



DETERMINATION OF COMPENSATION

Under the Consumer Protection Act

RELEVANT PROVISIONS UNDER CPA, 1986 & 2019

- S 14(c): to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
 - (d) 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:
 - Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;
 - (hb) to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:
 - Provided that the minimum amount of sum so payable shall not be less than five per cent of the value of such defective goods sold or services provided, as the case may be, to such consumers;
 - Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;
- s.39 under 2019 Act: For defective product or for unfair trade practice, the Commission has power to direct "to pay such amount by it as compensation for any loss or injury suffered by consumer.." or the Commission shall have power to grant damages in such circumstances as deems fit or award compensation in a product liability action

SCOPE FOR COMPENSATION/ DAMAGES UNDER CPA

Expansive meaning of 'deficiency of service'

Defects in products

Restrictive trade practice

- Medical negligence cases
- Housing issues
- Defective products
- Unfair trade practice
- Insurer's liability
 - Carrier's Act
 - Carriage by Air Act
 - Merchant Shipping Act
 - Claim for consequential loss due to failure to settle claim under contract of insurance
 - Life Insurance Act
 - Mediclaims
 - Crop Damage and other agricultural policies
 - Theft, fire, fidelity, arson and other miscellaneous categories

DAMAGES UNDER CONTRACT AND TORT

- Commonality.
 - Function of damages in both is compensatory
 - Restitutive
- Differences
 - Breach of duty in tort claims shall arise by breach of some law; in contractual claims, they arise by the contract brought between parties themselves
 - In tort, the duty is towards persons generally; in contracts, the duty is towards a party to the contract only.
 - In contracts, no damages will be awarded for feelings, whereas in torts, the subjective element of mental agony is always relevant

LEGAL BASIS FOR AWARDING COMPENSATION/ DAMAGES

- Expressions used in s 73 of Contract Act:
- Is there a distinction between compensation and damages? (Both expressions are used in the Act; former refers to pecuniary recompense for anything other than an actionable compensation)
- What is damage and what are damages?
- Damages arising out of contract
 - Enumerate damages arising out of contract
- Damages arising out of tort
 - Enumerate damages arising out of tort
- S 74 of Contract Act: Liquidated damages; Penalty
 - Courts power to pass reasonable amount

DAMAGES ARISING OUT OF CONTRACT

Factor contributing to damages:

Breach of contract
resulting in loss or
damage

It must have naturally
arose on account of
breach in the usual
course of things; or

The parties must have
known about the loss or
damage, when they
made the contract to
be likely to result from
the breach

It shall not be remote or
indirect loss or damage

Measure of damage shall take
into account the scope for
remedying the inconvenience
caused by non-performance



DUTY OF CARE



FAILURE OF DUTY



RESULT OF INJURY AND
PROXIMAL CAUSE TO
THE FAILURE OF DUTY



DETERMINATION OF
FINANCIAL
EQUIVALENT

MATTERS TO BE ESTABLISHED
RESULTING IN TORTS

DEATH AND PERSONAL INJURIES



Multiplier theory – a point missed in
Krishnakumar v State of Tamil Nadu (2015) 9
SCC 388



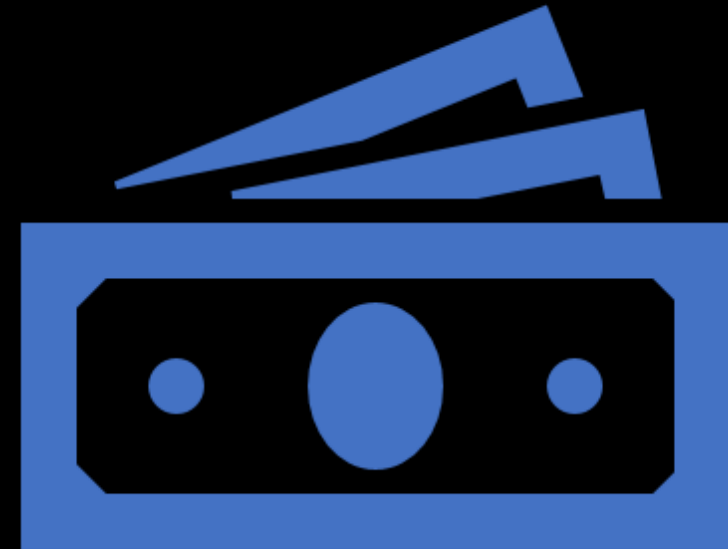
explaining principle – to secure an amount,
which if invested in a steady economy with
slightly inflationary trend, will yield a return
equivalent to what the victim would have
earned, had not the accident occurred



estimating percentage of functional
disability that will have relevance to how it
could impact earning capacity

HEADS OF CLAIM FOR COMPENSATION

- Personal injuries
 - Pecuniary
 - Medical expenses, past and future
 - Transport expenses
 - Loss of income, past and future
 - Non pecuniary
 - pain and suffering
 - loss of amenities
 - for functional disability
 - Rounded numbers
- Damage to property
 - Loss
 - disrepair
- Loss of business



DAMAGES FOR LOSS OF LIFE OR PERSONAL INJURIES

- Death
 - Multiplier method
 - Heads of claim
 - Medical expenses
 - Income – extent of dependence
 - Provision for increase of income
 - Loss of consortium
 - Loss of love and affection
 - Funeral expenses
 - Loss to estate
- Injuries
 - Loss of income
 - Loss of amenities
 - Loss of earning capacity
 - Medical expenses
 - Nutrition
 - Attendant charges
 - Transport charges
 - Loss of expectation of life
 - Pain and suffering
 - Loss of prospect of marriage

SARLA VERMA V DTC & NATIONAL INSURANCE V PRANAY SETHI

Multiplier

| Age | Multiplier |
|--------------|------------|
| Up to 15 yrs | 15 |
| 15 to 20 yrs | 18 |
| 21 to 25 yrs | 18 |
| 26 to 30 yrs | 17 |
| 31 to 35 yrs | 16 |
| 36 to 40 yrs | 15 |
| 41 to 45 yrs | 14 |
| 46 to 50 yrs | 13 |
| 51 to 55 yrs | 11 |
| 56 to 60 yrs | 09 |
| 61 to 65 yrs | 07 |
| Above 65 yrs | 05 |

Provision for increase

- In case of regular employment on salary

| Age | % of increase |
|--------------|---------------|
| Up to age 40 | 50% |
| 40 to 50 | 30% |
| 50 to 60 | 15% |

- In case of self employment

| Age | % of increase |
|--------------|---------------|
| up to age 40 | 40% |
| 40 – 50 | 25% |
| 50 – 60 | 10% |

MEASURE OF COMPENSATION FOR INJURIES



Rajkumar v Ajay Kumar
(2011) 1 SCC 343



Injuries for privation of organs: Follow EC Act 1923



Injuries for fractures that result in (functional) disability, loss of earning capacity and loss of amenities



Multiplier for % loss of earning capacity



Subjective Components such as pain and suffering, loss of amenities, loss of prospects of marriage



SPECIAL FEATURES OF CONTRACTUAL DAMAGES

- Parties may stipulate that no damages will become payable even in the event of breach. It is perfectly tenable.
 - Query: In a building contract, what is the effect of a term of contract that provides for payment of interest for delayed remittances of price but a non-liability for interest in the event of delayed completion of construction?
- Even if there a contractual term restricting liability to a particular sum, that alone could be claimed.
- A claim for damages will not be barred merely because some other form of performance is possible.
- Specific performance or recovery of damages or both – situations that the Specific Relief Act contemplates.
- A party in breach cannot complain of damages.



When the plaintiff has been guilty of wrong is some measure (*HUDA v Sakuntala Devi* (2017) 2 SCC 301)



contributory negligence



Laches – it is not the same as bar of limitation



In pari delicto cases

FACTORS THAT IMPACT FOR REDUCTION

PROVISION FOR MEDIATION



Ss.37 to 39 Consumer Protection Act



Have a panel of mediators



Get the lawyers practicing in the Forum/ Commission to be trained in mediation



Get also doctors and other social workers to be trained.



Do not take the case for adjudication if you have attempted mediation and failed.