not find any factual and legal infirmity in the order passed by the State Commission. Therefore, the revision petition is dismissed.

Revision Petition Dismissed.

Swaraj Mazda Ltd. vs. P.K. Chakkappore & Anr.

II (2005) CPJ 72 (NC)

Facts

The appellant was the opposite party before the State Commission where the respondent/complainant had filed a complaint alleging deficiency in service on the part of the appellant. The complainant had purchased a Swaraj Mazda Light Commercial Vehicle from the appellant, which was delivered to him on 8.1.1992. Since this vehicle did not meet the necessary requirement, like that of a sleeper cabin, necessary to obtain the license from the licensing authority, on a request being made by the complainant, a vehicle with sleeper cabin was supplied to the complainant on 26.6.1992. On the ground that this vehicle has serious problems and defects, which were not being removed, a complaint was filed before the District Forum on 20.9.1992. The District Forum after hearing the parties dismissed this complaint *vide* its order dated 25.8.1994.

During the pendency of this complaint, the complainant filed another complaint before the State Commission alleging manufacturing defect and praying for replacement of vehicle. The State Commission after hearing the parties directed the 1st opposite party to replace the vehicle with a new vehicle of similar nature without charging anything more within a period of 2 months. The complainant was also awarded compensation of Rs. 15,000/- for the loss suffered by the complainant from the 1st opposite party and cost of Rs. 1,500/- .

Aggrieved by this order, the appellant, Swaraj Mazda has filed this appeal.

Issue

First, whether there was manufacturing defect in the vehicle? Secondly, whether complainant can file a fresh complaint before State Commission during the pendency of complaint before District Forum?

Decision

It is observed by the National Commission that while filing a complaint before the District Forum, Ernakulam which was dismissed on 25.8.1994, no allegation about any manufacturing defect or any problem with the engine has been referred to and secondly while this complaint was pending, the second complaint before the State Commission was filed in 1993 itself but there is no reference whatever about the complaint already filed pending before the District Forum. It is also alleged by

the complainant before State Commission that the two tyres bursted out on 4.9.1992, however, the complaint before the District Forum was filed on 26.9.1992 yet there is no mention of this episode in the complaint filed before the District Forum. Both these facts leave with clear impression that the complainant did not approach the Consumer Fora with the clean hands.

It is suggested by the National Commission that the Consumer Forums should appoint a person who is normally of a Government agency and with requisite qualification and background to enable them to submit the report as a neutral organization/person, which has not happened in this case. The inspection, hopefully, was carried out keeping in mind the provisions of Section 13 of CPA. Vehicle in question should have gone to an appropriate Testing House. Lists for such purposes are notified. If for any reason it is not possible to follow the provisions of Section 13(C) of the Act then parties must agree to a common name. This has not been done in this case. The National Commission have gone through the report of the Local Commissioner very carefully and found that he very candidly admits that they did not run vehicle, as it was not on the tyres. In fact not a word is said about loss caused by the accident in 1994. The very point of excessive oil consumption could not be said to be a manufacturing defect in the engine. What is shown in his observation is, that running of the "engine is weak and there is every symptom of excessive oil consumption as observed from the engine breather". How could this be said to be a manufacturing defect, has not been explained even while he is candid enough to say that "road test can only reveal the exact damage of the gear box and the clutch which is not possible without wheels and which it did without running the vehicle. With this report the Commission failed to appreciate the very rationality of a Surveyor, a loss assessor-to jump at the conclusion based on his observation of excessive oil consumption that this vehicle requires replacement with new one, while not caring to refer to the factum of its meeting with an accident and having been on the wooden block for over a year. This is important to note that the proof of over consumption, so heavily relied upon by the Local Commissioner, in Dealer's Record, which is not placed on record. The petitioner showed his willingness to replace the chassis and put the vehicle back on the road including any repairs to the engine for which the learned Counsel for the respondent/complainant was not agreeable. There is no dispute that vehicle has run for 34,650/- kms as per the inspection report even though the learned Counsel for the appellant stated that there has been repeated tempering with the milo-metre. This all leaves with a clear view that the complainant has not been able to prove any defect in the engine and State Commission's reliance on the inspection report was misplaced for two reasons-

one about the qualification of the Local Commissioner and second the assumptions on which this report is based, was not accurate, especially, when the vehicle had met with an accident: what damage was caused by that accident is not on record, nor has that been commented upon by the Surveyor/Local Commissioner. However, what is clear is that there has been a problem with the chassis resulting in possible bursting of tyres replacement of which was offered by the appellant in 1993 which was declined by the complainant.

The financial status of the complainant should not be any ground for concealing basic information like the complaint being filed before two consumer forums or for that matter concealing this fact from the State Commission.

Hence, National Commission directed the appellant to get the vehicle inspected by a faculty member of IIT, Madras or by an engineer of AAI which shall be made available by the respondent/complainant about the current status of the vehicle vis-à-vis availability of all parts which should have been there and then replace the chassis, carry out all other repairs which ever is necessary to bring the vehicle on road and running. After completing the repairs and making the vehicle roadworthy petitioner is directed to get the vehicle retested from an authorized agency referred to earlier, in the presence of the parties about the road-worthiness of the vehicle and removal of all defects. After the satisfaction of the qualified and competent Commissioner referred to earlier the vehicle be handed over to the complainant along with a manufacture's guarantee for one year. To this extent the appeal is allowed and order of the State Commission is modified. No order as to costs.

Appeal Allowed.

Dr. Hema Vasantial Dakoria vs. Bajaj Auto Limited & Ors.

II (2005) CPJ 102 (NC)

Facts

Petitioner was the complainant before the District Forum, where she had filed a complaint alleging deficiency in service on the part of the respondent, Bajaj Auto Ltd.

Petitioner/complainant had purchased a 'Bjaja Super' Scooter for a consideration in September 1996, which had allegedly developed crack on the chassis even when it had not run for 50 kms. or so. The matter was taken up with the dealer from whom the scooter was purchased and they offered to replace the chassis of the said scooter as it was within the warranty period but it was not acceptable to the complainant, who was of the view that there is a manufacturing defect in the scooter, hence wanted replacement by a new scooter. When the issue was not getting resolved, a complaint was filed before the District Forum, who after hearing the parties directed the respondents to replace the scooter. On an appeal filed by the respondents before the State Commission, it was allowed in part and the State Commission directed the respondents to change the chassis of the scooter as also pay compensation of Rs. 5,000/- and a cost of Rs. 1,000/-. Not satisfied with this relief, the petitioner/complainant had filed this revision petition before us.

Issue

Whether there was manufacturing defect in the scooter?

Decision

As per settled position of law that if a part could be replaced or a defect could be removed then replacement cannot be ordered. In this case, no evidence has been led by the complainant to tell that there is a manufacturing defect, hence National Commission is unable to satisfy about allegation of manufacturing defect in the scooter. The admitted position is that a crack had developed on the chassis and is not disputed that the respondents offered to change the chassis, which had developed the crack by replacing it but it was not acceptable to the petitioner/complainant for which he alone is held to be accountable. Since it is the chassis, which had cracked and since its, replacement is ordered by the State Commission, National Commission did not find any infirmity in the order passed by the State Commission, which is upheld. However, it is true that the complainant has been inconvenienced

though partly on her own attitude, yet keeping in view the fact that she remained deprived of the use of the scooter, compensation granted by the State Commission was considered inadequate and it was increased to Rs. 10,000/-. Rest of the order passed by the State Commission is maintained. The revision petition is allowed in above terms. No order as to cost.

Revision Petition Allowed.

Eicher Motors Ltd. vs. Mahendra Nirmal Kumar & Ors.

II (2005) CPJ 86 (NC)

Facts

The present appeal arises out of an order of the State Commission, Maharashtra awarding a sum of Rs. 6.00 lacs plus interest thereon @ 18%. The respondent No. 1 had raised a grievance that the engine of the vehicle which was purchased on 3rd October, 1992 and which became roadworthy after construction of body thereon in February, 1993 had seized on 27th April, 1993 and that the engine suffered from manufacturing defects which needed to the remedied. The vehicle was inspected by two different, Inspectors of appellant on two occasions first on 28.4.1993 by an Inspector and thereafter on 8th of May, 1993. Each of them had opined that the overheating of engine was responsible for the defects in the pistons of two of the cylinders and such overheating was the result of the complainant having replaced the genuine radiator cap with a spurious one by buying it from the local market which did not have the adequate safeguards to prevent overheating and evaporation of the coolant.

Thereafter, while the matter was still pending before the State Commission orders were passed for having the vehicle inspected by an independent agency namely Western India Automobiles Association. But before any inspection could be carried out the vehicle was towed away by the dealer respondent No. 3 to another site about 52 kms. away which was a petrol pump owned by his brother. The complainant took his representatives and photographer to take inspection of the truck at Atkot where the said vehicle was garaged and discovered to his dismay that even the engine and various other parts have been removed and an application to that effect was filed before the State Commission and the Commission awarded a sum of Rs. 6.00 lacs plus interest thereon @ 18%. Hence, the present appeal.

Issue

Whether there was supply of defective vehicle?

Decision

The National Commission observed that the State Commission proceeded to return the findings without ascertaining as to whether the engine or the vehicle suffered from any manufacturing defect, which was absolutely essential to enable the State Commission to award any compensation against the manufacturer. Even

to award compensation and to quantify it, there had to be a basis or certain material which is not indicated in the impugned judgment. In that view of the matter it is considered appropriate that the matter should be remanded to the State Commission with the directions that the question of manufacturing defect and the consequent compensation should be gone into on the basis of evidence adduced or to be adduced by the parties before it. Accordingly, the impugned order is set aside and the matter is remanded to the State Commission.

However, a sum of Rs. 6.50 lakhs has already been paid by the appellant to the respondent No. 1 pursuant to the order of the State Commission. National Commission directed that the amount would abide by the fresh determination by the State Commission. The first appeal is disposed of as above.

Appeal Disposed of.

Scooters India Limited & Anr. vs. Madhabananda Mohanty & Ors.

II (2005) CPJ 136 (NC)

Facts

The complainant / respondent No. 1 had purchased an auto-rickshaw from M/s. B.P. Motors Pvt. Ltd., manufactured by the petitioner. M/s. B.P. Motors was opposite party No. 1 and the petitioner was also one of the opposite parties.

Complaint was that auto-rickshaw which the complainant had taken on hire purchase from M/s B.P. Motors had manufacturing defect. Complainant sought damages and also refund of various amounts incurred by him on repairs of the vehicle. District Forum after writing a judgment of 11 pages held that since oral evidence was required it would be appropriate if the matter is considered by the Civil Court. Complaint was accordingly dismissed without prejudice to the right of the complainant to have resort to the Civil Court. Complainant went in for an appeal to the State Commission, which allowed the appeal and directed the manufacturer to pay Rs. 10,000/- towards general damages and also Rs. 2,000/- as costs of litigation to the complainant.

An auto-rickshaw manufactured by the petitioner was purchased on hire purchase by the complainant. Vehicle was delivered to the complainant on 5.9.1993. According to the complainant he deposited Rs. 5,000/-with B.P. Motors on 9.6.1993 for purchase of a new diesel auto-rickshaw by the name Bikram. He made further payments of Rs. 42,926/- as margin money and also gave 12 post-dated cheques of Rs. 4,647/- before taking delivery of the vehicle. It was registered on 4.9.1993. Further amounts were also spent by the complainant to make some minor alternations. Right from the day one he found the vehicle was not giving proper service and there were manufacturing defects resulting in monetary loss to the complainant. He had to take the vehicle repeatedly to M/s B.P. Motors for repairs to remove the defects. There were defects in the engine, gearbox, telecrown, body, break systems, etc. Sometimes there were breakdown on the road itself far away from the workshop of B.P. Motors. However, since the vehicle was having major defects these could not be repaired. In utter frustration complainant left the vehicle with the B.P. Motors. Complainant also alleged that it was not a new auto-rickshaw but the load carrier, which was used by the B.P. Motors for four or five months for demonstration purposes and thereafter auto-rickshaw body was built on it in the garage and passed on to the complainant as new auto-rickshaw. All these allegations were, however, denied

by the opposite parties who alleged that it was the misuse of the vehicle by the complainant. But this could not be denied that the vehicle had been to the workshop repeatedly. It was also the defence that warranty was for three months period or for a run of 7000 kms., whichever was earlier and during this period complainant had availed of free services and since he defaulted in payment of hire money, a plea of manufacturing defect was advanced to avoid the hire purchase agreement.

State Commission examined the matter afresh. Instead of remanding the matter to the District Forum, State Commission on its own examined the whole aspect of the matter and it accepted the version of the complainant. State Commission was of the view that opposite parties have failed to prove that the defects pointed out had cropped up during the normal wear and tear or that these defects occurred because of rough use of the vehicle on roads by the complainant in far off places of Balasore or for lack of proper maintenance by the complainant. State Commission also found that the differential of the vehicle was overhauled on 9.4.1994 and that it was hardly necessary to overhaul a differential unless there was an inherent defect. State Commission found the complaint to be valid and allowed the complaint by directing the petitioner manufacturer to pay Rs. 10,000/- as damages and Rs. 2,000/- as litigation expenses. Aggrieved by the order the appellant filed present appeal.

Issue

First, whether the case can be dealt by the Consumer Forum under the Act? and Secondly, whether the Court below was right to order to adjudicate the matter before the Civil Court?

Decision

At the time of hearing it was submitted that the amount of Rs. 12,000/- has since been paid by the petitioner to the complainant in execution proceedings filed by the complainant and, therefore, the petition has become infractions. However, the National Commission did not find it a correct approach. If the amount has been received by means of execution that would not mean that parties have settled their dispute.

Any consumer when buys a new vehicle he is under the impression that a new vehicle is bound to be mechanically perfect or that a brand new vehicle would be defect free. A new vehicle could be deficient as well. It could be that some errors are insignificant but there may be many others which substantially impair use of the vehicle. If the vehicle is defective a consumer has a right to seek its replacement or

refund of the price. Though the burden to prove the defect would be on the consumer, yet it must be understood that consumer is not bound to pin point the precise nature of defects or its cause or source. The warranty which is given for a vehicle is a warranty for whole of the vehicle and when it is found that the vehicle does not perform properly the warranty would be taken to have been breached even if no individual part could be identified as defective. It is not always necessary for the consumer to give expert testimony though if he does so it will add to the weight of the evidence. However, it must be shown that the use of the vehicle has been substantially impaired on account of the defects. If the defects are insignificant that could not be a case of replacement or refund. A consumer Forum has, however, to take into consideration consumer state of mind as well. After all he had invested in the new vehicle to buy peace of mind hoping that the vehicle is dependable and trouble-free. But then coming to a Consumer Forum, consumer must first give notice to both the dealer and the manufacturer and both of them must be given reasonable opportunity to repair the defect if it is not inherent manufacturing defect. It is not that consumer has to take the vehicle to the workshop time and again for repairs to be carried out. It will depend upon case to case. It must also be understood that vehicle has to be returned for repair to an authorized dealer and not to the distant manufacturer itself. For this purpose manufacturer must maintain sufficient repair facilities reasonably close to all areas where the vehicles are sold. As a matter of fact accessibility of repair facility to implicit when a new vehicle is sold.

In the light of these principles in the view of National Commission the State Commission has taken correct view of the matter. No merit found in the appeal to take a different view. This petition, is therefore, dismissed with cost of Rs. 2,000/-.

Revision Petition Dismissed.

Kinetic Engineering Ltd. vs. Shashi Dhar Sharma & Anr.

III (2005) CPJ 23 (NC)

Facts

The complainant/respondent purchased motor bicycle from M/s. Kanha Automobiles on 4.7.2001 for a sum of Rs. 41,990/-. It was manufactured by Kinetic Engineering Pvt. Ltd. The motor bicycle had wobbling problem since beginning. It was brought to the notice of M/s Kanha Automobiles. The complainant visited as many as 10 times within the warranty period for getting the defects removed. Wobbling problem persisted despite all efforts made. The vehicle remained 30 days in the workshop of M/s Kanha Automobiles. Alleging manufacturing defect in the motor-cycle and old battery complainant approached District Forum. The District Forum admitted that there was manufacturing defect and supply of old battery and awarded Rs. 41,990/- as cost of vehicle alongwith compensations and Rs. 5000/- as cost. In appeal State Commission also upheld the order of District Forum. Aggrieved by the order opposite party filed present Revision Petition.

Issue

Whether there was manufacturing defect?

Decision

From the materials on record it is found that due to wobbling problem the vehicle remained 30 days in the workshop of M/s Kanha Automobiles and if the defects in the motor-bicycle could not be removed despite 10 attempts made by the dealer then it would provide a very strong reason to believe that there was manufacturing defect and manufacturing defect was not removed. It is not only that the petitioner has failed to remove the manufacturing defects but in addition he was also supplied a battery manufactured in September 1999 along with the motor bicycle sold on 4.7.2001 and the battery stopped working in July 2002. It was submitted about battery that batteries were purchased in bulk. But a dealer was not supposed to supply a defective motor bicycle or any other vehicle with nearly two years old battery, in place of a new battery. Thus, it was established that there was manufacturing defect in the motor-cycle and old battery was supplied in place of new battery indicating defective battery. Hence, the concurrent finding of State Commission and District Forum upheld. Opposite Parties were held liable. Accordingly the revision petition dismissed.

Revision Petition Dismissed

Bajaj Auto Ltd. & Anr. vs. Kirit Kumar Jagjivan Das Patel

III (2005) CPJ 86 (NC)

Facts

Respondent/complainant purchased Bajaj Kwasky 4 S motorcycle bearing Registration No. GJ-5RR-3597 from petitioner No. 2, dealer of petitioner No. 1 company on 7.10.1997 for a sum of Rs. 36,879/-. Warranty was of one year. It was alleged that after about three months from the date of purchase of the motorcycle it developed defects. Despite the fact that it was repaired 8-9 times by the petitioner, the defects, which were of manufacturing nature, were not removed. Alleging deficiency in service, respondent filed complaint claiming certain relief against the petitioners. The stand taken by petitioners was that the motorcycle as and when brought was repaired to the satisfaction of respondent and in token of repairs having been carried out the signatures of respondent were taken on service card. It was denied that motorcycle was having manufacturing defects. After considering materials on record District Forum allowed the complaint with direction to the petitioners and opposite party Nos. 2 and 4 to take back the motorcycle and refund the value thereof of Rs. 36,879/- with interest @ 12% p.a. w.e.f. 10.7.1997 till realization holding that motorcycle was having manufacturing defects. Appeal filed by petitioners was disposed of by the State Commission reducing the amount to be refund to Rs. 31,347/- by allowing 15% depreciation and interest to 9% p.a. and that too from 7.10.1997. Against the order the present revision petition was filed.

Issue

Whether there was manufacturing defect?

Decision

In support of the averment that motorcycle in question was having manufacturing defects, the respondent had filed affidavit of Jagdishbhai, proprietor of an authorized service auto shop of Bajaj Company. Petitioners did not file affidavit of an expert engineer denying that the motorcycle did not have manufacturing defects. Grievances of petitioners was that the State Commission did not take note of the material documents filed on 3.12.2004. The National Commission held that since these documents were filed after conclusion of arguments in appeal the State Commission had rightly declined to consider them. Considering the unrebutted affidavit of Jagdishbhai who had opined that motorcycle was having

manufacturing defects and also motorcycle having been taken for repairs to the petitioners 8-9 times, no illegality or jurisdictional error found in the order passed by State Commission warranting interference in revisional jurisdiction under Section 21(b) of C.P. Act, 1986. Revision Petition is, therefore, dismissed.

Revision Petition Dismissed.

Punjab Tractors Ltd. vs. Hamam Singh & Anr.

IV (2005) CPJ 74 (NC)

Facts

The complainant, Hamam Singh purchased a tractor on 27.11.1996 with one-year warranty. He had taken loan from P.A.D.B. Branch at Faridkot and he had sold some shares for purchasing the tractor. Immediately after the purchase of the tractor, it started giving trouble in as much as two Pistons Assy, Liner Assy, Main Oil seal and Leveling rod and Shaft had to be replaced. The complainant sought compensation amounting to Rs. 2.00 lakh.

The opposite parties, Supreme Tractors Corporation claimed that the tractor was delivered on 20.10.1996 and upto 1.8.1997, it had been used for 940 hours. The defect in the tractor was removed and the complainant and his son were fully satisfied. The complainant availed the services of warranty. Necessary parts were replaced after rendering free service and job done on 9 occasions from 27.11.1996 to 1.8.1997.

Learned Counsel for the Punjab tractors submitted that there was no manufacturing defect as it was evident that the tractor had plied for 940 hours during first nine months itself. If the tractor was defective it could not have been used for such a long period. The fact that the vehicle was sold, was not disclosed earlier would indicate *mala fide* on the part of the complainant/petitioner when he filed the appeal. The vehicle was used for commercial purposes. The complainant was not consumer and he was not entitled to any relief after the expiry of the warranty.

Issue

First, whether complainant is a consumer? Secondly, whether the tractor was used for the commercial purpose? Thirdly, whether there was manufacturing defect?

Decision

In so far as the point as to whether Hamam Singh was a consumer or not and the submission that the tractor used for commercial purposes would be covered by the explanation added to the definition of the term 'consumer' and the complainant could not be excluded from the definition of 'consumer'. One has to consider distinction between the different terms, commercial, industrial, agricultural, etc.

which are being simultaneously used in various enactments. Since it is not meant for re-sale, if could not be said to be a commercial purpose. Tractor would be used for agriculture purpose. Consequently, the contention of the learned Counsel appearing on behalf of the manufacturer and the dealer in this regard cannot be accepted.

In so far as the question of manufacturing defect is concerned, there is no dispute that on 9.12.1996, the Piston assembly was replaced. Again on 10.1.1997, Liner assembly was replaced. On 24.4.1997, again of Piston and Liner assembly was required to be replaced. On 7th May, 1997 seating ring was replaced and again on 1.8.1997, Main Oil Seal and Levelling Rod had to be replaced, even if one ignores replacement of Oil seals on 14th February, 1997 to 24th February, 1997. Since out of three Pistons, two were required to be replaced along with Liner assembly and Cam Shaft, it would clearly indicate that there was manufacturing defect in the tractor. One could not be oblivious to the submission that these defects were noticed within a very short time span of 10 months from the date of purchase forcing the dealer/manufacturer to replace them. Even if the changing of oil seals and diesel filter ignored, other repairs and replacement required to be undertaken by the dealer and consider undisputed jobs done the manufacturing defects would become too obvious. A tractor is supposed to give reasonable service for a number of years exceeding 5 to 7 years without forcing a purchaser to visit workshop of the respondents to complain about the aforesaid defects again and again.

As regards the submission that the complainant had already got half of the price by selling the tractor it would neither help the dealer nor the manufacturer the reason being that the complainant had to sell the vehicle for he had to undisputedly waste time, money energy in getting the tractor repaired repeatedly and could not have the satisfaction of using new tractor.

Further, during two years, the tractor would have depreciated in value at least to the extent of 20% one has to keep in view the fact that there is evidence of its use for 940 hours in first nine months. We are also supposed to take into consideration the Pistons and the assemblies. Various defects were repaired by the petitioners. In these circumstances, National Commission did not disturb the ratio of the loss suffered to the extent of 50% and reduced the amount of Rs. 1,31,250/- by taking into consideration the depreciated value to the extent of 20% from the original value of Rs. 2,62,500/- . The contention that the petitioner had already received a sum of Rs. 1,56,000/- by selling the tractor on 15.10.1998 would not make any difference. It would be totally different kind of transaction depending on price of a new tractor of the same brand market forces of supply and demand and condition of the tractor. The

petitioners have nothing to do with it. Accordingly the National Commission reduced Rs. 53,500/- by way of depreciation, take its value at Rs. 2,09,000/- and award 50% of Rs. 2,09,000/- i.e. , a sum of Rs. 1,04,500/- interest @ 18% p.a. with cost of Rs. 1,500/- in all.

Both the petitioners i.e. Punjab Tractors Ltd. and Supreme Tractors Corporation being jointly and severally liable in terms of judgment in *Jose Philip v. Premier Automobiles Ltd.* I (2004) CPJ 9 (SC)=I (2004) SLT 855. They are accordingly directed to pay the above mentioned amount within a period of six weeks. Both the revision petitions stand disposed of as mentioned here in above.

Revision Petition Disposed off.

Annexure

MODEL FORM OF NOTICE, COMPLAINT, AFFIDAVIT AND REPLY
MODEL FORM-1 NOTICE BEFORE FILING THE COMPLAINT

Name and address
.....
(of the trader, dealer, firm, company, etc.)
.....
(Complete address)
IN RE: (Mention the goods/services complained of giving details)
.....
Dear Sir,

This is to bring to your kind notice that 1 had purchased…….....from your ..... for a consideration of Rs.…….....paid in cash vide your cash memo/Receipt/Invoice No.....(or through cheque No .....dated..... drawn on .....bank for a sum of Rs .....

The said goods are suffering from the following defects:

(i) .....

(ii) .....etc

I have reported the above matter to you several times (give reference of earlier letters, if any) but despite all my pleadings you have not made good the defect in the goods (ordeficiency in services) which is indeed regrettable and highly unbusiness like. On account of your aforesaid dereliction of duty and failure and neglect to rectify the same I have suffered losses/incurred expenses

.....
.....
.....
.....
.....

(give details)

which you are liable to compensate to me.
You are hereby finally called upon to

(i) remove the said defects in the goods

and/or

(ii) replace the goods with new goods

and/or

(iii) return the price/ charges paid

(iv) pay compensation for financial loss/injury/interest suffered due to your negligence .....
(give details)

in the sum of Rs ..... with interest @..... % per annum within……days of the receipt of this notice failing which 1 shall be constrained to initiate against you for redressal of my aforesaid grievances and recovery of the aforesaid amount such proceedings, both civil and criminal as are warranted by law, besides filing a complaint under the statutory provisions of The Consumer Protection Act, 1986 exclusively at your own risk, cost, responsibility and consequences which please note.

Place……..
Dated.....

Sd/-
……..

Model Form –2 -The complaint

BEFORE THE HON'BLE DISTRICT CONSUMER DISPUTES
REDRESSAL FORUM AT .....
OR
BEFORE THE HON'BLE STATE CONSUMER DISPUTES
REDRESSAL COMMISSION AT .....
OR
BEFORE THE HON'BLE NATIONAL CONSUMER DISPUTES REDRESSAL
COMMISSION AT NEW DELHI
IN RE: COMPLAINT NO .....OF 20.....IN THE MATTER OF:
(FULL NAME)(DESCRIPTION)(COMPLETE ADDRESS)

..... Complainant

VERSUS

(FULL NAME)(DESCRIPTION)(COMPLETE ADDRESS)

..... Opposite Party/ Parties

COMPLAINT UNDER SECTION 12/SECTION 17/ SECTION 21 OF THE CONSUMER PROTECTION ACT, 1986.

RESPECTFULLY SHOWETH

INTRODUCTION

(In this opening paragraph the complainant should give his introduction as well as that of the opposite party/parties.

TRANSACTION

(In this paragraph complainant should describe the transaction complained of, *i.e*., particulars and details of goods/ services availed; items of goods/kind and nature of service; date of purchase of goods/availing of service; amount paid as price/consideration, full or in part towards the goods/service; Photocopies of the bill/cash memo/voucher or receipt should be attached and properly marked as Annexure – A,B,C and so forth or 1,2,3 and so forth.)

DEFECT DEFICIENCY

(In this paragraph complainant should explain the grievance, *i.e*., whether the loss or damage has been caused by some unfair trade practice or restrictive trade practice adopted by any trader or there is some defect in the goods or there has been deficiency in service or the trader has charged excessive price for the goods. One should elucidate the nature of unfair trade practice adopted by the trader, *i.e*., relating to the quality of goods/services; sponsorship; warranty or guarantee for such period promised. The nature and extent of defects in goods should be explained and so should the deficiency in service. In case of excessive price one should specify the details of actual price fixed by or under any law for the time being in force or as set out on goods and their packing vis-a-vis the price charged by the trader. Complaint can also be filed against offer for sale of goods hazardous to life and safety when used. You should narrate your grievance and rest assured it is being read /heard by compassionate and pragmatic judges. Photocopies of relevant documents must be attached.)

RECTIFICATION

(In this paragraph complainant should highlight what attempts were made by him to set things right, *i.e*., personal visits or negotiations; communication in writing if any; whether any legal notice was got served and / or whether he has approached any other agency for redressal like, Civil or Criminal Court of competent jurisdiction; the stage of its proceedings, its outcome, if any, alongwith copies (certified preferably) of such proceedings. The nature of response got from the trader when irregularities were brought to his notice, should also be disclosed here).

OTHER PROVISIONS

(In this paragraph reference may be made to any other law or rules or regulations of particular procedure which is applicable to the case and/or which has been violated by the trader and consumer's rights under the same. There are incidental statutory obligations, which traders must fulfil and in case of their failure to do so the case in *prima facie* made out and Forum would take cognizance).

EVIDENCE

(In this paragraph complainant should give details of documents and/or witnesses he will rely upon to substantiate his case. The documents attached as Annexures as stated above may be incorporated in a proper list and a list of witnesses (if any) may be filed similarly).The annexures should be attested as "True Copy".

JURISDICTION

(In this paragraph complainant should liquidate the claim in the complaint, *i.e*., upto 20 lakh; 20 lakh to one crore; or above and set out the pecuniary jurisdiction of the Forum/ State Commission/National Commission, as the case may be. The territorial Jurisdiction should be highlighted to obviate any formal objection).

LIMITATION

That the present complaint is being filed within the period prescribed under section 24A of the Act.

RELIEF CLAIMED

(In this paragraph complainant should describe the nature of relief he wants to claim. *i.e*., for removal of defects in goods or deficiency in service; replacement with new goods; return of the price or charges, etc., paid and/or compensation on account of financial loss or injury or detriment to his interest occasioned by negligence of the opposite party and elucidate how you have calculated the amount of compensation claimed).

PRAYER CLAUSE

It is, therefore, most respectfully prayed that this Hon'ble Forum/ Commission may kindly be pleased to ..... (Details of reliefs which complainant wants the Court to grant)

Place:..... Dated:.....

Complainant Through .....
(Advocate or Consumer Association, etc.)

Verification.

I, ... the complainant above named, do hereby solemnly verify that the contents of my above complaint are true and correct to my knowledge, no part of it is false and nothing material has been concealed therein. Verified this ..... day of ..... 20 ..... at ..... Complainant.

Note: Although it is not compulsory, complainant may file an affidavit in support of the complaint which adds to the truth and veracity of allegations and gives credibility to the cause. It need not be on a Stamp paper but one should get it attested from an Oath Commissioner appointed by a High Court. The format is just as simple.

Model Form –3- Affidavit in support of the complaint

BEFORE THE HON'BLE……..IN RE: COMPLAINT NO……..OF 20……..IN THE MATTER OF:

……

..... Complainant

.....

..... Opposite party

AFFIDAVIT

Affidavit of
Shri……..S/o. Shri .....
aged……years, resident of .....
.....

(1) That I am complainant in the above case, thoroughly conversant with the facts and circumstances of the present case and am competent to swear this affidavit.
(2) That the facts contained in my accompanying complaint, the contents of which have not been repeated herein for the sake of brevity may be read as an integral part of this affidavit and are true and correct to my knowledge.

Deponent

Verification:

I, the above named deponent do hereby solemnly verify that the contents of my above affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therein.

Verified this……day of……... 20…….. at……..

Deponent

Model Form –4- Reply by the trader to the complaint

BEFORE THE HON'BLE …….. THE CONSUMER DISPUTES REDRESSAL FORUM/COMMISSION AT……

IN RE: COMPLAINT NO……..OF 20……..

IN THE MATTER OF:

.....Complainant

VERSUS

.....Opposite Party

DATE OF HEARING……

WRITTEN STATEMENT ON BEHALF OF RESPONDENTS TO THE COMPLAINT OF THE COMPLAINANT

RESPECTFULLY SHOWETH:

Preliminary Objections

1 That the present complaint is wholly misconceived, groundless and unsustainable in law and is liable to be dismissed as such. The transaction question was without any consideration and free of charge.

2 That this Hon'ble Forum/ Commission has no jurisdiction to entertain and adjudicate upon the dispute involved in the complaint in as much as it is not a consumer dispute and does not fall within the ambit of the provisions of the Consumer Protection Act,1986, hereinafter called the said Act and is exclusively triable by a Civil Court and as such the complaint is liable to be dismissed summarily on this score alone.

3 That the dispute raised by the complainant in the present complaint is manifestly outside the purview of the said Act and in any event, the Act is in addition to and not in derogation of the provisions of the..... Act. The proceedings initiated by the complainant under the Act are honest, null and void and without jurisdiction.

4 That the definitions of 'Complainant', 'Complaint' 'Consumer Dispute' and 'Service', as defined in Section 2(1) of the said Act do not cover the claims arising under the present dispute and that from the aforesaid definitions, the complainant is not' consumer' and the controversy involved in the complaint is not a 'consumer dispute'.

5 That the present complaint is baseless and flagrant abuse of process of law to harass and blackmail the answering respondent.

6 That the complainant has no *locus standi* to initiate the present proceedings.

7 That the complaint is bad for non-joinder of necessary and proper party and is liable to be dismissed on this score alone.

8. That the complainant has already filed a Civil Suit for ..... in a court of competent jurisdiction which is pending disposal in the Court of ..... and the present complaint has become infructuous.

9. That the present complaint is hopelessly barred by limitation.

10. That this Hon'ble Forum/Commission has no territorial or pecuniary jurisdiction in as much as the amount involved in the subject-matter exceeds/is less than the limit prescribed by Section 11(1) Section 17(1)(a)(i)/Section 21(a)(i) of the Act.

11 That the present complaint is frivolous and vexatious and liable to be dismissed under Section 26 of the Act.

12. That the present complaint has not been verified in accordance with law.

On Merits:

In these paragraphs respondent must reply each and every allegation made and contention raised by the complainant, factual and legal as well. In case one has already made good the defect or deficiency, elucidate steps taken. One may have, *inter alia,* following goods defences as well.

1. That the transaction entered between the parties to the above dispute is a commercial one and the complainant cannot claim any relief from this authority in as much as.....(give details)
2. That the complainant had purchased the goods as a seller/retailer/distributor, etc., for consideration of resale and as such is barred from moving this Hon'ble Forum/ Commission for the alleged defect/deficiency etc. in as much as ..... (give details)
3. That the complainant has already availed the warranty period during which the answering respondent has repaired/replaced the goods in question. The complainant is thus legally stopped from enforcing this complaint or to take benefit of his own wrong.
4. That the present complaint is an exaggeration beyond proportion despite the fact that the complainant is himself responsible for delay and laches in as much as he has on several occasions changed his option for class of goods/type of allotment scheme of flats/model of vehicle, etc ..... (give details)
5. That the answering respondent is well within his rights to charge extra price for the subject-matter of the above dispute in as much as time was not the essence of delivery thereof. The complainant is liable to pay the increased price w.e.f ..... on account of escalation due to excise duty/budgetary provisions etc. in as much as….. (give details)
6. That the complainant has accepted the goods and/or service towards repair/replacement etc. without protest and the present complaint is merely an after thought.
7. That without prejudice the answering respondent as a gesture of goodwill is prepared to.....(give details of rectification, if any, which can be done in case of minor or tolerable problems to avoid harassment to consumer and litigation problems)

The allegations of defect/default/negligence and/or deficiency in service are wholly misconceived, groundless, false, untenable in law besides being extraneous and

irrelevant having regard to the facts and circumstances of the matter under reference.

Prayer clause with all the submissions made therein is absolutely wrong and is emphatically denied. Complainant is not entitled to any relief whatsoever and is not entitled Model Form costs.

Sd/-

(Opposite Party)

Place: .....

Dated: ..... through

(Advocate)

Verification

I, ... the above named respondent do hereby verify that the contents of paras ..... to ..... of the written statement on merits are true and correct to my knowledge. While paras ..... to ..... of preliminary objections and ..... to ..... of reply on merits are true to my information, belief and legal advice received by me and believed to be true while the last para is prayer to this Hon'ble Court. Verified at ..... this .....day of.....20.....

Sd/-

(Opposite party)