

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

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Queries & Answers through the Web

(www.advantageconsumer.com is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

Supreme Court Refuses To Reconsider Judgment Which Brought Doctors Under Consumer Protection Act

It gives me immense satisfaction to note that the supreme Court, on the 7th Nov., has refused to reconsider its earlier landmark judgement of 1995 (Indian medical Association Vs V.P. Shanta), which declared that the medical professionals do come under the Consumer Protection Act, 1986.

8th Nov.2024

B. Vaidyanathan
Chief Mentor

SC Refuses to refer 'VP Shantha' Judgment bringing Doctors within purview of Consumer Protection Act to Larger Bench. Agrees To Consider Issue in Appropriate Cases With Factual Foundation.

- Tushar Kohli

The Supreme Court today (7th Nov. 2024) refused to refer its Judgment holding medical professionals to be under the ambit of the Consumer Protection Act, 1986 (CPA) to a larger Bench stating that the questions on including professionals other than legal professionals under the Act could be considered in an appropriate case later.

On May 14, 2023, while holding that Advocates cannot be held liable under the CPA for deficiency of services and that such services do not come under the purview of the Act, a Two Judge Bench of the Apex Court had referred the matter to a larger bench of three judges to reconsider the three-judge Bench Judgment in Indian Medical Association v. VP Shantha (1995).

A three-judge Bench comprising Justice B.R. Gavai, Justice Prashant Kumar Mishra and Justice K.V. Vishwanathan disposed of the reference stating, "The question as to whether professionals, other than legal professionals, could be covered by the Consumer Protection Act can be considered in appropriate cases having a factual foundation."

The Division Bench in Bar of Indian Lawyers v. D. K. Gandhi (2024), Civil Appeal No. 2646 of 2009, had reasoned that the legal profession is *sui generis* and cannot be compared with other professions to keep it out of the ambit of the CPA.

The Court had additionally said that the decision in V.P. Shantha deserves to be revisited and considered by a larger Bench. V.P. Shantha had held that medical professionals could be held liable under the CPA.

The three-judge Bench today observed that the reference made in that Judgment was "not necessary". It said, "The Division bench observed that the question as to whether a profession could be treated as business or trade and therefore, covered within the ambit of the definition under Section 2(1)(o) required a revisit."

"We find that the issue before the Court was with regards to the legal profession and Court in unequivocal terms came to a conclusion that the legal profession is not covered by the provisions of Consumer Protection Act. Since the Court came to the aforesaid finding, irrespective of the finding of this Court in Shantha, the reference was not necessary." the Court observed.

In view of the above, the Court disposed of the reference.

Courtesy: verdictum.in

SC Refuses to refer 'VP Shantha' Judgment bringing Doctors within purview of Consumer Protection Act to Larger Bench.

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 2646 OF 2009

BAR OF INDIAN LAWYERS

Appellant(s)

VERSUS

D.K.GANDHI& ANR.

Respondent(s)

WITH

CIVIL APPEAL NO. 2647 OF 2009

CIVIL APPEAL NO. 2648 OF 2009

CIVIL APPEAL NO. 2649 OF 2009

ORDER

- 1 .** The question before a Division Bench of this Court was as to whether the legal professional could be covered by the provisions of Section 2(1) (o) of the Consumer Protection Act, 1986 (Now Section 2(42) of the Consumer Protection Act, 2019).
- 2 .** While considering the said question, this Court came to a specific conclusion that the legal profession is *sui generis*, that is it is unique in nature and cannot be compared with any other profession.
- 3 .** This Court has also held that the service hired or availed of an advocate is a service under a contract of personal service and, therefore, would fall within the exclusionary part of the definition of service contained in Section 2(42) of the Consumer Protection Act, 2019 [Section 2(1)(o) of the Consumer Protection Act, 1986].
- 4 .** While considering the said question, this Court was of the opinion that in the case of "*Indian Medical Association Vs. V.P. Shantha*", reported in (1995) 6 SCC 651 wherein this Court was considering whether medical practitioners would be covered under the provisions of the Consumer Protection Act requires to be revisited.

5. The Division Bench of the this Court further observed that the question as to whether a 'profession' could be treated as 'business' or 'trade' and, therefore, covered within the ambit of the definition under Section 2(42) of the Consumer Protection Act, 2019 [Section 2(1)(o) of the Consumer Protection Act, 1986], requires a revisit.
6. We find that the issue before the Court regarding the legal profession was addressed in unequivocal terms, leading to the conclusion that the legal profession is not covered by the provisions of the Consumer Protection Act.
7. We, therefore, find that since this Court came to the aforesaid conclusion, irrespective of the finding in the case of *Indian Medical Association (Supra)*, the reference to a larger Bench was not necessary.
8. The question as to whether the other professionals, excluding the legal professionals could be covered by the Consumer Protection Act, can be considered in an appropriate case, having a factual foundation for deciding the same.
9. The reference is answered in the above terms. Consequently, the appeals are disposed of.
10. Pending application(s), if any, stand(s) disposed of.

..... J
 (B.R. GAVAI)
 J
 (PRASHANT KUMAR MISHRA)
 J
 (K.V. VISWANATHAN)

New Delhi
 November 07, 2024

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Insurance Company is liable to compensate, unless it can prove that the Insured wilfully employed a driver without a valid Driving License.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

REVISION PETITION NO. 1907 OF 2016

(Against the Order dated 31/03/2016 in Appeal No. 676/2014 of the State Commission Orissa)

UNITED INDIA INSURANCE COOMPANY LTD.

THROUGH THE REGIONAL MANAGER, DRO-1, KANCHENJUNGA
 BUILDING, 8TH FLOOR, 18, BARAKHAMBA ROAD, NEW DELHI-110001.Petitioner(s)

Versus

RABI NARAYAN NAIK & ANR.

W/O. LATE SH. MADHUSUDAN NAIK, C/O. M/S. SHREE STORE, MAIN
 ROAD, BALUGAON, AT /P.O. BALUGAON

DISTRICT KHURDA, BHUBANESWAR. ODISHARespondent(s)

BEFORE: HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

Dated : 03 June 2024

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondents as detailed above, under section 21 of Consumer Protection Act, 1986, against the order dated 31.03.2016 of the State Consumer Disputes Redressal Commission, Odisha (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 676/2014 in which order dated 15.10.2014 of District Consumer Disputes Redressal Forum, Khurda, Bhubaneswar (hereinafter referred to as District Forum) in C.D. Case No. 369/2009 was challenged, inter alia praying for setting aside the impugned order dated 31.03.2016 passed by the State Commission.

2. While the Revision Petitioner(s) (hereinafter also referred to as OP) were Appellants before the State Commission and OP-1 & 2 before the District Forum and the Respondent No. (hereinafter also referred to as Complainant) was Respondent No.1 before the State Commission and Complainant before the District Forum and Respondent No. 2 (hereinafter referred to as OP-3/RTO) was Respondent No.2 before the State Commission in FA/676/2014 and OP-3 before the District Forum in C.D. Case No. 369/2009.

3. Notice was issued to the Respondents on 31.01.2018. Parties filed Written Arguments on 14.12.2023 (Petitioner) and 15.09.2023 (Respondent-1) respectively.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Forum and other case records are that: -

(i) The complainant got his vehicle TATA 407 Mini Truck insured from the United India Insurance Company Ltd. for the period from 03.01.2008 to 02.01.2009 with package policy with IDV amounting to Rs.3,01,600/-. The said vehicle met with an accident on 01.08.2008 near Sindurapalli, N.H. No. 5 and the complainant reported the matter before Chamakhandi Police Station in the district of Ganjam vide Station Diary Entry dated 02.08.2008. The next day morning the complainant informed the matter to the insurer and one Surveyor Er. S.B. Choudhury was deputed by the Insured and he conducted the spot survey and after survey and other formalities, the vehicle was shifted to Sriram Service Station, Sindurapalli, Chhattarpur, Ganjam and the vehicle was kept in the said Garage at Sriram Service Station, Er. B.P. Mohanty deputed by the insurer conducted the final survey and lastly Er. S.K. Panda deputed by the insured conducted the re-inspection survey at said garage. The damaged vehicle was estimated by the said Service Station and given estimate amount of Rs.3,06,747/- and the complainant submitted the claim form on 04.08.2008 with other documents before the Insurer for settlement of the claim. The vehicle was repaired by the said Sriram Service Station and the total amount of Rs.3,32,230/- was spent towards the said repair work of the damaged vehicle and the complainant paid the said amount to the said Service Station for release of the vehicle. Subsequently the complainant submitted the said Retail Invoice regarding repair expenditure of the said damaged vehicle. The Insurer United India Insurance Co. Ltd. repudiated the claim on 27.05.2009 taking plea on the driving licence of driver, Basanta Kumar Baral bearing D.L. No. 12528/88 issued by D.T.O., Charuchandpur Manipur found fake on verification. Hence, the complainant filed complaint before the District Forum.

5. Vide Order dated 15.10.2014 in the C.D. Case No. 369/2009, the District Forum has allowed the complaint against OPs-1 & 2 and dismissed ex parte against the OP-3.

6. Aggrieved by the said Order dated 15.10.2014 of District Forum, Petitioner(s) appealed in State Commission and the State Commission vide order dated 31.03.2016 dismissed the First Appeal No. 676 of 2014 and confirmed the order passed by the District Forum.

7. Petitioner has challenged the said Order dated 31.03.2016 of the State Commission mainly on following grounds:

(i) The order of the Forum below is bad in law as well as on facts, hence is liable to be set aside. The forum below failed to appreciate that the claim in respect of 3rd party is distinctly different from the "Own Damage" claim and the principle laid down in Swaran Singh's case reported in AIR 2004 SCW 663 has no application to the "Own Damage Claim". This being the position of law, laid down by the Apex Court, the Forum below erred in holding that the Insurance Company is liable to indemnify the insured on the ground that the complainant had no knowledge that the driver was having a fake Driving Licence.

ii) The Forum below also ignored various other Judgments passed by the National Commission to that effect. For the above reasons this is a fit case where the forum below should have held that the petitioner insurance company is liable to indemnify the insured as the driver had a fake Driving Licence and he had violated the policy conditions. The forum below failed to appreciate that in the insurance policy it has been stipulated that the petitioner insurance company is not liable to be indemnify any loss caused to the vehicle if the vehicle was driven by the person, who does not have valid & effective Driving License at the time of accident of the vehicle. As per the terms of policy, the petitioner issued the policy as per applicable terms and conditions including "Persons or classes of Persons entitled to drive: Any person including Insured provided that a person/ driver holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence. The person holding an effective learner's Licence may also drive the vehicle and such a person satisfies the Rule of Central Motor Vehicle Rule, 1989.

(iii) The Forum below failed to appreciate the terms of the insurance contract as agreed between the parties. The forum below failed to appreciate the report submitted by the Surveyor Mr. Rajat Kanti Chakraborty- submitted a DL-verification report dated 07.12.1988. The forum below failed to appreciate the report submitted by the investigator that on 04.04.2009 the Investigator -H. Iboyama Singh, submitted his investigation report regarding verification of DL of Driver Sh. Basant Kumar Baral and during investigation the investigator found and intimated to the petitioner that the District Transport Officer, Churachandpur, District Churachandpur, Manipur verified the D/L No. 12528/CH. and found that the D/L. No.12528/Chi is recorded and standing in the name of one R.K.Matum Singh and not in the name of one Basant Kumar Baral S/o Raghunath Baral as per record maintained by the Office of the District Transport Officer, Churachandpur, District Churachandpur, Manipur and hence the D/L. No. 12528/CH. submitted by Basant Kumar Baral is false/fake driving licence.

(iv) The forum below failed to appreciate that the precedent passed by the Hon'ble Supreme Court of India reported in AIR 2014 SC 3761 in Narinder Singh vs New India Assurance Company Ltd. The respondent has not filed any documentary evidence regarding his relationship with the insured i.e. M/s. Shree Store because the insurance contract has been executed with M/s. Shree Store and the respondent has not filed any documentary evidence regarding his proprietorship with M/s. Shree Store.

(v) The forum below failed to appreciate that the impugned judgment is illegal in view of the above facts and circumstances and is contrary to the settled law, for which it needs to be set aside.

8. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

8.1 In addition to the averments under grounds (para 7) it is contended that the petitioner insurance company issued a 'Goods Carrying (other than 3 Wheeler) Public Carrier Policy' for the period 03.01.2008 to 02.01.2009 vide Policy No. 634305/31/07/01/00003891 for the vehicle having registration no. OR- 02AE-1770 - MINI TRUCK (407) in favour of M/s. Shree Store, Balugaon having IDV Rs.3,01,600/-. The petitioner issued the policy as per applicable terms and conditions. On 01.08.2008 the insured vehicle met with an accident when it was driven by Mr. Basanta Kumar Baral (having DL No. 12528/88 dated 07.12.1988), causing damages to the insured vehicle. A police complaint /SDE NO. 35 dated 02.08.2008 was lodged at Police Station, Ganjam. The surveyor appointed by the insurance company submitted its report dated 05.08.2008. The statutory surveyor Mr. Rajat Kanti Chakraborty- submitted a DL- verification report of Licence No.12528/88 dated 07.12.1988. It was verified from R.T.A. Office Midapore, M.V. Dept. that there is no existence of the above mentioned driving Licence. The Authority verbally noticed that the Licence No. 12528/88 date 07/12/1988 have not issued in the name of Mr. Basanta Kr. Baral, they issued the licence No.12528 date on 20.06.1984 in the name of Dulal Chandra Ghosh. Hence, from physical verification and available documents it confirms that the driving licence No. 12528/88 date 07.12.1988 name of Mr. Basanta Kumar Baral are fictitious and false. In the Final report dated 20.01.2009 of the Surveyor & Loss Assessor) by Er. Bani Prasad Mohanty stated that the Driver Particulars: Name of Driver Basanta Kumar Barala, MDL No. & Validity-173/92K, 7.12.1998, upto 17.08.2009, Issuing authority- LA,BBSR, Type of License- Permanent, Badge Number –nil and Authorised to drive-LMV, HTV and Particulars of loss/Damage- Cabin Assy, Chasis Radator, Fr. Axle, Rear Axles Load Body, & other

parts as detailed in the report. The surveyor has assessed the net Loss on Repair basis Rs.1,80,000/-. The Investigator -H. Iboyaima Singh, submitted his investigation report regarding verification of DL of Driver Sh. Basant Kumar Baral, and during investigation the investigator found and intimated to the petitioner that the undersigned went to the office of the District Transport Officer, Churachandpur, District Churachandpur, Manipur and verified the D/L No. 12528/CH. and found that the D/L. No.12528/CH. is recorded and standing in the name of one R.K.Matum Singh and not in the name of one Basant Kumar Baral S/o Raghunath Baral as per record maintained by the Office of the District Transport Officer, Churachandpur, District Churachandpur, Manipur and hence the D/L. No. 12528/CH. submitted by Basant Kumar Baral is false/fake driving licence. The petitioner repudiated the claim of the respondent through repudiation letter dated 27.05.2009 for the reason that the driving license of driver on wheel named Basanta Kumar Baral bearing D/L No.12528/88 issued by D.T.O., Charuchandpur, Maipur has been found fake on verification, which constitutes violation of provisions stated under person or classes of Person entitled to drive on the face of the insurance policy. The District Forum allowed the complaint against the OPs 1 & 2 and dismissed exparte against the OP.3. It is further contended that as per the settled principle of law of that claim in respect of a third party is distinctly different from the own damage claim whereas the principle laid down in **Swaran Singh's** case reported in AIR 2004 SCW 663 has no application to the own damage claim. It is submitted that applicability of law laid down in:

AIR 2008 SCW 329 in re: UIIC vs Davinder

AIR 2007 SC 1563 NICL vs Laxmi Narayan Dhut

Narinder Singh vs NICL in the present matter.

In view of the afore mentioned case laws impugned order is liable to be set aside in the interest of justice.

To be concluded in the next issue.....

Support Your Cause

Consumer Protection Council, Rourkela is a registered voluntary organization, espousing the cause of the consumer. To a great extent, for its sustenance it depends on the good will of its donors like you. We solicit your support for sustaining the multifarious activities of the council. Donation to the council is eligible for tax exemption under Section : 80-G(5) (iv) of the IT Act. Donation may please be contributed through cash or crossed cheque / DD, drawn in favour of "**Consumer Protection Council, Rourkela**".

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