

PRODUCT LIABILITY INSURANCE : IS IT NECESSARY?

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Abstract : This paper will review the consumer protection act and also study the extent to which the product liability Insurance consumers' interests have been protected by the law. The purpose of the consumer legislation is to promote and protect the rights of the consumers.

The researcher has used case studies to analyze the protection of consumer's rights in the consumer court. This paper has also explained how product liability insurance protects business?

The paper can be used as a stepping stone for more research in the area of Insurance for consumer protection.

Keywords: Product , Liability, Insurance,Necessary.

I.INTRODUCTION

Product liability laws vary from state to state, but the basic premise is that companies have a duty to protect consumers from potential hazards, even if the damage is primarily caused by consumer negligence or deliberate misuse. Courts have held that manufacturers generally have more innate knowledge about their products, so it falls on them to assume financial responsibility for injuries and property damage.

Product liability is the area of law in which manufacturers, distributors, suppliers, retailers, and others who make products available to the public are held responsible for the injuries those products cause. Although the word "product" has broad connotations, product liability as an area of law is traditionally limited to products in the form of tangible personal property.

Objective of the study:

- 1.To review Consumer Protection Act 1986
- 2.Through judicial response, study how Consumer Protection Act protects consumers?
- 3.To study & understand how product liability Insurance protects business?

Research Methodology:

Data collection- Data has collected through books, magazines, websites, law reports, and Law journals.

Data analysis:

The researcher has used case studies to analyze the protection of consumer's rights in the consumer court.

Theories of Liability

In most jurisdictions, a plaintiff's cause of action may be based on one or more of four different theories: Negligence, breach of Warranty, Misrepresentation, and strict tort liability.

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Negligence refers to the absence of, or failure to exercise, proper or ordinary care. It means that an individual who had a legal obligation either omitted to do what should have been done or did something that should not have been done.

A manufacturer can be held liable for negligence if lack of reasonable care in the production, design, or assembly of the manufacturer's product caused harm. For example, a manufacturing company might be found negligent if its employees did not perform their work properly or if management sanctioned improper procedures and an unsafe product was made.

Breach of warranty refers to the failure of a seller to fulfill the terms of a promise, claim, or representation made concerning the quality or type of the product. The law assumes that a seller gives certain warranties concerning goods that are sold and that he or she must stand behind these assertions.

Misrepresentation in the advertising and sales promotion of a product refers to the process of giving consumers false security about the safety of a particular product, ordinarily by drawing attention away from the hazards of its use. An action lies in the intentional concealment of potential hazards or in negligent misrepresentation. The key to recovery on the basis of misrepresentation is the plaintiff's ability to prove that he relied upon the representations that were made. Misrepresentation can be argued under a theory of breach of express warranty or a theory of strict tort liability.

Strict liability involves extending the responsibility of the vendor or manufacturer to all individuals who might be injured by the product, even in the absence of fault. Injured guests, bystanders, or others with no direct relationship to the product may sue for damages caused by the product. An injured party must prove that the item was defective, the defect proximately caused the injury, and the defect rendered the product unreasonably dangerous.

Consumer protection

In addition to the above common law claims, many states have enacted consumer protection statutes providing for specific remedies for a variety of product defects.

Consumer Protection in India

The Consumer Protection Act, 1986 was enacted in India for better protection of the interests of consumers. All the provisions of the Act have come into force from 1 July 1987.

The Act was amended in 1991 and 1993. To make the Consumer Protection Act more functional and purposeful, a comprehensive amendment was carried out in December 2002 and brought into force from 15 March 2003. As a sequel, the Consumer Protection Rules, 1987 were also amended and notified on 5 March 2004. The salient features of the Act are:

(I) It covers all the sectors whether private, public, and cooperative or any person. The provisions of the Act are compensatory as well as preventive and punitive in nature and the Act applies to all goods covered by sale of goods Act and services unless specifically exempted by the Central Government;

(II) It enshrines the following rights of consumers:

(a) right to be protected against the marketing of goods and services which are hazardous to life and property; (b) right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumers against unfair trade practices; (c) right to be assured, wherever possible, access to a variety of goods and services at competitive prices; (d) right to be heard and to be assured that consumers' interests will receive due consideration at the appropriate forum; (e) right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and (f) right to consumer education;

(III) The Act also envisages establishment of Consumer Protection Councils at the central, state and district levels, whose main objectives are to promote and protect the rights of consumers; (v) To provide a simple, speedy and inexpensive redressal of consumer grievances, the Act envisages a three-tier quasi-judicial machinery at the national, state and district levels. These are: National Consumer Disputes Redressal Commission known as National Commission, State Consumer Disputes Redressal Commissions known as State Commissions and District Consumer Disputes Redressal Forum known as District Forum; and

(IV) The provisions of this Act are in addition to and not in derogation of the provisions of any other law for

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the time being in force.

DEFINITIONS

• Complainant means

An individual consumer or any voluntary consumer association, registered under the Companies Act, 1956 or under any other law for the time being in force; or the Central Government or any State Government; or one or more consumers, where there are numerous consumers having the same interest, who or which makes the complaint; or in case of death of consumer, his legal heir or representative.

• Complaint means

Any allegation in writing made by a complainant that:

1. An unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;
2. Goods bought by him or agreed to be bought by him suffer from one or more defects;
3. Services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
4. A trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price: fixed by or under any law for the time being in force; displayed on the goods or any package containing such goods; displayed on the price list exhibited by him by or under any law for the time being in force; agreed between the parties;
5. Goods which will be hazardous to life and safety when used are being offered for sale to the public; in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force; if the trader could have known with due diligence that the goods so offered are unsafe to the public.
6. Services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety; with a view to obtaining any relief provided by or under this Act.

When the price of any article is not fixed by any law or displayed on the goods or the package containing them, the Act does not contemplate any complaint being instituted in respect of the price charged on the ground that such price is excessive.

• Consumer

consumer means, implies, and includes any person

1. Who buys any "goods" for a consideration, which has been paid or promised or partly paid and partly promised, or, under any system of deferred payment, and includes
2. Any user of such goods, other than the person, who buys such goods for a consideration, as mentioned above, or,
3. Who "uses the goods" with the approval of the person, who has bought the goods, for a "consideration", or,
4. Who hires, or, avails of any "services" for a "consideration", as mentioned above, and includes
5. Any "beneficiary of such services" with the consent of the person, who has hired the services for a "consideration"

A person, who buys any goods for a consideration for resale, or for any commercial purpose, or, a person who avails of any services for any commercial purpose, cannot be called a 'consumer' under section 2(d) of the Act.

Following are a few instances of persons, held to be consumers:

1. Bank customers
2. Consumers of electricity
3. Subscribers of telephones
4. Passengers traveling by train or by bus or by aero plane

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- 5.A patient receiving medical treatment on payment of fees;
- 6.A beneficiary of services like a nominee of the insured;
- 7.A self-employed person, who buys goods and uses them himself, exclusively for earning his livelihood, is a consumer.

In case of death of patient who is a consumer, legal heirs (representatives), of the deceased will be considered as “consumer”. If the payment has been made by any person who is not a legal heir of the deceased he too will be considered as ‘consumer’.

Following are a few examples of persons, who are not held to be consumers:

- 1.A patient receiving medical treatment in a Government hospital;
- 2.A student hiring services of a private tutor.
- 3.Persons, who obtain goods for “resale”, or for “commercial purpose”.

People include

1. a firm whether registered or not;
2. a Hindu undivided family;
3. a co-operative society;
4. every other association of persons whether registered under the Societies Registration Act, 1860, or not.

•Defect means,

any fault, imperfection, or shortcoming, in the quality, quantity, potency, purity or standard, which is required to be maintained by, or under any law, for the time being in force, or as is claimed by the trader in any manner, whatsoever in relation to any goods.

•Goods means,

every kind of movable property, other than actionable claims and money; and includes stock and shares, growing crops, grass and things, attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale.

Deficiency means

Any fault, imperfection, short coming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

Service means,

Service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information but does not include the rendering of any service free of charge or under a contract of personal services.

•Unfair Trade Practice means,

a trade practice, which, for the purpose of promoting the sale, use or supply of any goods, or for the provision of any services adopts any unfair method, or unfair, or deceptive practice.

•Restrictive Trade Practice means,

any trade practice, which restricts the freedom of a consumer by forcing him to buy, hire, or avail of any goods, or services, as the case may be, as a condition precedent to buying, hiring, or availing of other goods or services. Thus, no trader can impose any such conditions for sale of a particular kind of goods or services, if a consumer wants to buy, or, hire or, avail of services of other goods and/or services.

Through judicial responses, let see how consumer protection act protect the consumer from defect in the goods.

CASES

Case 1:

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Makwana Bhartkumar Jethalal V. Punjab Automobiles and another (Gujarat, SCDRC), 2011, CTJ P.78

Complainant purchased a motor cycle for his use on 3.2.2006. Soon thereafter he took it to the service centre of opposite parties complaining of noise in the machine and giving less average. In the next fifteen months between 2.4.2006 and 9.8.2007 it had to be taken to the said service center eight more times and since then it was still lying with them. District Forum dismissed the complaint holding that the complainant failed to discharge the burden of proving the appeal. It is proved by the complainant that vehicle was defective from the very beginning from the warranty period itself. Onus thereafter shifted on the opposite parties to prove by expert evidence that it was not defective or the defects had been repaired. Though the existence of inherent manufacturing defects not proved, that would not mean that the vehicle to the complainant's satisfaction. Appeal partly allowed and the impugned order quashed. Opposite parties held liable to repair the vehicle to the complainant's satisfaction. Appeal partly allowed and the impugned order quashed. Opposite parties directed to refund the repair charges taken from the complainant and compensate him with Rs. 10,000/- for mental agony, inconvenience and hardship.

Case 2:

Zeena Giri V. Modern Life style interior and Furniture (Andhra Pradesh, SCDRC), 2011, CTJ p.719

Complainant purchased a dining table with a glass top from the opposite party. It cost her Rs. 17,000/-. Some nine months of its purchase, it burst into small pieces after a loud explosion. It took nearly 30 minutes for glass to stop bursting. Complainant's younger son even received a slight injury. District Forum dismissed the complaint. Hence appeal was filed. Opposite party contended that it never sold any dining table to the complainant and further that the furniture or crockery made of glass does not carry any warranty. However, considering the material on record held that there was deficiency in service on the part of the opposite party in not attending to the problem of the complainant.

In the result this appeal is allowed and the order of the district forum is set aside directing the opposite party to take back the defective dining table and refund an amount of Rs. 15,000 together with compensation of Rs. 3,000 and cost of Rs. 2,000 within four weeks from the date of receipt of the order.

Case 3:

Karnica (Ms.) V. Harri Hyperstore and others (UT Chandigarh SCDRC), 2011, P.695

A packet of imported Tiffany Orange Cream Wafers along with various other items purchased by the complainant from respondent no. 1. She consumed one wafer and while consuming the second wafer, she felt eating a peculiar rubbery embedded in it. She suffered dizziness and vomited thrice. She had also persistent diarrhea and was rushed to the hospital. Complaint allowed by the district forum. Respondent no. 1 directed to pay her Rs. 1,000/- as compensation. Appeal was filed for enhancement of the compensation amount. Appeal was partly allowed. As the complainant had undergone treatment in hospital it means the complainant had to go through a lot of physical and mental harassment. Due to this reason, the complainant was forced to file a complaint as well as appeal and for this, the complainant had to spend a lot of money out of her own pocket without any fault on her part. Considering the botheration the appellant had to undergo and the amount spent on this litigation, the compensation awarded by the lower forum is at lesser side. Impugnant order is modified and direction is given to pay compensation of Rs. 5000/- with litigation cost of Rs. 2000/- within one month from date of receipt of order, failing which interest @ 12% will be charged.

Case 4:

Sunil Kumar V. Tata motors Ltd. and others (Himachal Pradesh SCDRC), 2011, P.592

Engine of the truck started troubling during its warranty period itself. It was a Tata-make vehicle purchased from their authorized dealer, opposite party no. 4. At this point it had covered distance of 34292 kms in about a period of six months. Complaint dismissed by the district forum. Therefore appeal was filed. Defect in question in the vehicle cropped up within the warranty period as neither 18 months had expired nor it had covered the distance of 1,50,000 kms. Repaired by an authorized dealer. Problem persisted. Taken to the workshop of opposite party no. 4. Engine overhauled. A bill of Rs. 17,500/- handed over to the complainant. By all means a case of manufacturing defect in the vehicle. Both the opposite parties, the manufacturer and the dealer jointly and severally directed to replace the vehicle with a new one of similar description failing which to refund the amount charged along with 12% interest, Rs. 50,000/- as compensation for harassment and Rs. 20,000/- towards cost.

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Let us Review the above cases-

If there is defect in goods, a complaint can be maintained as per section 2(1) (f) & section 2(1) (i) of consumer protection Act. If defects in the goods or deficiency in the services are proved than regarding the remedies following are the provisions as per consumer protection Act, under section 14 –

If the district forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that of any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to take one or more of the following steps:

1. To remove the defect pointed out by the appropriate laboratory form the goods in question
2. To replace the goods with new goods of similar description this shall be free from any defect.
3. To return to the complainant the price or as the case may be the charges paid by the complainant.
4. 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.
5. In the above cases as defect in the goods are proved, so compensations are awarded with litigation cost.

Findings:

The purpose of the consumer legislation is to promote and protect the rights of the consumers. If the consumer is aware of the remedies available for him, then his rights are protected.

The cases listed are an example of how the consumer protection act is a very powerful tool for the consumer. Through above case analysis it has proved that consumer protection Act effectively protecting the consumers if there is defect in the goods.

The Consumer redressal agency on a complaint of defect in the goods not only settles the disputes, but also awards compensation.

From the above cases it is also proved that product liability is the area in which manufacturers, distributors, suppliers, retailers and others who make products available to the public are held responsible for the losses.

Recommendations for Manufacturers or Traders:

Product liability insurance protects the business from claims related to the manufacture or sale of products, food, medicines or other goods to the public. It covers the manufacturer's or seller's liability for losses or injuries to a buyer, user or bystander caused by a defect or malfunction of the product, and, in some instances, a defective design or a failure to warn. When it is part of a commercial general liability policy, the coverage is sometimes called products-completed operations insurance.

There are generally three types of products "claims" a company may face:

- **Manufacturing or Production Flaws-** A claim that some part of the production process created an unreasonably unsafe defect in the resulting product. Recent claims against Chinese manufacturers regarding the presence of dangerous chemicals in their products are an example of this type of claim.
- **Design Defect-** A claim that the design of the product is inherently unsafe. The most memorable example is the series of Pinto car cases against Ford in the 1970's.
- **Defective Warnings or Instructions-** The claim that the product was not properly labeled or had insufficient warnings for the consumer to understand the risk. The McDonald's "coffee case" is an example.

The damages awarded in these claims include medical costs, compensatory damages, economic damages, and, in some instances, attorneys' fees, costs and punitive damages.

All too often, resellers, gray market commercial sellers, and retailers fail to secure this coverage. The logic is that, since they did not "manufacture" anything, the coverage is not necessary. However, manufacturers are not the only ones subject to product liability exposure, retailers and wholesalers are often brought into a lawsuit for alleged negligence by the consumer.

If your company provides any products to the consuming public, then your company needs product liability or completed-operations coverage. In most cases, some form of this coverage will be present in the standard commercial general liability or business owners' policy. You will need to confirm this with your insurance professional. You will want to have a clear understanding of what is covered (for example, some policies will cover economic damages, but not punitive or statutory damages).

Finally, the premiums on such policies are based upon the type of product, volume of sales, and the

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role of the insured in the process. Thus, underreporting the volume of sales may seem like a good way to lower premiums or the idea may be to insure only a part of the sales. Don't under report or try to insure less than the actual amount of sales. This is because there is usually substantial underinsurance penalties applied when the insured underinsures. On the other hand, you will want to make absolutely sure that your products are properly identified.

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