

A PLAINT DOESN'T DIE WITH PATIENT, LEGAL HEIRS CAN PURSUE IT

A patient was admitted into a private hospital where he died due to the negligence of the doctors. The member of the family filed a complaint in the consumer forum claiming compensation for the tragedy. But the hospital authorities argued that the family members of the patient were not 'consumers' as per the provisions of the Consumer Protection Act (CPA) and they could not file a complaint on behalf of the patient.

Is this a valid argument? Can a person other than the consumer file a complaint on behalf of the consumer? In case the consumer who has suffered loss or injury dies, does that mean that the complaint should also die with him?

According to the provisions of the CPA, four categories of complaints are eligible for filing complaints. Accordingly a consumer, a registered consumer organization, central or state government and one or more consumer for and on behalf of other consumers similarly affected can file a complaint. The ACT expressly provides that a beneficiary of services can file a complaint.

The Act defines the word consumer in two parts. The first deals with goods and the second with services. However, the definition does not expressly include the legal representatives of the consumers.

But the National Commission in an important judgement has ruled that family members or legal heirs are competent to file a complaint on behalf of the deceased.

In the light of the above, it can be said that a consumer is (a) one who purchases goods and services for a consideration, (b) one who uses goods and services with the permission of the consumer, (c) one who is a legal representative of the deceased consumer.

Keeping this in view, the National Commission in the case of *Cosmopolitan Hospital vs Vasantha P. Nair* has decided that on the scheme of the Act, the grievance can be enforced even by a stranger, for a complainant means not only a consumer but any voluntary consumer registered association, and the central or state government who or which makes a complaint.

The Commission observed that a person in whom the rights are vested by assignment or by operation of law is clothed with these rights, status and personality of the deceased for the purpose of enforcing the cause of action which has devolved on him. It is consistent with the object of the Act to give an extended meaning to the definition of 'consumer' so as to include the legal representatives of the deceased consumer.

It is obvious that if a consumer dies, a complaint can be filed only by his or her legal heirs. There was no reason why his legal representative could not file a complaint claiming compensation.

In another case, the lift got jammed and as a result a passenger died instantaneously. A consumer activist from Tamil Nadu filed a complaint on behalf of the deceased and proved gross negligence in the maintenance of the lift.

The Commission held that the complaint filed on behalf of the dead is maintainable and awarded compensation. The same view has been expressed in the case of Sr Lousie vs V.K.Puthamma.

In case a complainant dies when the case is pending, does it alter the position?

The Dehli State Commission has held that there will be no change. In the case of Suman Bala Gupta vs Akash Ganga Builders and Engineers (P) Ltd., the complainant died while the complaint was pending before the forum. It was held that the legal heirs can be letters of admission.

Another important question related to the subject is that – is a nominee in the LIC policy a consumer and can a nominee file a complaint to get the proceeds of the policy?

The National Commission in the case of Subhangi Shivajirao Ghatge vs LIC of India has held that the nomination of a person under a policy of LIC does not confer on such person any title to the amount payable under the policy.

The only legal consequence of such nomination is that if the insurer pays the amount due under the policy due to the nominee, the insurer will get a valid discharge.

However, the National Commission in the case of Jagadish Prasad vs DM, LIC, has ruled that a nominee is a consumer and is entitled to file a complaint in the consumer fora.
