

India

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1 Liability Systems

1.1 What systems of product liability are available (i.e. liability in respect of damage to persons or property resulting from the supply of products found to be defective or faulty)? Is liability fault based, or strict, or both? Does contractual liability play any role? Can liability be imposed for breach of statutory obligations e.g. consumer fraud statutes?

In India, product liability law governs the liability of manufacturers, wholesalers, distributors, and vendors for injury to a person or property caused by dangerous or defective products.

Product liability in India is governed by:

- a) The Consumer Protection Act, 1986.
- b) The Sales of Goods Act, 1930.
- c) The law of Torts.
- d) Special statutes pertaining to specific goods

Previously, the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the “MRTP Act”) dealt with provisions in respect of unfair trade practices. The Act now stands repealed and the pending cases of unfair trade practices have been transferred to National Commission set up under Consumer Protection Act, 1986.

The Consumer Protection Act imposes strict liability on a manufacturer, in case of supply of defective goods by him, and a service provider, in case of deficiency in rendering of its services.

Section 16 of the Sale of Goods Act prescribes implied conditions as to quality or fitness. Section 16(1) requires that the goods shall be reasonably fit for the purpose made known to the seller by the buyer expressly or by implication. Section 16(2) requires only that the goods should be of merchantable quality. Secondly, Section 16(1) is excluded where the buyer does not rely on the seller’s skill or judgment, whereas Section 16(2) is not so limited, though it does not apply when the buyer examines the goods, as regards defects which that examination ought to reveal. Where a defect is revealed to the buyer, not only is Section 16(2) excluded, but that fact will normally indicate that it is unreasonable for the buyer then to rely on the seller for the purposes of Section 16(1).

Liability here is fault based. A breach of a condition and not merely a warranty, entitles a buyer to terminate contract of sale. For a breach of warranty, merely damages can be claimed. The Act contains no penal provisions. Tortious liability, if any, of the parties towards each other or towards third parties is not affected.

In India, a claim under the product liability law shall also lie where

the element of negligence under tort law. Liability for negligence can be placed in three heads:

- Things dangerous *per se*.
- Things not dangerous *per se* but actually dangerous and known to be so by transferor.
- Things neither dangerous *per se*, nor known to be so by the transferor, but are in fact dangerous.

In *Dixon v Bell* (1816)4M&S 198, defendant gave a servant a loaded gun which she fired on plaintiff who was seriously injured. The defendant was held liable for the same.

In case of things not dangerous *per se*, but known to be so, transferor owed a duty to warn about the known dangers not only to immediate transferee, but to all persons likely to be endangered by that thing.

For the third category, things neither dangerous *per se*, nor known to be so by the transferor, but are in fact dangerous, application of *Donoghue v Stevenson* principle requires manufacturer to take reasonable care (when thing is to reach ultimate consumer without any possibility of intermediate examination) and is liable for not taking that care despite being no privity of contract. This liability principle has extended to repairers, assemblers, builders and suppliers of products.

1.2 Does the state operate any schemes of compensation for particular products?

No, the state doesn’t operate any schemes of compensation for particular products.

1.3 Who bears responsibility for the fault/defect? The manufacturer, the importer, the distributor, the “retail” supplier or all of these?

Any person who trades in the goods (manufacturer, importer, distributor, wholesaler, etc.) may be made liable under Indian law. As per the Consumer Protection Act, the definition of trader (Section 2(1) (q)) and manufacturer (Section 2(1)(j)) is exhaustive and includes: any person who sells or distributes any goods for sale; or a manufacturer, assembler, or dealer or any person who causes his or her own mark to be put on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself or herself.

Bearing in mind the law on privity of a contract, if a consumer finds a defect in the goods, he or she usually sues the person from whom he or she has bought the goods. However, if the defect is a manufacturing defect, then the consumer may sue the manufacturer along with the seller, particularly under law of torts. This is an option for the consumer.

1.4 In what circumstances is there an obligation to recall products, and in what way may a claim for failure to recall be brought?

Section 14(1) (h) states that district forum under the Consumer Protection Act can include direct withdrawal of all hazardous goods from market and direct compensation to be paid to affected parties. As per Section 27 of the Consumer Protection Act, if a trader fails or omits to comply with any order of district forum, such person shall be punishable with a term not less than one month, but which may be extended to three years or a fine which may extend 2,000 rupees, but which may be extended to 10,000 rupees or both. Also, Section 25 of the said Act empowers district form or State Commission or National Commission as the case may be to attach property of the person who does not comply with its orders. If a person fails to pay an amount as per order passed by a district court, then such person may move an application before the district form which shall issue a certificate to the collector of district and collector shall proceed to recover the said amount from such person as arrears of land revenue.

1.5 Do criminal sanctions apply to the supply of defective products?

Under the Consumer Protection Act, as per Section 27, where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the district forum, the State Commission or the National Commission, as the case may be, such trader, person or complainant shall be punishable with: imprisonment for a term which shall not be less than one month, but which may be extended to three years; a fine, which shall not be less than 2,000 rupees, but which may extend to 10,000 rupees; or both. Criminal sanctions may also be imposed under other statutes specifically providing for such sanctions.

2 Causation

2.1 Who has the burden of proving fault/defect and damage?

The Burden of Proof generally lies on the party who is alleging the fault/defect and damage or who initiates the civil action (plaintiff).

2.2 What test is applied for proof of causation? Is it enough for the claimant to show that the defendant wrongly exposed the claimant to an increased risk of a type of injury known to be associated with the product, even if it cannot be proved by the claimant that the injury would not have arisen without such exposure?

In order to recover damages under tort of negligence, a plaintiff must prove following:

1. the manufacturer owed a duty to the plaintiff;
2. the manufacturer breached a duty to the plaintiff;
3. the breach of duty was the actual cause of the plaintiff's injury;
4. the breach of duty was also the proximate cause of the injury; or
5. the plaintiff suffered actual damages as a result of the negligent act.

The law requires that a manufacturer exercises a reasonable degree of standard of care akin to those who are manufacturing similar products. In case the plaintiff can prove that a manufacturer has failed to exercise the reasonable standard of care, the plaintiff still

needs to prove two parameters of causation. The plaintiff must first show injury was caused to the plaintiff due to the manufacturer's negligence and further that the defendant could have foreseen the risks that led to such an injury.

On the other hand, in a contract, the plaintiff is required to prove that the breach of contract was the actual and effective cause of the loss which has been sustained.

2.3 What is the legal position if it cannot be established which of several possible producers manufactured the defective product? Does any form of market-share liability apply?

Market-share liability does not generally apply. In many such cases, the claim stands dismissed.

2.3 Does a failure to warn give rise to liability and, if so, in what circumstances? What information, advice and warnings are taken into account: only information provided directly to the injured party, or also information supplied to an intermediary in the chain of supply between the manufacturer and consumer? Does it make any difference to the answer if the product can only be obtained through the intermediary who owes a separate obligation to assess the suitability of the product for the particular consumer, e.g. a surgeon using a temporary or permanent medical device, a doctor prescribing a medicine or a pharmacist recommending a medicine? Is there any principle of "learned intermediary" under your law pursuant to which the supply of information to the learned intermediary discharges the duty owed by the manufacturer to the ultimate consumer to make available appropriate product information?

When goods are transferred under a contract, the liability of parties is governed by the contract itself. In certain cases, there is an implied condition that goods will be reasonably fit for the purpose for which it is required by the buyer. If, while selling goods under a contract, defendant expressly excludes his liability, he cannot be made liable for the loss caused to plaintiff. Liability may arise. Section 16 of the Sale of Goods Act prescribes implied conditions as to quality or fitness. Section 16(1) requires that the goods shall be reasonably fit for the purpose made known to the seller by the buyer expressly or by implication. Section 16(2) requires only that the goods should be of merchantable quality. Secondly, Section 16(1) is excluded where the buyer does not rely on seller's skill or judgment, whereas Section 16(2) is not so limited, although it does not apply when the buyer examines the goods, as regards defects which that examination ought to reveal. Where a defect is revealed to the buyer, not only in Section 16(2) excluded, but that fact will normally indicate that it is unreasonable for the buyer then to rely on the seller for the purposes of Section 16(1).

In addition, liability may be found under tort law. When a tin had a defective lid to the knowledge of the seller and he failed to warn the buyer about it, injury caused to buyer as a consequence thereof the defendant will be liable. (*Clarke v Army and Navy Cooperative Society Ltd* [1903] 1 K.B. 155.)

Liability towards ultimate transferee could be based on fraud where there is false representation that goods are safe. In case of dangerous goods, such as loaded firearms, there is added precaution and warning required to be given to the intermediary, as well as ultimate transferee. In *Dixon v Bell* (1816)4M&S 198, defendant gave a servant a loaded gun which she fired on plaintiff who was seriously injured. The defendant was held liable for the same.

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transferor owed a duty to warn about the known dangers not only to immediate transferee, but to all persons likely to be endangered by that thing.

For the third category, things neither dangerous *per se*, nor known to be so by the transferor but are in fact dangerous, application of *Donoghue v Stevenson* principle requires manufacturer to take reasonable care (when thing is to reach ultimate consumer without any possibility of intermediate examination) and is liable for not taking that care despite being no privity of contract. This liability principle has extended to repairers, assemblers, builders and suppliers of products.

3 Defences and Estoppel

3.1 What defences, if any, are available?

A probable defence could be that the defect had occurred due to the negligence or contributory negligence of the buyer. An additional defence would be that the buyer had examined the goods prior to purchase. Also, the parties can rely on contractually agreed warranties or waivers or disclaimers and clauses on limitation of liability. The expiration of limitation periods for filing or initiating claims can also be a defence.

3.2 Is there a state of the art/development risk defence? Is there a defence if the fault/defect in the product was not discoverable given the state of scientific and technical knowledge at the time of supply? If there is such a defence, is it for the claimant to prove that the fault/defect was discoverable or is it for the manufacturer to prove that it was not?

In general, in the Consumer Protection Act, onus is on plaintiff to prove fault was discoverable by manufacturer.

3.3 Is it a defence for the manufacturer to show that he complied with regulatory and/or statutory requirements relating to the development, manufacture, licensing, marketing and supply of the product?

Yes, if the product complies with statutory standards relating to manufacturing, licensing, marketing and supplying, then the same can be argued as a defence.

3.4 Can claimants re-litigate issues of fault, defect or the capability of a product to cause a certain type of damage, provided they arise in separate proceedings brought by a different claimant, or does some form of issue estoppel prevent this?

Under the doctrine of *res judicata*, parties are estopped between themselves from re-litigating issues determined by final judgment of any competent court or tribunal. Different claimants may be able to re-litigate issues in separate proceedings; however, a claimant could be prevented from re-litigating an issue decided in a previous proceeding, on the grounds of abuse of process by re-litigation.

3.5 Can defendants claim that the fault/defect was due to the actions of a third party and seek a contribution or indemnity towards any damages payable to the claimant, either in the same proceedings or in subsequent proceedings? If it is possible to bring subsequent proceedings is there a time limit on commencing such proceedings?

The liability of joint tortfeasors is joint and several. No tortfeasor is allowed to claim that decree against him should be only to the extent of his fault. The court may apportion damages between tortfeasors for purpose of respective liability *inter se*. (*Amnithiben v SC, ONGC*). In *Amnithiben v SC, ONGC* [1976] ACJ (72) (Guj.), due to negligence of the driver of a jeep and driver of a bus, there was an accident and a passenger sitting in front of a jeep was thrown and killed. The negligence of the driver of bus and jeep was 75:25 ratio. A decree against defendants was passed making them liable jointly and severally to pay damages. Apportionment of damages was *inter se* made to workout respective liability of defendants. Limitation period to move case for recovery is generally three years from cause of action.

3.6 Can defendants allege that the claimant's actions caused or contributed towards the damage?

Yes. For example, where a pedestrian tries to cross the road all of a sudden and he is hit by a car, he is guilty of contributory negligence.

4 Procedure

4.1 In the case of court proceedings is the trial by a judge or a jury?

As the Indian legal regime is based on the common law system, the court system is adversarial and an impartial judge adjudicates a case. The jury system does not exist in India.

4.2 Does the court have power to appoint technical specialists to sit with the judge and assess the evidence presented by the parties (i.e. expert assessors)?

Yes, experts may be appointed by courts for any expert testimony if required under the Code of Civil Procedure, 1908.

4.3 Is there a specific group or class action procedure for multiple claims? If so, please outline this. Is the procedure 'opt-in' or 'opt-out'? Who can bring such claims e.g. individuals and/or groups? Are such claims commonly brought?

The Consumer Protection Act, 1986 recognises any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force can file a consumer complaint, and more than one consumer, where there are numerous consumers having the same interest, can file a consumer complaint with the leave of the court (forum).

4.4 Can claims be brought by a representative body on behalf of a number of claimants e.g. by a consumer association?

Yes, a complaint for class action could be filed by any trade association, consumer or registered consumer association or by

reference made by the Central or State Government, one or more consumers where they have a common interest. (Section 2(1)(b) Consumer Protection Act, 1986.)

4.5 How long does it normally take to get to trial?

In practice, a civil suit may take two to three years to get to the trial stage and another three years for final disposal; while in a consumer forum, a typical case gets disposed of within one to two years.

4.6 Can the court try preliminary issues, the result of which determine whether the remainder of the trial should proceed? If it can, do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided?

The court may decide matter on preliminary issues such as *res judicata*, limitation period, or other legal grounds. Courts will not assess facts at preliminary stages before trial.

4.7 What appeal options are available?

Action under the Consumer Protection Act, 1986

Any person aggrieved by an order made by the district forum may refer an appeal against such order to the State Commission within a period of 30 days from the date of the order. Provided the appeal is referred by a person who is required to pay any amount in terms of an order of the district forum, the appeal shall be entertained by the State Commission only if the appellant has deposited in the prescribed manner 50 per cent of that amount or 25,000 rupees, whichever is less. (Section 15 of Consumer Protection Act, 1986.)

Any person aggrieved by an order made by the State Commission may refer an appeal against such order to the National Commission within a period of 30 days from the date of the order. Provided the appeal is referred by a person who is required to pay any amount in terms of an order of the State Commission, the appeal shall be entertained by the State Commission only if the appellant has deposited in the prescribed manner 50 per cent of that amount or 35,000 rupees, whichever is less. (Section 19 of Consumer Protection Act, 1986.)

Any person aggrieved by an order made by the National Commission may refer an appeal against such order to the Supreme Court within a period of 30 days from the date of the order. Provided the appeal is referred by a person who is required to pay any amount in terms of an order of the National Commission, the appeal shall be entertained by the Supreme Court only if the appellant has deposited in the prescribed manner 50 per cent of that amount or 50,000 rupees, whichever is less. (Section 23 of Consumer Protection Act, 1986)

Action under civil courts

A suit is instituted in the lowest court competent to try such suit. An order or a decree passed by a district court is appealable before the high court. An order passed by the high court is appealable to the Supreme Court, which is the apex court.

4.8 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

Experts may be appointed by courts or consumer forums,

depending upon the facts and circumstances of each case. However, the case should be complicated enough to require the opinion of an expert. As per Section 45 of the Indian Evidence Act, expert testimony is possible, but generally cross examination does follow. The expert testimony or opinions should be limited only to highly technical points.

4.9 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?

Generally in product liability cases, expert opinions are not taken except if court thinks it is necessary to determine important facts. Depositions, reports, and cross examination all take place during trial.

4.10 What obligations to disclose documentary evidence arise either before court proceedings are commenced or as part of the pre-trial procedures?

In Indian law, it is for the party claiming a relief to supply to court all documents it relies on. Court may also entertain applications seeking relief of discovery or production of records depending on facts of every case. In *Ramrati Kuer v. Dwarika Prasad Singh & Ors.*, AIR 1967 SC 1134, this court held:

“It is true that Dwarika Prasad Singh said that his father used to keep accounts. But no attempt was made on behalf of the appellant to ask the court to order Dwarika Prasad Singh to produce the accounts. An adverse inference could only have been drawn against the plaintiffs-respondents if the appellant had asked the court to order them to produce accounts and they had failed to produce them after admitting that Basekhi Singh used to keep accounts. But no such prayer was made to the court, and in the circumstances no adverse inference could be drawn from the non-production of accounts.”

(See also: *Ravi Yashwant Bhoir v. District Collector, Raigad & Ors.*, AIR 2012 SC 1339.)

4.11 Are alternative methods of dispute resolution available e.g. mediation, arbitration?

Parties to a contract may agree to adopt alternative means of dispute resolution (ADR) in their contact before resorting to litigation. Such means could be negotiation, mediation or conciliation or other forms of ADR. Such contractual terms are binding on the contracting parties. In India, courts encourage settlement of disputes through ADR.

4.12 In what factual circumstances can persons that are not domiciled in India, be brought within the jurisdiction of your courts either as a defendant or as a claimant?

The Consumer Protection Act can be applicable to a foreigner who avails service or purchases a product from India as it does not limit its application to only Indian citizens. As a defendant, a plaintiff can file an action in Indian courts against a foreign service provider or manufacturer if he provides service or sells goods in India. This judgment obtained by plaintiff can be enforced in India if defendant has any assets in India or enforced abroad if a reciprocal arrangement exists with the government/country in question. In case a judgment is passed by Indian court, by virtue of Section 38 Code of Civil Procedure, a decree may be executed either by court which passed it or by court to which it is sent for execution.

According to Section 51, Code of Civil Procedure, execution order may entail delivery of any property specifically decreed or attachment and sale of any property, by arrest and detention in prison, by appointing a receiver, or other manner as the court may deem fit.

5 Time Limits

5.1 Are there any time limits on bringing or issuing proceedings?

In an action under the Consumer Protection Act, the District Forum, the State Commission or the National Commission shall not admit consumer complaints unless they are filed within two years from the date on which the cause of action has arisen.

Whereas, in an action under the Indian Contract Act, Sale of Goods Act and other applicable statutes, a person will not be able to initiate a product liability claim after three years from the date of which the cause of action (product defect) which gives the right to initiate a product liability claim.

5.2 If so, please explain what these are. Do they vary depending on whether the liability is fault based or strict? Does the age or condition of the claimant affect the calculation of any time limits and does the Court have discretion to disapply time limits?

The limitation of time does not vary depending on whether it is fault based or strict.

The age of the claimant also does not affect limitation. The court has discretion to extend time or condone delay if plaintiff proves there was sufficient cause for condoning the delay.

5.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?

Where an action is based upon fraud or the right of action is concealed by fraud, the period of limitation only begins to run when the plaintiff has discovered the fraud, or could with reasonable diligence have discovered it.

6 Remedies

6.1 What remedies are available e.g. monetary compensation, injunctive/declaratory relief?

Generally, in tort cases under product liability two remedies are common: one is damages such as to remove the defect from the goods or to seek replacement of the goods with new goods of similar description which shall be free from any defect; and if damages is an inadequate remedy, the court may grant an injunction for discontinuance of unfair trade practice or restrictive trade practices, as the case may be and for withdrawal and to cease and desist orders in the manufacturing of hazardous goods from being offered for sale. Refund of the purchase price can also be availed by the aggrieved party in the form of monetary compensation. (Section 14 of the Consumer Protection Act.)

6.2 What types of damage are recoverable e.g. damage to the product itself, bodily injury, mental damage, damage to property?

In order to recover damages, damages must be foreseeable. Foreseeable damages generally include pecuniary losses, such as those incurred by plaintiff for damaged goods, medical expenses, and lost money. Recoverable non-economic damages include awards for pain and suffering, emotional agony. The court may award punitive or exemplary damages in certain severe cases of negligence.

Under the Indian Contract Act, 1872, the party who suffers loss on account of breach of a contract by the other party is entitled to receive, from the party who has breached the contract, compensation for any loss or damage caused to it, which directly arise from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. However, no compensation is to be given for any remote and indirect loss of damage sustained by reason of the breach. Thus, as per Indian law, indirect damages are generally not awarded.

6.3 Can damages be recovered in respect of the cost of medical monitoring (e.g. covering the cost of investigations or tests) in circumstances where the product has not yet malfunctioned and caused injury, but it may do so in future?

Yes, compensatory damages can be recovered by the injured party if any damage stems or is likely to stem from the dangerous or defective product in future. For example, in the case of *Union Carbide Corporation etc v Union of India* (1991) 4 SCC 584 the Supreme Court, in addition to the compensation, directed Union Carbide Corporation to bear the expenses towards the setting up of specialised medical and research equipment for periodical medical checkups for victims of a toxic leak. Thus, in this case it has been witnessed that the court awarded damages towards the costs of medical surveillance.

6.4 Are punitive damages recoverable? If so, are there any restrictions?

As far as the award of punitive and exemplary damages is concerned, such damages can only be allowed at the discretion of the courts and in certain exceptional cases.

6.5 Is there a maximum limit on the damages recoverable from one manufacturer e.g. for a series of claims arising from one incident or accident?

No, there is not.

6.6 Do special rules apply to the settlement of claims/proceedings e.g. is court approval required for the settlement of group/class actions, or claims by infants, or otherwise?

No, there is not.

6.7 Can Government authorities concerned with health and social security matters claim from any damages awarded or settlements paid to the Claimant without admission of liability reimbursement of treatment costs, unemployment benefits or other costs paid by the authorities to the Claimant in respect of the injury allegedly caused by the product. If so, who has responsibility for the repayment of such sums?

Usually concerned government departments are party to the litigation itself.

7 Costs / Funding

7.1 Can the successful party recover: (a) court fees or other incidental expenses; (b) their own legal costs of bringing the proceedings, from the losing party?

The claimant usually seeks the reimbursement of litigation costs, interest, etc. It is at the court's discretion to order costs to be paid to claimant if he wins a case.

7.2 Is public funding e.g. legal aid, available?

Legal aid in the form of free legal services may be availed as per the provisions of the Legal Services Authority Act, 1987.

7.3 If so, are there any restrictions on the availability of public funding?

Legal aid clinics are governed by provisions of the Legal Services Authority Act, 1987 which receives fund and has policies for its utilisation.

7.4 Is funding allowed through conditional or contingency fees and, if so, on what conditions?

Conditional or Contingency fees are not generally adopted in India.

7.5 Is third party funding of claims permitted and, if so, on what basis may funding be provided?

Third-party litigation funding is available only through legal aid and is subject to the terms as specified under the Legal Services Authority Act, 1987. The prevalent legislation Public liability Insurance Act, 1991 aims at providing for public liability insurance for the purpose of providing relief to the persons affected by an accident occurring while handling any hazardous substance for matters connected therewith. Every owner, i.e. a person who has control over handling any hazardous substance, has to take insurance policy so that he is insured against liability to give relief in case of death or injury to a person, or damage to any property, arising from an accident occurring while handling any hazardous substance. Further, the Motor Vehicles Act, 1988 makes the insurance of motor vehicles against third party risks compulsory.

8 Updates

8.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Product Liability Law in India.

In India, consumer awareness is on the rise. A separate Department of Consumer Affairs was also created in the central and state governments to exclusively focus on ensuring the rights of consumers as enshrined under the CPA. CPA aims at providing speedy and cost effective redressal to the consumers by award of compensation and other injunctive reliefs. Courts have generally awarded the claimant damages along with reimbursement of costs of litigation. Non-governmental organisations, such as the Consumer's Association of India, the Consumers' Forum and the Citizen Consumer and Civil Action Group, are actively working towards increasing awareness and informing consumers with regards to their rights and remedies under CPA.

The courts in India have now started awarding compensation and damages which are more punitive than compensatory in nature.

In *Wheels World v. Pradeep Kumar Khurana* MANU/CF/0280/2002, the complainant, a doctor by profession, complained to the respondent about deficiency in service in not repairing, free of charge, a technical fault, which occurred during warranty period, in his new Montana car and then not delivering the same for a period of four years. A sum of 30,000 rupees with interest at 18 per cent *per annum* from 2/7/1988 to 7/5/1992, was awarded as compensation, in favour of the complainant for his suffering, both professionally and otherwise, on account of non-availability of car for a period of four years. Further interest, at the same rate for the same period, was also awarded on an amount of 82,000 rupees, being the price of the car, as well as an amount of 5,500 rupees towards costs and, last but not the least, an amount of 50,000 rupees, which was deposited by the respondent on account of stay of imprisonment, was also awarded to the petitioner.

Courts in India have upheld limitation of liability clauses, which parties have specifically agreed to in the contract as recognised by the Supreme Court in *Bharathi Knitting Company v DHL Worldwide Express Courie*. (1996) 4 SCC 704. Nonetheless, such clauses may be struck down if found to be unconscionable in nature. In *Maruti Udyog v. Susheel Kumar Gabgotra*, (2006) 4 SCC 644, the manufacturer of the vehicle had stipulated a warranty clause limiting its liability to merely repair the defects found if any. In view of this clause, the Supreme Court reversed the findings of the National Commission to replace the defective goods and held that the liability of the manufacture was confined to repairing the defect. Compensation was, however, awarded for travel charges to the complainant, which was incurred due to the fault of the car manufacturer.

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Karnika Seth specialises in Cyber law, Business laws and Intellectual Property law, and is the Managing Partner of Seth Associates, an internationally networked full service Indian law firm. Ms. Seth is also the Chairperson and Founder of the Cyberlaws Consulting Centre at Seth Associates, the world's first integrated cyberlaws research, forensics and legal consulting centre. She has significant and diverse transactional experience encompassing Internet and e-commerce laws, Business laws, International Commercial Arbitration, International Trade and Intellectual Property laws and is principal legal advisor to many multinational groups, corporate houses, public and private sector companies, corporations and government entities. In 2012, she authored a book titled '*Computers, Internet and New Technology Laws*' published by Lexis Nexis Butterworths that elucidates the key developments in the field of Cyberlaws across many important jurisdictions—India, United States and European nations. Ms. Seth was conferred the *Law Day Award* in 2012 from the Chief Justice of India for authoring this book.



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