



Key Updates

Recent Judgements

National Commission holds that a murder can be considered to be an accident in the context of claiming insurance, if there was no deliberate or wilful act by the insured that led to his murder.

A National Consumer Disputes Resolution Commission (NCDRC) bench comprising of the Presiding Member, Hon'ble Mr. Dr. S.M. Kantikar and Hon'ble Mr. Dinesh Singh in a judgment dated September 25, 2018 has held that a murder can be considered to be an accident in the context of claiming insurance, if there was no deliberate or wilful act by the insured that led to his murder.

In the case of Royal Sundaram Alliance Insurance Co. Ltd v. Pawan Balram Mulchandani, Balram Mulchandani took a personal accident shield insurance policy for an assured sum of Rs. 20,00,000/- from

Royal Sundaram Alliance Insurance Co. Ltd. for the period of 2008-2009. The deceased had gone to his office on 21-01-2009, but he did not return home that night, after which the police investigated the matter and arrested some persons, who revealed that they had murdered Balram Mulchandani. The son of the deceased filed a death claim with the Insurance company which was rejected, stating that the death was not due to an 'accident', but due to a case of 'murder'. Aggrieved, the son of the deceased filed a complaint before the Maharashtra State Consumer Disputes Redressal Commission. The State Commission allowed the complaint and directed the Opposite Party (Insurance Company) to pay the insured amount of Rs. 20,00,000/- with interest. The insurance company preferred an appeal to the NCDRC. The Issue that arose before the NCDRC was whether the murder that took place in the instant case was to be counted under the definition of 'accident', and whether the repudiation of the claim by the insurance company was justified.

After hearing both the parties, the NCDRC stated that the murder in the instant case shall be considered to be an accident within the terms and conditions of the policy. It relied on the decision of Maya Devi v. Life Insurance Corporation of India, [III (2008) CPJ 120 NC], wherein the meaning of the word 'accident' was held to include even wilful murder. Therefore, the Commission has held that the murder in the



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instant case shall be treated and taken as an accident within the terms and conditions of the policy, as there was no immediate deliberate wilful act by the insured that led to his murder.

[The Supreme Court re-iterates the test of negligence in medical cases, thereby establishing the standard of care required by medical practitioners](#)

A division bench comprising of Hon'ble Justice Abhay Manohar Sapre and Justice Vineet Saran in a judgment dated October 1, 2018 has reiterated the test of negligence in medical cases, hearing an appeal against an order passed by the National Consumer Disputes Redressal Commission (NCDRC) in the case of Dr. S.K. Jhunjhunwala v. Dhanwanti Kumar. In the present case, the Appellant was a qualified surgeon, who had operated on the respondent's gall bladder. Due to inflammation, the appellant had to remove the gall bladder instead of performing a laparoscopy surgery, which was done after the appellant had asked the respondent's husband for his consent. The aggrieved filed a complaint in the State Commission, West Bengal, Kolkata, claiming that she had given consent for performing laparoscopy Surgery only. However, the doctor performed general surgery of her Gall Bladder which resulted in several stitches and scars on her body, along with other ailments. The State Commission dismissed the complaint finding no merit. However, the NCDRC set aside the dismissal of the complaint and awarded compensation on account of negligence.

On appeal, the Hon'ble Supreme Court after hearing both parties set aside the order of the National Commission. It relied on two important decisions of the Queen's Bench- Bolam v. Friern Hospital Management Committee, [1957 1 WLR 582] and Eckersley v. Binnie, [(1988) 18 Con LR 1], and the full bench case of Jacob Matthew v. State of Punjab [(2005) 6 SCC 1] which establish the standard of care required by medical practitioners. It further went on to observe that a Physician cannot assure the patient of full recovery in every case. A professional can be held liable for negligence on one of two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did not possess. Since the qualification and skills of the doctor had not been questioned, he could not have been held liable for lack of requisite skills. The Hon'ble Court also noted that suffering of ailment by the patient after surgery may be due to myriad reasons known in medical jurisprudence. Suffering of any such ailment as a result of improper performance of the surgery and that too with the degree of negligence on the part of. It further went on to state that to prove the case of negligence of a doctor, the medical evidence of experts in the field to show that the ailment was a result of improper performance of the surgery is required. Simply proving the existence of ailments post any surgery was not held to be sufficient. The Hon'ble Supreme Court therefore set aside the order of the National Commission and the order passed by the State Commission was restored.

Policy Updates

[Highlights of the Consumer Protection Bill, 2018](#)

The Consumer Protection Bill 2018 was introduced in the Lok Sabha on 5 January 2018 and seeks to replace the existing Consumer Protection Act 1986. The new bill aims to fix many problems and shortcomings of the current Act.

Key Highlights:

i. Regulator- The current enactment does not provide for a Regulator. The Consumer Protection Bill, 2018 provides for establishment of a Regulator called the Central Consumer Protection Authority (CCPA). Complaints on violation of consumer rights can be forwarded to such authority.

ii. Product liability- The existing framework has no provision with regard to product liability. The Consumer

Protection Bill 2018 states that product liability action may be brought by a complainant against a manufacturer or a service provider or a seller, as the case may be, for any harm caused to him on account of a defective product.

iii. Unfair Contracts and Unfair Trade Practices - There is no provision for unfair contracts under the present framework. Any complaint against unfair contracts and unfair trade practices can be filed with the State Commission or the National Commission.

iv. Mediation- The Bill of 2018 also provides for reference of disputes to Mediation as an Alternative Dispute Redressal Mechanism and provides for setting up of a Consumer Mediation Cell.

v. Territorial jurisdiction – The Bill of 2018 has also made changes to the territorial jurisdiction of the Dispute Redressal Agencies and includes the place of residence or business of the complainant, in addition to that of the opposite party and the place of occurrence of the cause of action.

vi. E- Commerce- Under the present framework there is no provision with regard to transaction done through e-commerce. However, the new bill covers within its ambit buying or selling of goods or services including digital products over digital or electronic network.

Court fees for filing cases in Consumer Courts reduced.

The Ministry of Consumer and Affairs, Food and Public Distribution issued and published a Notification regarding the reduction in Court Fees for filing cases in Consumer Courts, vide Notification Number G.S.R. 898(E) dated 14th September, 2018.

The new Notification has amended Rule 9A of the Consumer Protection Rules, 1987, which lays down the fee for filing complaints in the different levels of consumer forums. As per the amendment, disputes valued up to 5 lakh Rupees attract no court fees. Disputes valued more than 5 lakhs but less than 10 lakh Rupees attract court fees of Rs. 200, and disputes valued more than 10 lakhs but not exceeding Rs. 20 lakhs attract court fees of Rs. 400.

It is also important to note that previously the slab was fixed at Rs. 1 lakh instead of Rs. 5 lakhs, which required a payment of Rs. 200 as court fees, Rs. 400 for disputes valued between Rs. 5 lakhs and Rs. 10 lakhs, and Rs. 500 for disputes valued between Rs. 10 lakhs and Rs. 20 lakhs.



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