

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

“ An aware consumer is an asset to the nation”

Website : www.advantageconsumer.com

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ADVANTAGE - XI

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.)

Some interesting questions and answers, which may be arising in the minds of many of the members of the Housing Society / Residents' Welfare Associations, who happen to reside in the Flats.

What are society bylaws?

Society Bye-laws are **rules formed by housing societies to self-regulate their activities and to control the actions of its members**. Housing society bye laws are provided and approved by higher authorities (government bodies, legislative authorities). The activities, powers and functions of the Society and its **members are all governed by a set of rules**. All these housing society rules and regulations and the housing society byelaws must adhere to the Co-operative act or other laws in force in that region.

Can society bylaws be challenged?

Any regulation which infringes on the fundamental rights of an individual can be challenged in the court of law.

How can the Residents' Welfare Association handle defaulters?

I am the new president of a RWA where several residents have accumulated large amounts due to the Association. We have several chronic defaulters who have in some cases more than Rs 100,000/ of maintenance due. We have so far not resorted to any disruptive options but currently we are considering stoppage of services to these apartments. What are the legal ramifications of stopping such services like water, parking and housekeeping or suggest an alternative method of collection of dues?

Answer:1) No Resident Welfare Association or Housing Society has authority to deprive the resident of the essential services like water, housekeeping etc. and hence you cannot take that step to deal with the defaulters.

2) You need to first publish their names on the notice board of the Association and allow a short period to comply. If they fail to respond, send them a legal notice demanding payment of arrears.

3) If the defaulters fail to pay even after receipt of the legal notice you will need to file a suit for recovery in a civil court. The jurisdiction to file the suit will depend the nature of your welfare association.

What is Supreme Court Judgement on society maintenance charges?

The court held that **each member of the society is getting equal facility and it would be completely discriminatory and irrational** to increase maintenance charges on members who have larger plots considering the facilities being provided to each of the members are the same.

What are the legal rights of RWA?

Since it is a society, RWA is a legal person and can sue and be sued as well. Taking care of society's by-laws, addressing any disputes over management of the colony or maintenance of common areas, etc. is the work of an RWA.

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Can RWA disconnect electricity?

The RWA can issue a lawyer's notice to the defaulters and even follow it up (if required) by filing a suit for recovery against them in the court, but **under no circumstances it can disconnect the electricity and water supply**.

Can society cut water supply of a member for not paying the maintenance?

As per Supreme Court ruling that **no society is entitled to disconnect or suspend** common amenities including water supply. You have to issue a legal notice to the defaulter and if he/she does not budge, move the Civil Court.

Can a defaulter attend and speak in society AGM?

Yes. Non-payment of dues does not disqualify them from attending the AGM as part of their Owner member rights.

Is it compulsory to be a member of RWA?

It is to be noted that the formation or registration of **an RWA is not mandatory**, it has to be registered if it aims to collect money from residents. If your developer does not take steps to form an RWA, residents themselves can form a body.

What if society member is not paying maintenance?

If a flat-owner fails to pay his maintenance on time then the society can initiate legal proceedings **to** recover the maintenance amount. In such an application, the society will request the Registrar to issue a certificate for recovery of the amount against the defaulting member (flat-owner).

Can AGM be held without audited financial statements?

As per first provision of Section 137(1), if financial statement not adopted in AGM or adjourned AGM due to any reason. Such Company meanwhile can file the un-audited financial statement as provisional **statement within 30 days of date** when AGM required being hold or held.

(Compiled by: B.Vaidyanathan)

**LIC Penalised for not speedily processing the Policy proposal
and promptly intimating about any shortcoming, to the
Policyholder.**

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 414 OF 2020

(Against the Order dated 17/12/2019 in Appeal No. 232/2018 of the State Commission West Bengal)

LIFE INSURANCE CORPORATION OF INDIA & ANR.
THROUGH DIVISIONAL MANAGER, JALPAIGURI
DIVISIONAL, VILLAGE SHANTIPUR, P.S. KOTWALI, P.O.
AND
DISTRICT-JALPAIGURI
WEST BENGAL

.....Petitioner(s)

Versus

PRAMILA BASAK
W/O. SWAPAN BASAK, VILLAGE GUDRI BAZAR, P.O. &
P.S. KALIAGANJ,
DISTRICT-UTTAR DINAJPUR
WEST BENGAL

.....Respondent(s)

BEFORE:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

ORDER

14. From the aforesaid clause it may be seen that the condition precedent for acceptance of the premium was the medical examination. It would be logical for an underwriter to accept the premium based on the medical examination and not otherwise. Therefore, by the very fact that they accepted the premium waived the condition precedent of medical examination”.

Clearly, the above illustration makes a complete hollow of the contention of the Appellant that mere acceptance of premium does not give rise to any contract.

It is indeed a sorrow sight that the most vocal advocate of the principle of ‘uberrima fides’ (utmost good faith) acted in contravention of the same simply to deny a bona fide claimant of her legitimate due. Such opportunistic attitude on the part of the Appellant is highly condemnable.

We do not find any merit in this Appeal and as such, dismiss the same with a cost of Rs. 25,000/- being payable by the Appellant to the Respondent No. 1. The impugned order is perfectly in order and hence requires no sort of intervention from this end.

5. The State Commission has passed a well-appraised reasoned Order. It has concurred with the findings of the District Forum. No palpable crucial error in appreciating the evidence by the two fora below, as may cause to require *de novo* re-appreciation in revision, is visible. No jurisdictional error, or legal principle ignored, or miscarriage of justice, is visible. Nothing warrants interference with the impugned Order of the State Commission in the exercise of the revisional jurisdiction of this Commission.
6. The revision petition, being ill-conceived and bereft of merit, is dismissed.
7. The son of the complainant expired in 2014, the District Forum passed its Order in 2016, the State Commission passed its Order in 2019, we are now in 2021.
8. To achieve the ends of justice, the revisionist insurance co. is directed through its chief executive to make good the award within one month from today and to file a report-in-compliance with the District Commission within the same period of one month from today, failing which the District Commission shall undertake execution against the revisionist insurance co. through its chief executive, both for 'Enforcement' and for 'Penalty', as per the law.
9. The Registry is requested to send a copy each of this Order to the chief executive of the revisionist insurance company, to the complainant and to the District Commission, within three days. The stenographer is requested to upload this Order on the website of this Commission immediately. ■



**Medical negligence established by applying “but for”
test, and relief given to the complainant.**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 2699 OF 2008

(Against the Order dated 10/03/2008 in Appeal No. 732/2006 of the State Commission Delhi)

SHIV KUMAR SHARMA

S/o Late Sh. Prem Chand Sharma, Resident of D-11, Main
Road, D Block, East Azad Nagar Nearby MCD School
Krishna Nagar
Delhi

.....Petitioner(s)

Versus

1. ST. STEPHENS' HOSPITAL & ORS.
Boulevard Road, Near Tis Hazari Court
Delhi - 54

2. NEW INDIA INSURANCE COMPANY LTD.
2nd Floor, Jeewan Deep Building, 10 Parliament Street,
New Delhi.

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT
HON'BLE DR. S.M. KANTIKAR, MEMBER**

Dated : 08 Jul 2021

ORDER

PER DR. S.M. KANTIKAR, MEMBER

1. Both the Revision Petitions have been filed against the Order dated 10.03.2008 passed by the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the "State Commission") in Appeal No. 732 of 2006, which partly allowed the Appeal and modified the Order of the District Consumer Disputes Redressal Forum (hereinafter referred to as the "District Forum"), wherein the award of compensation of Rs. 5 lakh was reduced to Rs. 2.5 lakh.
2. For the convenience, the Parties are referred as placed before the District Forum, such that, the Complainant is Shiv Kumar Sharma, the Opposite Party No. 1 is St. Stephen's Hospital, New Delhi and Opposite Party No. 2 is the New India Assurance Co. Ltd.
3. Brief facts: On 18.08.2003 the Complainant Mr. Shiv Kumar (hereinafter referred to as "the patient") sustained bodily injuries due to road accident. After First-Aid at Ambala Government Hospital, on 21.08.2003 he was referred to St. Stephens Hospital, Delhi (Opposite Party No.1). Dr. Mathew Verghese examined him and diagnosed it as fracture of femur (thigh bone) on right side. On 02.09.2003 he was operated and a rod was implanted from the loin to the thigh and he was discharged on 08.09.2003. The doctor informed about successful operation. During follow-up after one month, X-ray of operated site was taken and seen by Dr. Bedi of Opposite Party No. 1 Hospital. He assured that it would take some more time for getting everything cured. It was alleged that even after 6 months the patient was unable to walk due to pain. In the month of May, 2004 because of unbearable pain in operated leg, the patient contacted Dr. Neeraj Garg who examined the patient and took X-rays. He opined that there was a fracture of the loin bone, and advised the patient to approach the same hospital where he was first operated. However, the patient met his family doctor, Dr. Arvind Saxena, who saw all the X-ray films and opined that the fracture had occurred during the 1st operation in the Operation Theatre (OT) of the Opposite Party No. 1 Hospital. Then, the Complainant met Dr. Bedi and showed opinions of two doctors. Dr. Bedi, in order to protect the doctors at the Opposite Party No. 1 Hospital, told that the fracture might have occurred due to fall somewhere else. On 06.12.2003, the patient was advised for bone grafting as there was unsatisfactory union of bones. However, the patient was not willing to undergo bone grafting. On 04.06.2004, the patient came back to the Hospital with the complaint of pain in right hip and thigh. The X-ray revealed displaced intra-capsular fracture of neck femur and he was advised to undergo osteosynthesis- a valgus osteotomy and fixation with angled blade plate. The cost of operation was told about Rs. 45,000/-. Because of financial hardship the Complainant did not opt for further surgery and approached the nearby Dr. Hedgewar Arogya Sansthan", (Govt. Hospital) Karkardooma, Delhi wherein on 21.07.2004 he was operated by Dr. Ashish and Niraj Garg.
4. Being aggrieved by the alleged negligent treatment at the Opposite Party No. 1 Hospital, the Complainant filed the Complaint No. 481/2004 before the District Forum, Tis Hazari, Delhi and claimed a total amount of Rs. 16,97,800/-.
5. The Opposite Party No. 1, in their Written Version, denied the allegation and submitted that the Complaint was false, misconceived and not maintainable. The Complainant suppressed the facts that he was initially treated at the Ambala Government Hospital, wherein the X-rays showed only fracture of femur shaft. The Opposite Party No. 1 denied that the fracture in loin bone had occurred during surgery performed at their hospital.
6. The District Forum after hearing both Parties, partly allowed Complaint vide Order dated 20.06.2006 and directed the Opposite Party No. 1 to pay Rs. 5.00 lac to the Complainant and Rs. 5,000/- as cost of litigation.

7. The Opposite Parties preferred two separate appeals before the State Commission, challenging the Order of the District Forum. The First Appeal No. 732/2006 was filed by the Hospital and FA/739/2006 was filed by the Insurance Company.
8. The State Commission disposed both the Appeals vide common Order dated 10.03.2008 and modified the quantum of award. The State Commission directed the hospital to pay a lump sum compensation of Rs. 2.5 lakh to the Complainant.
9. Being aggrieved by the Order of State Commission, the instant cross Revision Petitions were filed. The Hospital (Opposite Party No. 1) filed Revision Petition No. 2912 of 2008 for dismissal of Complaint whereas the Complainant filed Revision Petition No. 2699 of 2008 for enhancement of compensation.
10. We have heard the learned Counsel for both the sides, perused the material on record, *inter alia*, the Medical Record and the X-ray films.
11. The crux of this matter is that whether the treating doctors of Opposite Party No. 1 Hospital failed to diagnose fracture of loin bone.

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

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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**".

Editor : Sri B Pradhan

Editorial Committee : Sri A.K. Goswami
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Sri Amitava Thakur

Circulation Manager : Sri B.D. Tripathy

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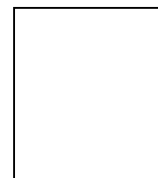
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E.mail : bpradhan.cpcrkl@gmail.com
(or) vaidya@advantageconsumer.com

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