

**ASSESSMENT OF DAMAGES  
UNDER THE  
CONSUMER PROTECTION ACT**

**A study conducted at the  
Consumer Disputes Redressal Agencies  
in the state of Goa**

**By**

**SABA VINCENT MESQUITA DA SILVA**

**DISSERTATION SUBMITTED  
IN PARTIAL FULFILLMENT OF THE REQUIREMENT  
FOR THE AWARD OF THE DEGREE OF  
MASTER OF LAWS**

**DEPARTMENT OF LAW  
AT V.M.SALGAOCAR COLLEGE OF LAW  
GOA UNIVERSITY  
BAMBOLIM, GOA.**

**1999-2000**

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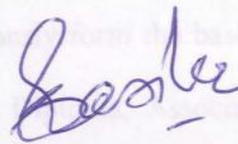
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## **DECLARATION**

I declare that the Dissertation entitled **“ASSESSMENT OF DAMAGES UNDER THE CONSUMER PROTECTION ACT - A STUDY CONDUCTED AT THE CONSUMER DISPUTES REDRESSAL AGENCIES IN THE STATE OF GOA”**, has been written by me and that it has not formed the basis for the award of any Degree, Diploma, Associateship, Fellowship or similar title.



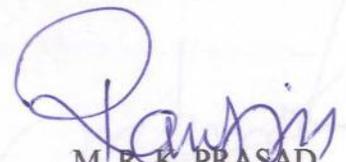
**SABA VINCENT MESQUITA DA SILVA**



Lecturer-in-law  
Research Supervisor

CERTIFICATE

This is to certify that this dissertation entitled  
**“ASSESSMENT OF DAMAGES UNDER THE CONSUMER  
PROTECTION ACT – A STUDY CONDUCTED AT THE  
CONSUMER DISPUTES REDRESSAL AGENCIES IN THE  
STATE OF GOA”** is a *bona fide* work done by **SABA VINCENT  
MESQUITA DA SILVA** during the period 1999-2000 under my  
guidance for the award of Degree of Master of Laws and that this  
Dissertation did not previously form the basis for the award to the  
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similar title.

  
M. R. K. PRASAD  
Lecturer-in-law  
Research Supervisor.

ACKNOWLEDGMENT

F.VMSCL/CERT/CERT/

May, 2000

CERTIFICATETO WHOMSOEVER IT MAY CONCERN

This is to certify that Mr. **SABA VINCENT MESQUITA DA SILVA** is a *bona fide* student of the LL.M. Program of Goa University conducted at V. M. Salgaocar College of Law, Panaji-Goa, during the academic years 1998-99 and 1999-2000. This Dissertation is a *bona fide* work of the above mentioned student carried out as part of the requirement for the Degree of Master of Laws of Goa University.

(M. Pinheiro)  
Principal and Chief Co-ordinator,  
LL.M. Program,  
Goa University

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**SABA VINCENT MESQUITA DA SILVA**

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*Contra legem* meaning "the buyer" will "buy" was the classical rule of English common law, which had its exceptions and which in the course of time grew more prominent than the rule itself out of which emerged the Consumer Protection law.<sup>1</sup>

In India, the Consumer Protection Act was enacted in 1986. It applies to all goods or all services of

classes of services. Enacted with a strong political support in Parliament, it provides for the better protection of the interests of consumers and for that purpose, to make provisions for establishment of consumer councils and other authorities for

## **CHAPTER 1**

### **INTRODUCTORY**

#### **(A) Background of Consumerism**

Consumerism and Consumer Protection have arisen as a result of the demand by consumers for equality of treatment and fair dealing in commercial transactions. Accustomed to full political rights and social equality, the 20<sup>th</sup> century citizens of Free Capitalist countries would not stand helpless in the face of all powerful corporations manufacturing and aggressively marketing their products.<sup>1</sup>

<sup>1</sup> G. B. Reddy, *Law of Consumer Protection*, Gogla Law Agency, 1998, Second

Edition, 45

<sup>1</sup> G. B. Reddy, *Law of Consumer Protection*, Gogla Law Agency, 1998, First Edition, 53

*Caveat Emptor* meaning “the buyer must beware” was the classical rule of English common law, which had its exceptions and which in the course of time grew more prominent than the rule itself out of which emerged the Consumer Protection law.<sup>2</sup>

In India, the Consumer Protection Act was enacted in 1986. It applies to all goods or classes of goods or all services or classes of services<sup>3</sup>. Passed with an unprecedented unanimity and support in Parliament, it provides for the better protection of the interests of consumers and for that purpose, to make provisions for establishment of consumer councils and other authorities for settlement of consumer disputes.

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<sup>2</sup> Justice Malik, Commentaries on the Consumer Protection Act, 1996, Second Edition, 48

<sup>3</sup> Except those, which are specifically exempted by notification by the Central Government.

## **(B) Statement of the problem**

The Consumer Protection Act, 1986 was enacted with a view to provide relief to consumers by the establishment of Consumer Dispute Redressal Agencies in order to protect the interests of consumers and for quick disposal of consumer disputes at a cheap cost.<sup>4</sup>

There is a continuous increase in the number of cases under the Act and there is a consequent increase in the claims for the award of damages for losses, both pecuniary damages, i.e. those which are generally designed to make good the pecuniary loss, which is capable of being calculated in terms of money and non-pecuniary damages, i.e. those which are incapable of being assessed by arithmetical calculation, viz. incurred due to mental shock and torture or due to inconvenience.<sup>5</sup>

The Consumer Protection Act, 1986 does not lay down any guidelines/yardsticks in the Act for the award of damages, unlike some legislations that have schedules to that

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<sup>4</sup> supra 2

<sup>5</sup> supra 1

effect.<sup>6</sup> Consequently variations are seen at the District Forum level while awarding such damages and very often the State Commission and other high appellate authorities grossly disagree with the findings of the North District Forum and South District Forum, in respect of such damages.

As such, it is necessary to find out if there is proper criteria for the award of damages, which can range from small to very huge amounts.

In order to achieve this, the researcher in his project, has put into main focus the criteria used by the North District Forum and the South District Forum in the State of Goa while awarding damages in cases of Consumerism. The project also takes a look at whether the officials performing judicial functions are in reality qualified and competent to settle such complaints and whether this could be a reason for the inconsistency seen in the award of such damages.

In effect, it is to be seen, whether any guidelines need to be laid down, for award of such damages, or, in the alternative, whether it is possible to have an in-built mechanism in the Act itself, as seen in other beneficial legislations, like the Motor

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<sup>6</sup> For example, Motor Vehicles Act, 1988 and Workmen's Compensation Act, 1923.

Vehicles Act, 1988 and the Workmen's Compensation Act, 1923, with a view to minimise such variations.

It is seen that under the Consumer Protection Act, in the area of assessment of damages, there is no fixed criteria insofar as the assessment of non-pecuniary damages are concerned.

While awarding non-pecuniary damages, the quantum of damages awarded varies from person to person, due to the lack of judicial background of the Members of the Consumer Disputes Redressal Agencies.

Besides this, too much discretion is given to the Presidents of the Consumer Disputes Redressal Agencies. There are no checks to see whether the Consumer Disputes Redressal Agencies award damages on sound judicial principles. There is no responsibility thrust upon the Consumer Disputes Redressal Agencies, more particularly at the Forum level.

### **(C) Hypothesis**

It is seen that under the Consumer Protection Act, in the area of assessment of damages, there is no fixed criteria insofar as the assessment of non-pecuniary damages are concerned.

While awarding non-pecuniary damages, the quantum of damages awarded varies from person to person, due to the lack of judicial background of the Members of the Consumer Disputes Redressal Agencies.

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## **(D) Objectives**

The objectives of this project are as under:

- 1: To find out the criteria adopted, by the North Goa Consumer Disputes Redressal Forum and South Goa Consumer Disputes Redressal Forum, for the award of damages in general, and non-pecuniary damages in particular. This is done by doing an empirical study of the cases decided by the Consumer Disputes Redressal Agencies in the State of Goa along with a doctrinal study of the law of damages.
2. To find out the criteria for the award of non-pecuniary damages under the Law of Torts and the Law of Contract and compare it with the criteria used under the Consumer Protection Act, 1986.
3. To provide suggestions in respect of standards to be used while assessing such damages, specially in the present day context, to suit today's world.

(F) *Review of literature*

**(E) Scope** There is a paucity of research work carried out under the Consumer Protection Act. After the review of literature, it is This project concerns the functioning of cal study conducted in the area of assessment of damages under the Consumer Protection Act.

- (i) the North Goa Consumer Disputes Redressal Forum  
(hereinafter referred to as the 'North District Forum')
- (ii) the South Goa Consumer Disputes Redressal Forum  
(hereinafter referred to as the 'South District Forum')
- (iii) the Goa State Consumer Disputes Redressal Commission  
(hereinafter referred to as the 'Goa State Commission')

in dealing with cases under the Consumer Protection Act.

## **(F) Review of literature**

### **(G) Methodology adopted**

There is a paucity of research work carried out under the Consumer Protection Act. After the review of literature, it is understood that there has been no empirical study conducted in the area of assessment of damages under the Consumer Protection Act. Therefore, there is a strongly felt need for the present study.

The Advocates were interviewed with the help of a structured questionnaire and through personal interview to ascertain information regarding their views on the criteria adopted by the Consumer Disputes Redressal Agencies in the assessment of damages while disposing off complaints. While Members of the Consumer Disputes Redressal Agencies were interviewed with the help of open-coded questionnaires and interviews, Presiding officers were interviewed informally.

Secondary data was collected by perusal of complaints made to the North District Forum and South District Forum and the orders passed as a result, as also the appeals filed before the State Commission and the orders passed. Data was also collected from decisions of the National Commission and the

### **(G) Methodology adopted**

**Primary data** was collected through questionnaires and interviews. For this purpose, the Advocates, Presiding officers and both sitting and served Members of the North District Forum, the South District Forum as also of the Goa State Commission were met by the researcher.

The Advocates were interviewed with the help of a **structured questionnaire** and through personal interview to ascertain information regarding their views on the criteria adopted by the Consumer Disputes Redressal Agencies in the assessment of damages while disposing off complaints. While Members of the Consumer Disputes Redressal Agencies were interviewed with the help of **open-ended questionnaires** and **interviews**, Presiding officers were interviewed informally.

**Secondary data** was collected by perusal of **complaints** made to the North District Forum and South District Forum and the orders passed as a result, as also the appeals filed before the State Commission and the orders passed. Data was also collected from decisions of the National Commission and the

Supreme Court of India, the Statutes, rules and notifications, relevant articles published in Newspapers, Journals, Reporters etc.

The Universe for the study is the State of Goa. This State is now an industrially developed area, educationally well equipped with a growing population. While in the past, most of the newspapers have published articles relating to consumer consciousness, it has been recently seen that most of the papers have been publishing articles with respect to the increased ambit of the Consumer Protection Act. Justice Dr. Evaristo Semana De Silva has himself published an article in Goa Today, Volume XXXIV, No. 5, January 2000 entitled 'Indiscriminate Consumerism'.

Since Goa is a small State, the decisions of the State Commission are not reported in Consumer Protection Reporters and Journals.

The researcher has selected the state of Goa wherein he has identified three Consumer Disputes Redressal Agencies, the North District Forum and the South District Forum at the District level and the State Commission, at the State level. The study has focused on the complaints filed before the North District Forum and the South District Forum and the complaints and appeals before the State Commission, in the area of award of damages.

## **(H) Universe and Sample**

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## **(I) Scheme**

The next chapter entitled **Concept of Damages**, initially deals with the historical development of damages, object of damages, damage and damages, the meanings of pecuniary and non-pecuniary damages. Finally, damages under the Law of Torts and the Law of Contract are dealt with next as they form the theoretical basis of the law under the Consumer Protection Act, which is dealt with at the end of this Chapter.

The data that is empirically collected by the researcher through primary and secondary sources is contained in the subsequent Chapter, which is entitled **Statistical Profile**.

Next, the data collected in the Collection of data Chapter, is illustrated through histograms, polygons and graphs and analysed in the Chapter entitled **Relevant Findings**.

Some important appeals decided by the Goa State Commission, which have particular significance to the concept of assessment of non-pecuniary damages are examined in the next Chapter entitled **Case Study**.

Finally, the conclusions arrived at from this research project are enumerated and appropriate suggestions are provided in the Chapter entitled **Conclusions and Suggestions**.

## CHAPTER 2

### CONCEPT OF DAMAGES

#### (A) "Damages": Origin of the conception

The primary right to a satisfaction for injuries is given by the law of nature. This right to receive satisfaction is based upon the necessity of individual rights which humanity has about itself from its infancy, jealously protecting from being wrongfully violated.

In the earlier ages, when the appeal to arms was the only mode of redress, the old barbaric notion of "an eye for an eye, a tooth for a tooth" became almost a law. Though this form of exacting satisfaction had its origin in the passion of revenge always so predominant in nature, the basic principle appears to be nothing but the right to obtain reparation for the wrong or injury. However, as

<sup>1</sup> The origin of the word 'damages' is found in Black's Law Dictionary, 2d Ed., Ch. 29, 478.

<sup>2</sup> C. Calverley, *The Law of Damages and Compensation*, (1961), 196 \*  
 Edition, Vol. 1

## CHAPTER 2

### CONCEPT OF DAMAGES

#### **(A) “Damages”: Origin of the conception**

The primary right to a satisfaction for injuries is given by the law of nature.<sup>7</sup> This right to receive satisfaction is based upon the sanctity of individual rights which humanity has always been from its infancy, jealously protecting from being wantonly violated.<sup>8</sup>

In the ruder ages, when the appeal to arms was the only mode of redress, the old barbaric notion of “an eye for an eye, a tooth for a tooth” became almost a law. Though this form of obtaining satisfaction had its origin in the passion of revenge always so prominent in nature, the basic principle appears to be nothing but the right to obtain reparation for the wrong or injury. However, as

<sup>7</sup> Blackstone in his commentaries, Book II, Ch. 29, 438

<sup>8</sup> C. Kameshwara Rao, The Law of Damages and Compensation, 1982, Fifth Edition, Vol. I

ideas of refinement began to develop, and peace and progress came to be valued, it had to be recognised that this form of reparation is not consistent with tranquility, progress and social organisation. With the advance of society and the increase of commerce and the varied activities of notional and social intercourse, the history of social relations assumed such a complexity as to exercise the minds of the ancient law-givers for evolving new rules for regulating the remedies consonant with the changing ideas of right and wrong.<sup>9</sup>

Every violation or infringement of a right creates in the injured party a right to receive compensation. This sanctioning right includes the right to receive damages or pecuniary compensation according to certain rules, forming what is known as the Measure of Damages. In considering this question of damages, two questions naturally arise for treatment, viz. (1) the question of liability, i.e. whether damages are due at all, or in other words, whether the person complained against is liable or not for damages, (2) the question as to the quantum, in other words, the extent of the damages payable or putting it more analytically, to discriminate between that portion of the damages payable by the wrong-doer and that portion which has to be borne by the sufferer.<sup>10</sup>

<sup>9</sup> *supra* 8.

<sup>10</sup> Salmond's *Jurisprudence*, 8<sup>th</sup> Ed., p.131

## (B) “Damage” and “Damages”

“Damage” may be defined as the disadvantage which is suffered by a person as a result of act of default of another.

“Injuria” is damage which gives to a legal right to recompense; if the law gives no remedy, there is *damnum absque injuris*, or damage without the right to recompense.<sup>11</sup> The meaning of “damage” in a statute is a matter of construction.<sup>12</sup>

“Damages” are the pecuniary recompense given by process of law to a person for the actionable wrong that another has done him.<sup>13</sup> The “measure of damage” or “measure of damages” is concerned with the legal principles governing recoverability, remoteness being the negative aspect of this measure. The assessment of quantum of damages, not being concerned with the legal principle, is distinct from the measure of damages.

In those torts which have been developed from the action on the case, such as negligence and nuisance, proof actual damage is an essential ingredient in the cause of action. A breach of contract or the infringement of an absolute right is actionable per

<sup>11</sup> Halsbury's *Laws of England*, 1975, Volume 12, Fourth Edition, 364

<sup>12</sup> *Drinkwater v. Kimber* (1952) 2 QB 281

<sup>13</sup> *Jubbair v. State of Israel Absentee's Property Custodian*, (1954) 1 All E.R.

se, and no actual damage need be proved; if none is, any damages will usually be nominal.<sup>14</sup>

Damages represent the pecuniary recompense recoverable by process of law, by a person who has sustained an injury through the wrongful act or omission of another.<sup>15</sup>

Damages are a species of property that is acquired and lost by act and judgment at law. The injured party has unconditionally a vague and indeterminate right to some damages of value, the instant he receives the injury; and the verdict of the jury and the judgment of the Court thereupon do not in this case, so properly vest a new title in fact, as they do ascertain the old one. They do not give but define the right.<sup>16</sup>

Damages are the pecuniary recompense given by process of law to a person for an actionable wrong that another has done him.<sup>17</sup>

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<sup>14</sup> *Ratcliffe v. Evans* (1892) 2 QB 524

### (C) Definition

Damages represent the pecuniary recompense recoverable by process of law, by a person who has sustained an injury through the wrongful act or omission of another.<sup>15</sup>

Damages are a species of property that is acquired and lost by suit and judgment at law. The injured party has unquestionably a vague and indeterminate right to some damages or other, the instant he receives the injury; and the verdict of the jurors and the judgment of the Court thereupon do not in this case, so properly vest a new title in him, as fix and ascertain the old one. They do not give but define the right.<sup>16</sup>

Damages are the pecuniary recompense given by process of law to a person for an actionable wrong that another has done him.<sup>17</sup>

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<sup>15</sup> *supra* 8

<sup>16</sup> Blackstone in his Commentaries Book II, Ch. 26, 438

<sup>17</sup> *supra* 13

### (D) Object of damages *pecuniary damages*

The object of damages is to recompense the plaintiff for what he has lost, and what he has lost is what would have been in his pay packet when he took it home.<sup>18</sup>

The object of damages is to put the plaintiff in as good a position, as far as money can do it, as if the promise had been performed. In fraud, the defendant has been guilty of a deliberate wrong by inducing the plaintiff to act to his detriment. The object of damages is to compensate the plaintiff for all the loss he has suffered, so far, again, as money can do it. In contract, the damages are limited to what may reasonably be supposed to have been in the contemplation of the parties. In fraud they are not so limited.<sup>19</sup>

<sup>18</sup> Halsbury's *Laws of England*, 4th Ed., Vol. 12, 412

<sup>19</sup> *Cooper v. Firth Brown Ltd.*, (1963) 2 All E.R. 31

### (D) Pecuniary and non-pecuniary damages

“Pecuniary damage” or “pecuniary loss” refers to any financial disadvantage, past or future, whether precisely calculable or not. Thus past loss of earnings and an assessment of loss of future earnings, loss due to damage to a chattel, loss on breach of contract for sale of goods, and loss of profits constitute pecuniary damage. “Non-pecuniary damage” is exemplified by personal injuries, damage to reputation and interference with the enjoyment of property, although, of course, in each case pecuniary damage may have sustained as well.<sup>20</sup>

Damages or compensation awarded towards damage caused is classified into two kinds, viz. **pecuniary** which are also called special damages and **non-pecuniary** which are also called general damages. Pecuniary damages are generally designed to make good the pecuniary loss which is capable of being calculated in terms of money while non-pecuniary damages are those which are incapable of being assessed by arithmetical calculation.<sup>21</sup>

Pecuniary losses can arise from any injury, whether physical injury or not. For they refer to the type of damage and not

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<sup>20</sup> *supra* 18

<sup>21</sup> McGregor on Damages, 1972, Thirteenth Edition

the manner in which the damages was inflicted. Many, if not most, of the losses caused through physical injury to the plaintiff or his property are pecuniary ones, such as loss of earnings, loss of profits, expenses of medical treatment, costs of repair or replacement.<sup>22</sup>

The pattern of non-pecuniary losses shows a much greater difference between tort and breach of contract: in tort they are a rule, in contract the exception. In tort, the recognised heads are pain and suffering, Physical inconvenience and discomfort, social discredit, i.e. injury to reputation, mental suffering, i.e. injury to feelings and loss of society of wife or child. In Contract, the losses are concerned with commercial matters and therefore, the protection afforded by the law of contract is primarily directed to commercial losses.<sup>23</sup>

In case of Motor Accident claims, pecuniary damages are generally designed to make good the pecuniary loss, which is capable of being calculated in terms of money and includes four sub-heads:<sup>24</sup>

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<sup>22</sup> supra 16

<sup>23</sup> supra 16

<sup>24</sup> Dr. G.S Karkara, Assessment of compensation in Accidents under M.V. Act, 1988, 214

1. Expenses incurred by the claimant in respect of injury which may include medical expenses and special diet cost of nursing or attendant.
2. Loss of earning or profit up to the date of trial.
3. Loss of earning capacity which may even include incapability to earn in future years and also incapability in the labour market, loss of earning on account of termination of service or discontinuance of any trade, business or profession, and
4. Other material loss which may require any special treatment or aid to the injured or the claimant for the rest of his/her life.

Non-pecuniary damages are those, which are incapable of being assessed by arithmetical calculation and generally include the following four sub heads:<sup>25</sup>

1. Damages for mental and physical shock, pain and suffering already suffered or likely to suffer by the claimant.

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<sup>25</sup> supra 1

2. Damages to compensate for loss of amenities of life which may include a variety of matters, e.g. on account of injury the claimant may not be able to walk, run, sit or loss of marriage prospects, sexual intercourse and loss of other amenities of life.
3. Damages for loss of expectation of life and
4. Inconveniences, hardship, discomfort disappointment, frustration and mental stress.

Note that all these heads/sub-heads mentioned above are not exhaustive in nature.

One of the factors of distinction between pecuniary (special) damages and non-pecuniary (general) damages is that, while special damages relate to some specific item of loss which is alleged to be the result of the negligence of the other, general damages are those, which the law presumes to flow from the negligence, which complained of.

## (E) Damages under the Law of Torts

Awarding of damages under the Law of Torts is one of the judicial remedies, the other two being granting of injunction and specific restitution of property. In a suit for damages in a tort case, the Court awards pecuniary compensation to the plaintiff for the injury or damage caused to him by the wrongful act of the defendant.<sup>26</sup> However, there would be manifest injustice if a person were held responsible for all the consequences of his act, which in theory may be endless. A person is therefore, held responsible in law only for consequences which are not remote.

Towards the middle of the nineteenth century, two competing views were laid down as regards the test of remoteness. According to one view, **foreseeability** is the test for remoteness.<sup>27</sup> According to the other view, **directness** is the test of remoteness.<sup>28</sup> The test of **foreseeability** now holds the field.

<sup>26</sup> *Neekerev v. Robinson* (1986) 715 P 2d 1076

<sup>27</sup> In other words, on this view, consequences are too remote if a reasonable man would not have **foreseen** them.

<sup>28</sup> That is to say, the **defendant** is liable for all **direct consequences** of the tortious acts suffered by the **plaintiff**, whether or not a reasonable man would have foreseen them.

The leading case in directness is the decision in *Re an Arbitration between Polemis and Furness, Withy & Co.*<sup>29</sup> On this view, if the tort concerned is negligence, foreseeability of some damage is relevant to decide whether the act complained of was negligence or not but the liability for damages is not restricted to foreseeable damage but extends to all damage directly traceable to the negligent act.

The test of foreseeability in preference over directness came in the decision in *Overseas Tankship (U.K.) Ltd., v. Morts Dock & Engineering Co.*, popularly called Mound Wagon No. 1.<sup>30</sup> Wagon Mound No. 2 decision<sup>31</sup> is to affirm and explain the test of foreseeability. It has now been authoritatively decided by the House of Lords in *Cambridge Water Co. Ltd. v. Eastern Countries plc.*<sup>32</sup>, that even in cases of strict liability governed by the rule in *Ryland v. Fletcher*<sup>33</sup>, foreseeability of damage of the relevant type, was prerequisite for liability.

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<sup>29</sup> (1921) 3 KB 560

<sup>30</sup> (1961) 1 All ER 404 (PC)

<sup>31</sup> (1966) 2 All ER 709 (PC)

<sup>32</sup> (1994) 1 All ER 53 (HL)

<sup>33</sup> (1868) LR 3 HL 330

*Hughes' case*<sup>34</sup> also illustrates and lays down the test of foreseeability. In *Doughty's case*<sup>35</sup> it was held that the defendant was not liable on the reasoning that the accident that happened was not merely a variant of, but of entirely different kind to that which was foreseeable.

A very useful attempt to solve the problem by laying down precise rules was made in the well-known case of *Hadley & Baxendale*.<sup>36</sup> ALDERSON B. has laid down the following: "When two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may be reasonably supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach itself."

This decision has always been taken as laying down

<sup>34</sup> (1963) 1 All ER 705 (HL)

<sup>35</sup> (1964) 1 All ER 98 (CA)

## (F) Damages in Contract

Theoretically, the consequence of a breach of contract may be endless, but there must be an end to liability. The defendant cannot be held liable for all that happens from the breach. There must be a limit to liability and beyond that limit is said to be too remote and therefore, irrecoverable. However, the problem is where to draw the line.

A very noble attempt to solve the problem by laying down certain rules was made in the well-known case of *Hadley v. Baxendale*<sup>36</sup>. ALDERSON B. has laid down the following: "When two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may be reasonably supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach itself."

This decision has always been taken as laying down two rules:

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<sup>36</sup> (1854) 9 Ex 341

- (i) General damages are those that arise naturally in the usual course of things from the breach of contract itself. Another mode of putting this is that the defendant is liable for all that, which naturally happens in the usual course of things after the breach.
- (ii) Special damages are those which arise on account of the unusual circumstances affecting the plaintiff. They are not recoverable unless the special circumstances were brought to the knowledge of the defendant so that the possibility of the special loss was in the contemplation of the parties.

The relationship between the two rules was established in *Victoria (Windsor) Ltd. v. Newman Industries Ltd.*<sup>37</sup>, wherein the substance of the propositions is as follows: "Only such loss is recoverable as was at the time of the contract reasonably foreseeable as liable to result from the breach. Foreseeability depends upon the knowledge then possessed by the parties, or, at all events by the party who later commits the breach.

This is the subject matter of the 'first rule'. But to this knowledge which the defendant is assumed to possess must be added his actual knowledge of the special circumstances of the case

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<sup>37</sup> (1949) 2 KB 528 (CA); (1949) 1 All ER 997

showing the possibility of more loss arising from the breach. Such a case attracts the operation of the 'second rule' so as to make the additional loss recoverable."

The judgement emphasises that both the rules are based upon the principle of foreseeability. This gives a new look to *Hadley v. Baxendale*. Now it has been clearly so stated in *Czarnikow Ltd. v. Koufos*<sup>38</sup>, that there are not two rules formulated in *Hadley v. Baxendale*, but only two different instances of the application of a single rule.

In theory, even if not always in practice the subject of Measure of Damages is distinct from that under the head, "Remoteness of Damages", though topics have a bearing on the amount of money the plaintiff will ultimately recover. Remoteness of damages concerns the question, "in respect of what consequences of an established breach of duty can the injured party recover?" Now we must see how the law attempts to answer the different question, "how much compensation can the injured party recover for consequences of the breach of legal duty which have already been held to be not too remote?"<sup>39</sup>

<sup>38</sup> (1967) 3 All ER 686 HL

<sup>39</sup> Wilson and Slade, "A Re-examination of Remoteness" (1952) 15 M.L.R. 458

In the case of some torts such as conversion and deceit, specific rules for the assessment of damages exist. For the rest, and most notably for damages related to personal injury, the Courts were once content to leave the assessment of damages to the jury with only general guidance from the judges, and many statements can be found to the effect that the quantum of damages in each case is a question of fact.<sup>40</sup>

It is no doubt still true that ultimately the exact sum of money which the plaintiff is awarded in any case is *dependent upon all the detailed circumstances*<sup>41</sup> of the case, but this does not mean that the topic is devoid of principle.<sup>42</sup>

<sup>40</sup> *Mehmet Hagan Bay v. Abdeni & Co. Ltd* (1951) 2 All E. R. 162

<sup>41</sup> emphasis supplied by the researcher.

<sup>42</sup> *McFarlane & another v. Tayside Health Board* (1999) 4 All E. R. 861

### (G) Restitutio in integrum

The basic principle for the measure of damages in tort as well as in contract is that there should be *restitutio in integrum*. When any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting the compensation or reparation.<sup>43</sup>

So, in an action for deceit, the proper starting point for the assessment of damages is to compare the position of the plaintiff as it was before the fraudulent statement was made to him with his position as it became as a result of the reliance upon the statement.<sup>44</sup>

In a case of personal injury, too, this criterion can and should be applied to the pecuniary elements of the plaintiff's loss such as his loss of earnings,<sup>45</sup> but it is difficult to see that it can be applied to the non-pecuniary elements such as pain and suffering. Full *restitutio in integrum* is not possible there and it may be that

<sup>43</sup> *Admiralty Commissioners v. S. S. Valeria* (1922) 2 A.C. 242

<sup>44</sup> *Doyle v. Olby (Ironmongers) Ltd.* (1969) 2 Q.B. 158

<sup>45</sup> *British Transport Commission v. Gourley* (1956) A.C. 185

even compensation is not a wholly apt expression. What is given has been described as "notional or theoretical compensation to take the place of that which is not possible, namely, actual compensation."<sup>46</sup>

The Consumer Protection Act, 1986, provides for specific relief and General relief. While the Act allows the consumer to file complaints on specific grounds, it does not allow the framing of relief as per their wish for they are indicated in Sec. 14 of the Act and can be asked for either jointly or alternatively depending on the grounds. The general relief of compensation is based on negligence and is the subject matter of study in this dissertation.

In this connection it is to be noted that negligence is very close to deficiency which arises in respect of services, but they have to be carefully distinguished since in case of simple deficiency, the consumer will get only return of charges, whereas in case of negligence, he will get compensation as addition. While negligence is defined under the Act, negligence is not

Compensation has to be specifically asked for and the acts of negligence pointed out. Once negligence is proved, the amount of compensation has to be determined. As per the Act, it is the loss or injury suffered. The complainant has, therefore, to give details of the loss and estimate it in terms of money. Proof by the

<sup>46</sup> *S v. Distilleries Co. (Biochemicals) Ltd.* (1970) 1 W.L.R. 114 (children born deformed, having been injured in *utero* by the drug "thalidomide" used by their mothers)

## (II) Relief under the Consumer Protection Act

There are broadly two kinds of relief that a consumer can obtain under the Consumer Protection Act, 1986, viz. **Specific relief** and **General relief**. While the Act allows the consumer to file complaints on specific grounds, it does not allow the framing of relief as per their wish for they are indicated in Sec. 14 of the Act and can be asked for cumulatively or alternatively depending on the grounds. The general relief of compensation is based on **negligence** and is the subject matter of study in this dissertation.

In this connection it is to be stated that negligence is very close to **deficiency** which arises in respect of services, but they have to be carefully distinguished since in case of simple deficiency, the consumer will get only return of charges, whereas if there is **negligence**, he will get compensation in addition. While deficiency is defined under the Act, negligence is not.

Compensation has to be specifically asked for and the acts of **negligence** pointed out. Once negligence is proved, the amount of compensation has to be determined. As per the Act, it is for loss or **injury** suffered. The complainant has, therefore, to give details of the loss and estimate it in terms of money. Proof for the amount of loss or injury is necessary and the correctness of the estimate has to be established.

Negligence is a sine qua non for the award of compensation as held in *Indian Airlines v. Rajesh Kumar*<sup>47</sup>. In fact, Sec 14 (1)(d) of the Act reads: “to pay such amount as may be answered by it as compensation to the consumer for any loss or injury suffered to the consumer due to negligence.”

The scope of the above clause was considered by the *National Commission in Consumer Unity & Society, Calcutta v. Chairman & Managing Director, Bank of Baroda*<sup>48</sup> where it was held that it is of the essence of this provision that loss/injury for which compensation is to be adjudged or awarded should be found to be caused by negligence. In other words, in case there is a deficiency in service and subsequent injury, there must be a nexus: so where the allegation against the Nagar Palika Nigam for supply of polluted water for which the complainant had to suffer jaundice, the claim was turned down as there was no direct nexus in this case<sup>49</sup>.

Once negligence is proved, the amount of compensation has to be determined. Assessing loss or injury, which results in the assessment of damages, does this. It is pertinent to

<sup>47</sup> 1991 CPI 206 (NC) See also *Patel Ramubhai v. Indian Airlines*, 1991 CPI

311 (Guj)

<sup>48</sup> 1991 CPR 263

note that the status of the complainant is immaterial in awarding compensation. The legal position in this regard has been explained by the National Commission in *General Manager, South Eastern Rly. v. Anand Prasad*<sup>50</sup>, where a retired High Court Judge and his wife were travelling in a first class railway compartment where the fans were not working etc. The State Commission allowed an amount of Rs. 10,000/- each, observing that in view of the status of the complainant and the conditions in which they were forced to travel even the said compensation was not sufficient. But the National Commission observed that the status was of little relevance in this context since every passenger who had paid for this travel is entitled to similar treatment in the matter of award of compensation.

Are there any principles for the assessment of compensation? The National Commission has observed in *Bharat Tractors v. Ramchandra Pandey*<sup>51</sup> that compensation has to be assessed not arbitrarily, but on well-accepted legal principles. Here a consumer had to spend approximately Rs. 3,500/- while purchasing a tractor and the State Commission not only ordered refund of the said amount but also for payment of Rs. 8,000/- as compensation for harassment and loss suffered. The National

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<sup>50</sup> *Nagar Palika Nigam v. Ravikant*, 1991 CPJ 400 (MP)

<sup>50</sup> 1991 CPJ 400 (MP)

<sup>51</sup> 1991 CPJ 14 (NC)

Commission held that as there was hardly any material on record to support such loss, this part of the award had to be struck down.

So also, in *Commercial Officer, Office of Telecom. v. Bihar State Warehousing Corporation*,<sup>52</sup> a compensation of Rs. 5,000/- for arbitrary and illegal disconnection of a telephone, allowed by the Bihar State Commission was reduced to Rs. 1,000/- as there was no material before the State Commission to allow the same. In fact, the National Commission observed further that the Corporation had another two telephones and so did not suffer a huge loss.

As we have seen, the correct perspective in quantification of compensation does not seem to be viewed with consistency. The result being, for the same set of circumstances, the compensation appears to grossly vary in different cases and appears to lack consistency among the different Consumer Disputes Redressal Agencies. While, the extent of other types of relief is determined by the Act itself, the one of compensation is left to the appreciation of the Consumer Disputed Redressal Agencies. Since the matter is within the realm of contract, there is no room for the award of nominal or exemplary damages. The aggrieved person is entitled to real compensation.

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<sup>52</sup> 1991 CPJ 42 (NC)

Under the Act, as regards the assessment of compensation by the Consumer Disputes Redressal Agencies, there are two methods:

- CHAPTER 3**  
**STATISTICAL PROFILE**
- (i) **Global assessment**, to the best of the judgment of the adjudicatory body (which consists of three persons), or
  - (ii) **Computation of damages with the help of some yardsticks.**
- Although the second appears to be more accurate, these yardsticks are not easy to determine properly and since they are not rigid, may lead sometimes to grave errors. The preference of the Consumer Disputes Redressal Agencies is now for global assessment and there is no denying the fact that there are now great variations.<sup>53</sup>

## **CHAPTER 3**

### **STATISTICAL PROFILE**

The study has divided this Chapter into different areas as under:

- (1) The Composition of the Consumer Disputes Redressal Agencies since their inception,
- (2) Data from the records of the Consumer Disputes Redressal Agencies,
- (3) Data from interviews conducted with Presidents of Consumer Disputes Redressal Agencies,
- (4) Data from questionnaires provided to Members of the Consumer Disputes Redressal Agencies and
- (5) Data from questionnaires provided to Advocates appearing before the Consumer Disputes Redressal Agencies.

## (1) The composition of the Consumer Disputes

### Redressal Agencies

(a) Before actually going to the data collected, the researcher deems it necessary to give a brief background of the set-up of the State Commission and the North District Forum and South District Forum. Initially, with the commencement of consumerism in the State of Goa, i.e. in the year 1989, there was only one District Forum for the Entire State of Goa and the State Commission had not started then.

The adjudicatory set-up for the lone Forum was as under:

1. **Shri. M. Ravichandra**, retired Secretary(Law), as the President.
2. **Prof. L. J. Dennis**, retired College Teacher, as a Member and
3. **Smt. Inez Cota Carvalho**, Social Worker, as a Member.

The said forum held office for a period of five years from 1989 to 1994.

In the year 1996, there was a bifurcation: one District Forum for North Goa and the other for South Goa were established.

The adjudicatory set-up for the North District Forum was as under:

1. **Shri. N. S. Kaisare**, retired District Judge as the President,

2. **Adv. S. U. Pai Raiker** as a Member and
3. (vacant)

The adjudicatory set-up for the South Goa District Forum was as under:

1. **Adv. S. Rajlaxmi**, as the President,
2. **Adv. Vinnie Coutinho** as a Member and
3. **Shri. K. N. Rao** as a Member.

The State Commission started functioning from the year 1991 with the adjudicatory set-up as under:

1. **Justice S. Loney**, retired High Court Judge, as the President.
2. **Adv. Subhalaxmi Naik** as a member and
3. **Adv. Atanasio Monteiro** as a member.

The said Commission held office for a period of five years from 1991 to 1996.

The adjudicatory set-up for the next period i.e. 1996 to 2001 was as under:

1. **Justice B. N. Krishnan**, retired High Court Judge, as the President,
2. **Shri Y. V. Rao**, retired Govt. Auditor, as a Member
3. **Smt. Mangala Sane**, retired College teacher, as a Member.

With the retirement of Justice B. N. Krishnan, Justice Dr. Eurico Santana Da Silva was appointed as the President w.e.f. 1<sup>st</sup> May, 1999.

(b) Therefore, in all, but at different points of time, there were 5 Members of the North District Forum and the South District Forum together, 4 of which filled up the Questionnaire. There were 3 Presidents of the District Forum level, 2 of which the researcher interviewed personally. There were 4 Members of State Commission, all of which filled up the questionnaire. There were 3 Presidents of State Commission, 2 of which were personally interviewed by the researcher.

Viewing this picture overall:

- \* At the **Member level**, the researcher got the views of 8 Members out of a total of 9, which amounts to **88.88%** and
- \* At the level of **President**, the researcher got the views of a total of 4 Presidents out of a total of 5, which amounts to **80.00%**.

These percentages represent a very large majority of the views and hence strengthen the findings projected in this project.

**(2) Data from the records of the Consumer Disputes Redressal Agencies**

(a) Although this project report is based primarily on a study done on the functioning of the Consumer Disputes Redressal Agencies for one year i.e. during the period 1.4.1999 to 31.3.2000, a glance of the **year-wise** position of complaints and appeals of the past five years would prove useful.

The position of **complaints** disposed by the North District Forum is as in Table 1 below:

Year	No. of Complaints
1994 – 95	67
1995 – 96	132
1996 – 97	195
1997 – 98	313
1998 – 99	287
1999 – 00	350

**Table 1**

The position of **complaints** disposed by the South

**District Forum** is as in Table 2 below:

Year	No. of cases
1994 - 95	Nil
1995 - 96	59
1996 - 97	150
1997 - 98	130
1998 - 99	93
1999 - 00	150

**Table 2**

The position of **complaints** filed before the **State Commission**<sup>54</sup> is as in Table 3 below:

Year	No. of Complaints
1994-95	47
1995-96	36
1996-97	09
1997-98	09
1998-99	40
1999-00	50

**Table 3**

<sup>54</sup> When the claim exceeds Rs. 5 lakhs, it can directly be filed before the State

**The position of appeals filed before the State**

**Commission is as in Table 4 below:**

Year	No. of appeals
1994 - 95	77
1995 - 96	28
1996 - 97	06
1997 - 98	32
1998 - 99	282
1999 - 00	126

**Table 4**

(b) The total number of complaints at all the three Consumer Disputes Redressal Agencies, the North District Forum, the South District Forum and the State Commission is 548 in the last one year. Of these, it is found that the following is the category distribution:

Telephone Services	172
Housing/Building	171
Financing/Banking	159
Others	46
<b>TOTAL</b>	<b>548</b>

**Table 5**

Since a large percentage of complaints deal with telephone services, housing/building and finance/banking services, the researcher has restricted his study to these complaints only. In effect, the technique of deliberate sampling is adopted.

(e) From the complaints studied, following is the data which reveals as to in how many complaints, pecuniary damages were dealt with:

Telephone Services	172
Housing/Building	171
Financing/Banking	159

Table 6

And following is the data which reveals as to in how many complaints, non-pecuniary damages were awarded:

Telephone Services	132
Housing/Building	150
Financing/Banking	106

Table 7

(d) The total number of appeals before the State Commission is 126 in the last year (up to 31<sup>st</sup> March 2000) as seen from Table 4 above and the following category distribution is found:

Telephone Services	43
Housing/Building	45
Financing/Banking	25
Others	13

Table 8

Again, in the case of appeals also, it is found that a major percentage deals with Telephone services, Housing/Banking and Financing/Banking. Hence, the researcher has again restricted to these areas, once again adopting the technique of deliberate sampling.

(d) The following information is gathered in respect of **pecuniary damages** from the records of the Goa State Commission:

Category	No. of appeals	No. in which pecuniary damages reversed
Telephone Services	43	6
Housing/Building	45	11
Banking/Finance	25	3

**Table 9**

The above has mainly been due to lack of evidence, non-appreciation of evidence by the District Forum and/or evidence in favour of opposite party.

(f) The information in Table 10 is gathered in respect of **non-pecuniary damages** from the records of the Goa State Commission:

Category	No. of appeals	No. in which non-pecuniary damages drastically altered
Telephone services	43	38
Housing/Building	45	33
Banking/Finance	25	15

Table 10

In the case of Telephone services, notional damages of Rs. 3,000/- were awarded in most cases<sup>55</sup> in respect of inconvenience, irrespective of whether the consumer uses the telephone for a domestic purpose or for a business purpose.

In the case of Housing/Building, non-pecuniary damages are awarded at a flat slab rate of Rs. 10,000/- to Rs.

<sup>55</sup> *The General Manager, Telecom., Panaji, Goa v. Ashwini Plastruder*, decided by the Goa State Commission in April, 1998, (unreported); *General Manager, Telecom. v. Heshma Chopdekar*, decided by the Goa State Commission in July, 1998, (unreported); *General Manager, Telecom. v. M/s Narayandas Gokuldas*, decided in November, 1998, (unreported) and *Sub-Div. Engr., Dept. of Telecom. v. Shri Utkal V. Pat*, decided by the Goa State Commission in March 1999, (unreported).

15,000/- in most cases<sup>56</sup>, irrespective of whether the consumer had purchased an additional house in addition to the one owned by him or whether he was living in rental accommodation awaiting the possession of his only house. In addition, in a few cases<sup>57</sup>, exemplary damages to the tune of Rs. 75,000/- to Rs. 1,00,000/- were awarded without sufficient cause, proper reasoning or findings.

In the case of Finance/Housing, except for the case of *John D'Cruz v. Gomes Catao Complex* decided by the Goa State Commission in December, 1998, where notional damages for inconvenience caused were allowed, non-pecuniary damages were otherwise not allowed as a general practice of the State Commission in the year of study.

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<sup>56</sup> *M/s Talak Home and Estates v. Smt. Vandana Umesh Loliengar*, decided by Goa State Commission in March 1998, (unreported); *Mrs. Saraswati Fernandes v. M/s Sayed Construction and ors.*, decided by the Goa State Commission in March 1998, (unreported); *M/s Keyel Construction, Vasco v. Casy Apartments Co-op. Housing Society Ltd., Vasco-da-Gama*, decided by Goa State Commission in July 1998, (unreported) and *Prasad K. Shetye v. Shri Santan Nanu*, decided by the Goa State Commission in September 1998, (unreported);

<sup>57</sup> *Shri Sheikh Mohammad Salien & anr. v. Mr. Rameshwar Shantram Morje & ors.*, decided by the Goa State Commission in November 1998, (unreported) and *Jagdish Naik of M/s Kamala Builders v. Luis Freitas*, decided in March 1999 (unreported).

**(3) Data from interviews conducted with Presidents of the Consumer Disputes Redressal Agencies**

- (a) In respect of the Presidents of the State Commission, both past and present, the researcher interviewed 2 of the total 3:

Interviewee 1:

**Justice B. N. Krishnan**, Former President of the State Commission holds the view that in respect of **pecuniary damages**, Section 14 of the Consumer Protection Act, 1986 clearly states that the District Forum shall issue an order to remove the defect or to replace the goods or to return to the complainant the price/charges, if the Forum is satisfied that the goods complained of suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved. He further adds that the award of pecuniary damages are in the realm of the **Law of Contract** and relief granted are to protect the rights of consumers and compensating the same for the violation thereof. In respect of **non-pecuniary damages**, Justice Krishnan holds the view that although the Consumer Protection Act, 1986 does

allow the award of the same via Section 14(d)<sup>58</sup>, the aspect of **negligence of the opposite party** is the key word of the sub-section, which is often neglected by the District Forum. He further adds that it is a grey area of assessment and there is an element of **guess-work** with a rough estimate in it, which he coined as '**guesstimate**'. To a question put by the researcher, according to Justice Krishnan, the award of non-pecuniary damages **does lie** in the realm of the Law of Torts.

Interviewee 2:

**Justice Dr. Eurico Santana Da Silva**, President of the State Commission holds the view that the award of **pecuniary damages** is flowing from the **Law of Contract** and the award of **non-pecuniary damages** flows from the **Law of Torts**. Justice Da Silva also feels that mere loss or injury without negligence is not envisaged in Section 14 of the Consumer Protection Act, 1986. According to Justice Da Silva, the view of the Supreme Court is clear on the subject in the Bank of

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<sup>58</sup> to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

Baroda case<sup>59</sup>, where loss of service was due to illegal strike by bank employees, the Bank was not negligent in discharge of its duties. He feels that sound judicial experience of the President of the District Forum would go a long way in ensuring the proper assessment of non-pecuniary damages.

(b) In respect of the Presidents of the District Forum level, the researcher interviewed 2 of the total 3.

Interviewee 3:

**Shri N. S. Kaisare**, retired District Judge and President, North District Forum, holds the view that the Consumer Protection Act, 1986 creates a contractual liability on the seller, in today's buyers market, which has flown from the exception to caveat emptor. However, in respect of non-pecuniary damages, Shri Kaisare has a very brief description of the criteria of assessment holding that it depends on the facts and circumstances of each case, which cannot be explained. To a suggestion put by the researcher, according to Shri

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<sup>59</sup> *Consumer Unity & Trust Society, Jaipur v. The Chairman and Managing Director, Bank of Baroda, Calcutta*, (1995) 1 CPJ 1 (SC)

Kaisare, the award of non-pecuniary damages **does not lie** in the realm of the Law of Torts.

Interviewee 4:

**Smt. R. Rajlaxmi**, President, North District Forum is of the view that pecuniary damages and non-pecuniary damages are indistinguishable. She says that damages for mental torture, inconvenience etc. should not be separately awarded and one sum of compensation should include both the aspect of damages. She glorifies that the Consumer Protection Act, 1986 saying that it gives the Forum the powers to award damages even for loss of future earnings, citing the *Spring Meadow Hospital case*<sup>60</sup> to support her view. However, a suggestion put by the researcher that this is an award of non-pecuniary damages and is in line with the theory of remoteness of damages under the Law of Torts, Smt. Rajlaxmi replies in the affirmative.

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<sup>60</sup> (1998) 4 SCC 39

**(4) Data from questionnaires provided to Members of the Consumer Disputes Redressal Agencies**

Taking into account, Members of all the Consumer Disputes Redressal Agencies, the State Commission and both the North District Forum and the South District Forum, there are in all 9. The researcher could successfully meet and complete the questionnaire (Annexure I) with 6 Members in all, 2 from the State Commission and 4 from the Forum level.

Following is the data collected from these Members:

**(a) In respect of educational experience:**

Qualifications	No. of members
Doctorate	1
Post-graduate degree	3
Graduate (Law) degree	2
No formal studies	1

**Table 11**

**(b) In respect of position in society the position is on the next page:**

Status in society	No. of members
Educationists	2
Legal field	2
Accountancy	1
Social Worker	1

Table 12

(c) It is pertinent to note that none of the members had previous adjudicatory experience.

(d) Views on assessment of damages:

1. **Note:** One Member was unable to fill up the questionnaire provided by the researcher, not being literate enough to do so.
2. Most of the Members put a chain bracket in respect of pecuniary damages and non-pecuniary damages, to take in both the items as one question.
3. Two Members (both with legal background) mentioned, that the Law of Torts governs the assessment of non-pecuniary damages; 2 Members mentioned, that they simply endorse the views of the President without going into the reasoning

or merits; I said he follows the National Commission case-law and awards damages according to similar facts and circumstances and 1 Member (the Social Worker) said that she is unable to fill up the questionnaire as she does not understand the terminology etc. used in the said questionnaire.

Out of the 50 Advocates appearing before all the Consumer Disputes Redressal Agencies, i.e. the State Commission and both the North District Forum and the South District Forum, this researcher approached 20 Advocates with the questionnaire (Annexure II).

This amount to 25% of the Universe obtained by random sampling.

The following data was collected through the said questionnaire:

(a) Experience in the legal field

No. of years	% of Advocates
10 to 15	12
13 to 20	5
20 to 25	1

**(5) Data from questionnaires provided to Advocates appearing before the Consumer Disputes Redressal Agencies**

Out of the 80 Advocates appearing before all the Consumer Disputes Redressal Agencies, i.e. the State Commission and both the North District Forum and the South District Forum, this researcher approached 20 Advocates with the questionnaire (Annexure II).

This amounts to **25%** of the Universe obtained by **random sampling**.

The following data was collected through the said questionnaire:

**(a) Experience in the legal field:**

No. of years	No. of Advocates
10 to 15	12
15 to 20	6
20 to 25	2

**Table 13**

## (b) Experience at the Consumer Disputes Redressal Agencies:

No. of years	No. of advocates
5 to 10	2
10 to 15	18

Table 14

## (c) Criteria for assessment of pecuniary damages:

Criterion	No. of Advocates
Law of Tort	Nil
Law of Contract	20
Any other	Nil

Table 15

(d) Criteria for assessment of non-pecuniary damages is tabulated on the next page:

Criterion	No. of Advocates
Law of Torts	3
Law of Contract	1
Sound Judicial Reasoning	2
Reasonableness test	2
No criteria at all	12

**Table 16**

(e) Suggestions for proper assessment of damages at the Consumer Disputes Redressal Agencies:

All Advocates suggested that there should be a proper selection of President of the District Forum, who necessarily has previous adjudicatory experience. They also said that some minimum standards should be defined in the Act itself to guide the selection of Members of the District Forum as well as that of the State Commission, preferably incorporating sound judicial

experience. They further said that expertise in respect of Members would go a long way in the assessment of non-pecuniary damages.

## CHAPTER 4

### RELEVANT FINDINGS

The data collected by the researcher in pursuit of the criteria used by the Consumer Disputes Redressal Agencies for the assessment of damages is subject to statistical treatment and analysed.

Based on the scope of collection of data in Chapter 3, this Chapter has been divided in the same manner, analysing data obtained area wise.

- (1) The composition of the Consumer Disputes Redressal Agencies does not actually reveal any findings with respect to the theme of this project, but only gives an idea of the composition of these Agencies since their invention and it enables the illustration of the sampling technique.

(2) The data available from the records of the Consumer Disputes Redressal Agencies is subjected to statistical analysis, based on which certain findings are arrived at.

## **CHAPTER 4**

### **RELEVANT FINDINGS**

Viewing Table 1 in Chapter 3, the data therein is graphically represented in Fig. 1 below:

The data collected by the researcher in pursuit of the criteria used by the Consumer Disputes Redressal Agencies for the assessment of damages is subject to statistical treatment and analysed.

Based on the areas of collection of data in Chapter 3, this Chapter has been divided in the same manner, analysing data obtained area wise.

(1) The composition of the Consumer Disputes Redressal Agencies does not actually reveal any findings with respect to the theme of this project, but only gives an idea of the composition of these Agencies since their inception and it enables the illustration of the sampling technique.

Similarly, viewing Table 2 in Chapter 3, the data therein is graphically represented in Fig. 2 on the next page.

(2) The data available from the records of the Consumer Disputes Redressal Agencies is subjected to statistical analysis, based on which certain findings are arrived at.

Viewing Table 1 in Chapter 3, the data therein is graphically represented in Fig. 1 below:

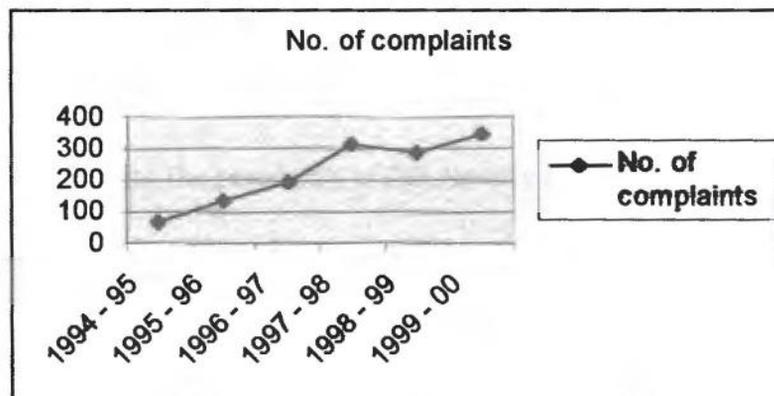
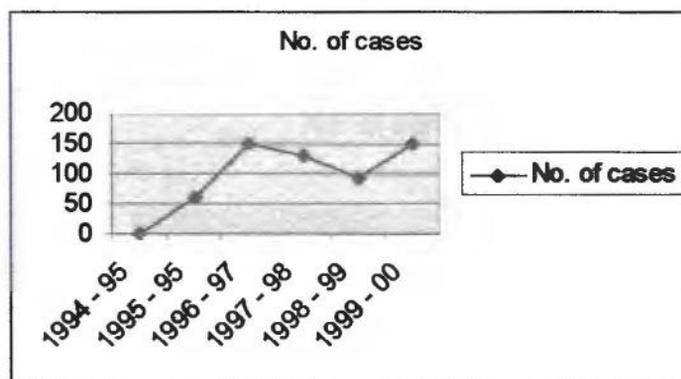


Fig. 1

There is an increase in the number of complaints every year (with the exception for the year 1998 – 99) showing the popularity of this remedy available to the consumer under the Consumer Protection Act.

Similarly, viewing Table 2 in Chapter 3, the data therein is graphically represented in Fig. on the next page:



**Fig. 2**

There is an increase in the number of complaints every year (with the exception for the years 1997 – 98 and 1998 - 99) showing the popularity of this remedy available to the consumer under the Consumer Protection Act.

Comparison of Fig. 1 and Fig. 2 above reveals the position of increase of complaints between North District Forum and South District Forum. This shows that compared to the North District Forum, the South District Forum had lesser number of complaints. This is due to the fact that the South District Forum was functioning in the North District, thus dissuading the consumers from approaching the forum for appropriate redressal.

Table 3 in Chapter 3 is graphically shown in Fig. 3 on the next page:

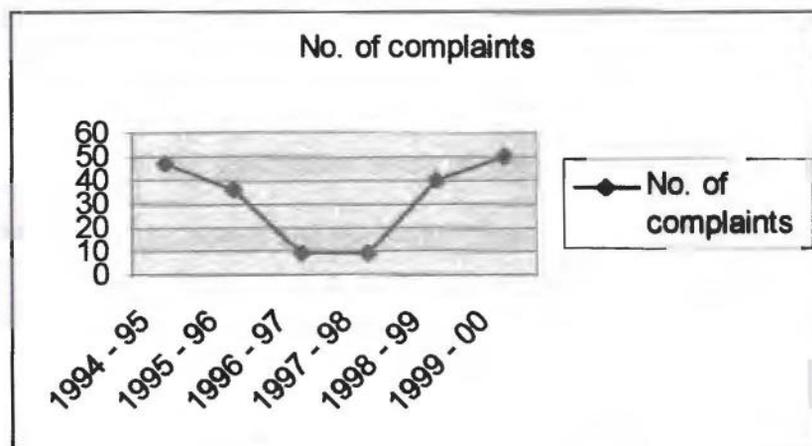


Fig. 3

This shows the number of complaints before the State Commission and does not reveal any consistent picture since only those complaints with pecuniary jurisdiction of Rupees Five Lakhs and above, i.e. before the said State Commission.

The most important area in this research project is viewing the number of appeals before the State Commission.

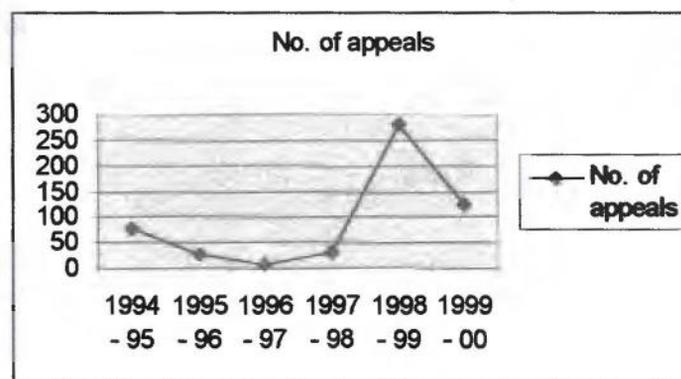
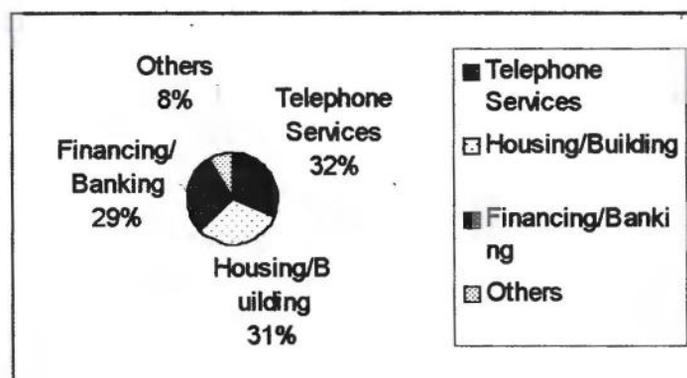


Fig. 4

Table 4 in Chapter 3 which is graphically shown in Fig. 4 on the previous page, shows that there is a drastic increase in the number of appeals, more particularly in the last two years. This reveals that the satisfaction levels of the parties at the level of the North District Forum and the South District Forum is low.

The researcher has observed that of the total complaints before all the Agencies, a large number of complaints belong to the categories of Telephone services, Housing/Building and Financing/Banking and a very small number belong to others. The pie chart given below in Fig. 5 better illustrates the above



observation.

Fig. 5

Based on the above observation, the researcher has confined his study of assessment of damages under the Consumer Protection Act to the areas of Telephone services, Housing/Building and Financing/Banking.

Now, as mentioned at the outset, this project looks into the assessment of damages under the Consumer Protection Act, both pecuniary and non-pecuniary. Table 6 in Chapter 3 shows that invariably, in all the chosen categories in this area of study, the complaints dealt with assessment of pecuniary damages.

Compared to the above observation, non-pecuniary damages were awarded in most of the complaints before the Consumer Disputes Redressal Agencies, as seen in Table 7 of Chapter 3 and as shown in the histogram at Fig. 6 below, where Series 1 is the total number of complaints before all the Consumer Disputes Redressal Agencies and Series 2 is the number of complaints, from among Series 1, in which non-pecuniary damages were awarded:

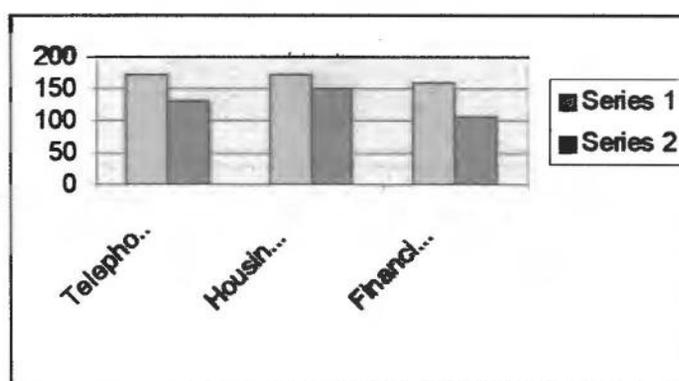


Fig. 6

Thus, as can be seen, non-pecuniary damages were awarded in majority of the complaints before all the Consumer Disputes Redressal Agencies. Hence, there is no doubt that the practice of awarding non-pecuniary damages is widely resorted to by the Consumer Disputes Redressal Agencies in general, while dealing with complaints.

Taking a look at the appeals before the Goa State Commission, again it is seen, that of the total of 126 appeals, a major contribution is from the categories of Telephone Services, Housing/Building and Finance/Banking, better illustrated in the pie-chart at Fig. 7 below:

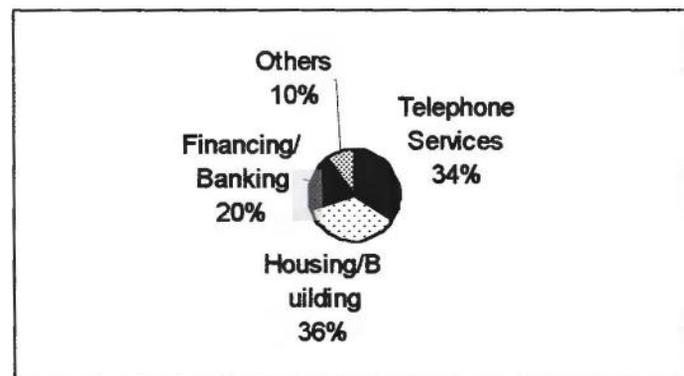


Fig. 7

This is an important observation, since it strengthens the reasoning behind the deliberate sampling resorted to by the

researcher, while restricting his research to the above sampled areas for the purpose of ascertaining the criteria adopted in the assessment of damages under the Consumer Protection Act.

The next important aspect is to examine the fate of the appeals before the Goa State Commission in respect of the reversal or otherwise of damages awarded, both pecuniary and non-pecuniary, by the North District Forum and South District Forum. Here, referring to Table 9 of Chapter 3, better illustrated in Fig. 8 below, it is seen that in most of the appeals, the pecuniary damages awarded by the North District Forum and South District Forum were upheld.

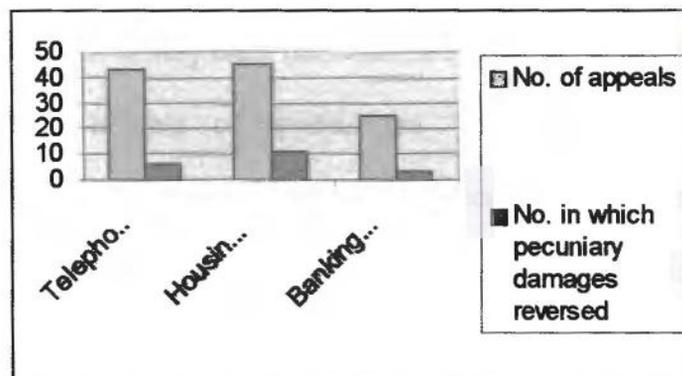


Fig. 8

Similarly, on a perusal of Table 10 of Chapter, better illustrated in Fig. 9 below, it is seen that in most appeals, non-

pecuniary damages awarded by the North District Forum and South District Forum are not upheld.

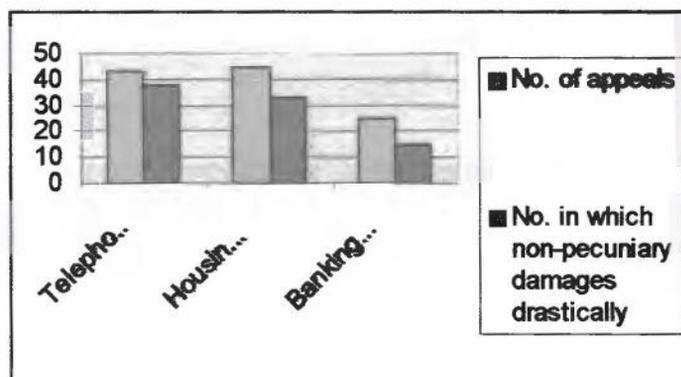


Fig. 9

All the above data is from the records of the Consumer Disputes Redressal Agencies and in view of the analysis so far, it is very clear that there is a major lapse due to which such a large number of appeals are “reversed” by the Goa State Commission, in respect of non-pecuniary damages and a deep research is required to look into the reason why this is so.

(3) Next, analysing the excerpts from the interviews conducted with all the Presidents of the Consumer Disputes Redressal Agencies, the following findings unfold:

- There is consistency in the opinion of all Presidents, that the award of pecuniary damages is in line with the damages under the Law of Contract, although, Smt. Rajlaxmi, President of the South District Forum holds the view, that pecuniary damages and non-pecuniary damages are indistinguishable.
- None of the Presidents could point out exactly which law guides the criteria for the award of non-pecuniary damages. Justice B. N. Krishnan, former President and Justice Dr. Da Silva, President of the Goa State Commission seem to have parallel views: that the aspect of “negligence” plays a pivotal role in deciding the quantum of damages to be awarded. If the opposite party has not been proved negligent, the quantum of compensation awarded to the complainant will be proportionately scaled down.
- However the Presidents of the North District Forum and the South District Forum hold diverse views on the law that governs the assessment of non-pecuniary damages. While, Dr. Kaisare, President of the North District Forum holds the view that the

law of Torts is inapplicable, Smt. Rajlaxmi holds the view that the law of Torts is. Besides, the terms like “according to facts of circumstances of the case”, used by Dr. Kaisare, do not enable the researcher to arrive at any concrete finding .

- The term “guesstimate” coined by Dr. B. N. Krishnan, former President of Goa State Commission, speaks volumes of what criteria at all exists for the assessment of non-pecuniary damages.

- (4) When the data obtained from the Members of the Consumer Disputes Redressal Agencies is analysed, the researcher came across certain important issues:
- None of the members have served in any adjudicatory capacity, prior to appointment in the Forum or the Commission, although some have had legal experience. The legal experience possessed cannot be equated with adjudicatory experience.
  - With the exception of one member at the Forum who does not have formal qualifications, others appear to be well qualified.
  - There is fair consistency in their views on the assessment, but by affixing a chain bracket on “pecuniary” and “non-pecuniary” in the questionnaire, it reveals that they do not seem to know that there exist different criteria for their assessment.
  - There is a totally surprising revelation by some members, that they simply endorse the views of the President, thus reducing them to mere puppets in the decision making process, which is a judicial function.
  - There is lack of consistency among other members, as to the law that governs the assessment of non-pecuniary damages, with

some holding the view that the Law of Contract applies and others holding that the issues come within the realm of the Law of Contract. The other diverse opinions from the Members, about following case-law from National Commission decisions etc., has not convinced the researcher and on the contrary, shows that that there is no uniformity in the line of thinking of Members of the Consumer Disputes Redressal Agencies.

(5) Analysis of data obtained from the advocates appearing before the Consumer Disputes Redressal Agencies is as under:

Table 13 of Chapter 3 shows the years of experience the said advocates have and is better illustrated in Fig. 10 overleaf. Almost all of the advocates approached by the researcher for the purpose of filling up the questionnaire are appearing before the CDRAs from their very inception, as seen from Table 14 in Chapter 3.

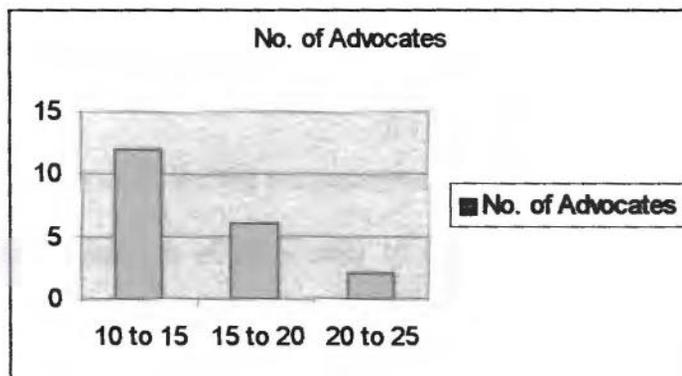


Fig. 10

There has been an unanimous agreement amongst all 20 Advocates that assessment of pecuniary damages under the Consumer Protection Act is in the realm of the Law of Contract, as seen in Table 15 in Chapter 3.

However, as far as the assessment of non-pecuniary damages are concerned, a fairly inconsistent picture emerges as seen in Table 16 of Chapter 3 better illustrated vide the Histogram in Fig. 11 below:

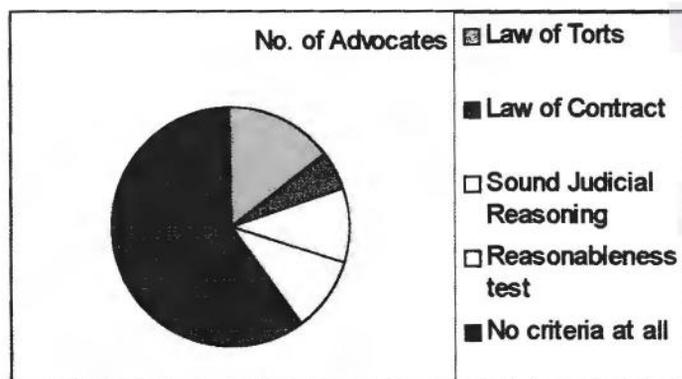


Fig. 11

As seen, most of the Advocates feel that there are no criteria at all for the assessment of non-pecuniary damages. A very small fraction of them refer to the Law of Torts and the Law of Contract.

Most of the Advocates feel that the Members of the Consumer Disputes Redressal Agencies should have judicial experience before being appointed. The researcher has seen that this is not the case and in fact, most of the Members did not have such experience nor did they have a legal background and one, the social worker did not even have formal qualifications.

## CHAPTER 5

### CASE STUDY

In the course of this research, certain appeals decided by the Goa State Commission assume importance in the light of observations made in respect of assessment of non-pecuniary damages by the North District Forum and South District Forum. They are examined below:

1. *Shri Shyamsundar Paliekar v. Ascitic Estate Development & ors.*<sup>61</sup>

This appeal is from the North District Forum and relates to the purchase of a flat wherein the construction was of a sub-standard quality and as a result of which, there was acute leakage.

The complainant claimed non-pecuniary damages to the tune of Rs. 1,10,000/- towards harassment, mental torture,

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<sup>61</sup> decided in July, 1998.

inconvenience and anxiety, besides alternative premises or a sum of Rs. 4,00,000/-.

The North District Forum, relying solely on the affidavit of the opposite party and not that of the complainant awarded a sum of only Rs. 5,000/- towards non-pecuniary damages.

The Goa State Commission held: “.....in respect of damages, the North District Forum has quantified it at Rs. 5,000/. *What is the basis for quantification at that figure, cannot be made out from the order of the said District Forum*”.<sup>62</sup>

The Goa State Commission set aside the entire order and remanded it back to be heard on merits.

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<sup>62</sup> emphasis supplied by the researcher.

2. *The General Manager, Telecom, Panaji-Goa v. M/s Amigos Enterprises*<sup>63</sup>

The North District Forum had directed the opposite party (now appellant) to pay Rs. 20,000/- as compensation for disconnection of telephone when the complainant was in arrears of a payment before reconnection.

The Goa State Commission held: “.....we fail to understand the logic of the District Forum in respect of its direction to the opposite party to pay a compensation of Rs. 20,000/- when it was actually a case of disconnection for non-payment and *there was no negligence* <sup>64</sup> on the part of the opposite party”.

The Goa State Commission set aside the order of the said District Forum.

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<sup>63</sup> decided in November, 1998.

<sup>64</sup> emphasis supplied by the researcher.

3. *Sky Pak Courier v. Dr. Pradeep Shinkre*<sup>65</sup>

A consignment in respect of a job in Oman for which the complainant (now respondent) was duly selected for was not delivered in time. Hence the complainant claimed *inter alia* damages for inconvenience, anxiety and loss of earnings for the time delay in the North District Forum, which awarded an amount of Rs. 50,000/- for the same.

In appeal the Courier Company took the defense that time delays were not due to their negligence and hence they were not liable to pay the respondent damages.

The Goa State Commission reduced the damages and directed the appellant to pay to the respondent an amount of Rs. 10,000/- being that for inconvenience and anxiety while holding that the appellant was not liable for loss of earnings.<sup>66</sup>

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<sup>65</sup> decided in April, 1999.

4. *Trifonio Pacheco (Ameya) v. Hemant K. Kulkarni*<sup>67</sup>

This case deals with a contractual obligation to deliver to the complainant (now respondent) the possession of a flat. Since the promise was not fulfilled, the complainant approached the South District Forum to direct the opposite party (now appellant) to compensate by paying damages of Rs. 1,00,000/-, for mental agony and inconvenience.

The South District Forum allowed an amount of Rs. 40,000/- which it directed the opposite party to pay. However, in appeal, the Goa State Commission upheld the orders of the South District Forum and confirmed the non-pecuniary damages awarded.<sup>68</sup>

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<sup>66</sup> With due respect, it is submitted, that the Goa State Commission erred in splitting the amount of Rs. 50,000/- as Rs. 10,000/- for inconvenience and anxiety, as there is no basis shown for such reasoning.

<sup>67</sup> decided in August, 1999.

<sup>68</sup> It is submitted that there was no evidence on record whatsoever for quantifying the amount to Rs. 40,000/- in this case.

5. *Panorama Constructions, Colwaddo, Sanguem-Goa & ors. v. Oriental Insurance Company, David House, Margao-Goa.*<sup>69</sup>

A Mahindra Allwyn Nishan, that was insured with the opposite party met with an accident and fell into the river and was damaged extensively. The complainant (now appellant) claimed a total amount of Rs. 3,75, 945.97 as damages for the vehicle repairs besides mental and moral losses etc. before the South District Forum.

The South District Forum disallowed the same. However, in appeal, the order of the South District Forum was quashed and the opposite party (now respondent) was directed to pay the amount fully.<sup>70</sup>

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<sup>69</sup> decided in October, 1999.

6. *Jose Caetano D'Costa, Parra, Bardez-Goa v. Sub-Div. Eng., Mapusa-Goa.*<sup>71</sup>

This is a case of excessive billing in telephone services, non payment of which resulted in disconnection. The complainant (now appellant) approached the North District Forum praying for damages of Rs. 10,000/- for mental tension.

The North District Forum, however allowed a sum of Rs. 1,000/-. In appeal, the Goa State Commission relying on a case<sup>72</sup> held, that: "the use of a telephone these days is a prime necessity of life and its unjustified deprivation by the department is by itself deficiency in service and enhanced the compensation to Rs. 5,000/-, which it directed the respondent to pay."<sup>73</sup>

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<sup>70</sup> It is submitted that this case is unique in that an insurance company was held responsible to pay non-pecuniary damages, which were included in the total amount.

<sup>71</sup> decided in October, 1999.

<sup>72</sup> 1998 (1) CPR 487

<sup>73</sup> This is a healthy development in cases of telephone services, for in the past the North District Forum and South District Forum were in the habit of awarding notional damages in telephone cases.

7. *Kashy Builders Pvt. Ltd v. Krishna Hegde*<sup>74</sup>

The South District Forum awarded in favour of the complainant (now Respondent) a sum of Rs. 50,000/-, which were claimed as non-pecuniary damages for inconvenience caused in respect of delay in period of delivery of a flat purchased.

In appeal, however, the Goa State Commission quashed the order of the South District Forum observing “There is absolutely no basis as to how the District Forum arrived at this figure”.

The above cases display instances wherein the Goa State Commission, which as the appellate authority from the North District Forum and South District Forum has “reversed” certain decisions, in respect of non-pecuniary damages, with strong remarks.

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<sup>74</sup> Decided in December, 1999

## CHAPTER 6

### CONCLUSIONS AND SUGGESTIONS

The basic principle for the measure of damages in tort as well as in contract is that there should be *restitutio in integrum*. When any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting the compensation.

On perusal of the Data collected as seen in Chapter 3 and its subsequent analysis as seen in Chapter 4, the study reveals a highly impressive picture by the overwhelming unanimity with which pecuniary damages are assessed by the Consumer Disputes Redressal Agencies.<sup>75</sup>

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<sup>75</sup> There have been very few instances where pecuniary damages awarded by the North District Forum and South District Forum, were disallowed, since there were flaws in the appreciation of evidence.

As seen from the questionnaires answered and interviews conducted, it is crystal clear that the Law of Contract is applied to assess the quantum of pecuniary damages to be awarded from case to case. Hence, the study does not suggest any adoption of criteria for the assessment of pecuniary damages under the Consumer Protection Act.

Other beneficial legislations, which are compensatory in character, like the Workmen's Compensation Act, 1923 and the Motor Vehicles Act, 1988 are guided by schedules, specifying the disability caused like loss of limb etc. and its quantum of compensation. But the Consumer Protection Act cannot possibly have schedules of such nature, since the subject covered in this area are of an enormously wide variety.

In any case, the pecuniary loss undergone is evident from material on record and in practically all cases, such loss is compensated for by way of removing defects, replacing goods or returning to the complainant the price or damages, in keeping with Section 14 of the said Act.

However, when the criteria adopted by the Consumer Disputes Redressal Agencies in assessment of non-pecuniary

damages is viewed, it is still not clear what yardsticks are used as guiding factors for such assessment.

It is strange but a well-established fact, that within the members of the Consumer Disputes Redressal Agencies itself, there is a vast divergence in views insofar as assessment of non-pecuniary damages is concerned. But the overall picture conveys the meaning that such assessment varies from person to person. Besides, even the Supreme Court of India has not laid down any yardsticks to follow, always holding that this aspect varies from case to case.

The National Commission has observed in *Bharat Tractors v. Ramchandra Pandey*<sup>76</sup> that compensation has to be assessed not arbitrarily, but on well-accepted legal principles. But what are these well-accepted legal principles in relation to the assessment of non-pecuniary damages and where are they laid down?

In *General Manager, South Eastern Rly. v. Anand Prasad*,<sup>77</sup> where a retired High Court Judge and his wife were travelling in a first class railway compartment where the fans were not working etc. The State Commission allowed an amount of Rs.

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<sup>76</sup> 1991 CPJ 14 (NC)

<sup>77</sup> 1991 CPJ 400 (MP)

10,000/- each, observing that in view of the status of the complainant and the conditions in which they were forced to travel even the said compensation was not sufficient. But the National Commission observed that *the status was of little relevance in this context*<sup>78</sup> since every passenger who had paid for this travel is entitled to similar treatment in the matter of award of compensation. This is a good step forward by the National Commission and also sends a signal that the status may be relevant in another context.

This boils down to conclude that wide discretion is the bottom line criteria for assessment of non-pecuniary damages and accordingly, there are a number of suggestions to offer.

Proper training must be imparted to the Presidents and Members of the Consumer Disputes Redressal Agencies for, as observed, no Member is having a judicial background when one who sits as an adjudicatory authority should have such a judicial background.

While awarding the amount of compensation or damages, the social status, standard of living, occupation or business etc. should be considered by the Consumer Disputes Redressal Agencies. In *Commercial Officer, Office of Telecom. v.*

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<sup>78</sup> emphasis supplied by the researcher.

*Bihar State Warehousing Corporation*,<sup>79</sup> a compensation of Rs. 5,000/- for arbitrary and illegal disconnection of a telephone, allowed by the Bihar State Commission was reduced to Rs. 1,000/- as there was no material before the State Commission to allow the same. In fact, the National Commission observed further that the Corporation had another two telephones and so did not suffer a huge loss. But, the use of a telephone for a domestic purpose and for a business purpose will have totally different implications.

Yet the North District Forum and South District Forum are observed to be awarding notional damages of Rs. 1,000/- without going into these implications. Furthermore, it is observed that the Goa State Commission has been adopting a similar approach by invariably augmenting this amount to Rs. 3,000/- without considering any implications above mentioned.<sup>80</sup>

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<sup>79</sup> 1991 CPJ 42 (NC)

<sup>80</sup> *The General Manager, Telecom., Panaji, Goa v. Ashwini Plastruder*, decided by the Goa State Commission in April, 1998, (unreported); *General Manager, Telecom. v. Reshma Chopdekar*, decided by the Goa State Commission in July, 1998, (unreported); *General Manager, Telecom. v. M/s Narayandas Gokuldas*, decided in November, 1998, (unreported) and *Sub-Div. Engr., Dept. of Telecom. v. Shri Vithal V. Pai*, decided by the Goa State Commission in March 1999, (unreported)

The researcher has observed that there is a mechanical use of terms like mental agony, inconvenience etc., which are very sensitive issues. The psychological aspects and effects of negligence on the consumers are very often ignored by the Consumer Disputes Redressal Agencies.

The Consumer Protection Act, 1986 is growing in importance as can be seen from the growing number of complaints and appeals before the Consumer Disputes Redressal Agencies. Besides in India, it is not a buyer's market, but a sellers market.

In view of the above, the higher judiciary, in particular, the Supreme Court of India, which is the highest Court of the land, should lay down certain yardsticks for the Consumer Disputes Redressal Agencies to follow, in the interest of the consumers, who are the victims of the system.

When the Act is silent in respect of the assessment of non-pecuniary damages, it is expected that the judiciary steps in to provide appropriate solutions. For the law should not be static as society marches on. It should keep in pace with time and be suitable to today's needs of the consumer.



(Tortious liability/Contractual liability/Others-specify) Kindly be descriptive.

6. What guidelines can you provide for the Consumer Redressal Agencies to follow in order to improve the criteria of assessment for the award of damages, both pecuniary and non-pecuniary damages?



7. While awarding non-pecuniary damages e.g. for mental torture/inconvenience etc, what is the criteria involved?  
(Tortious liability/Contractual liability/Others-specify) Kindly be descriptive.
  
8. What guidelines can you provide for the Consumer Redress Agencies to follow in the award of non-pecuniary damages?

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McFarlene & anr. v. Tayside Health Board

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The General Manager, Telecom., Panaji, Goa v. Ashwini Plastruder

Trifonio Pacheco (Ameya) v. Hemant K. Kulkarni

Victoria (Windsor) Ltd. v. Newman Industries Ltd.

