

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 2515 OF 2017**

(Against the Order dated 06/09/2017 in Complaint No. 208/2015 of the State Commission  
Telangana)

1. MANDA NIRMALA KUMARI

W/O. MR. ARTHUR MOSE. R/O. HOUSE NO.6-3-1140/F1,  
HOUSE NO.6-3-1140, BS MAQTA, BEGUMPET.

HYDERABAD-16

.....Appellant(s)

Versus

1. SENIOR STATE MEDICAL COMMISSIONER & 2 ORS.  
EMPLOYEES STATE INSURANCE CORPORATION, DOOR  
NO. 5-9-213, MAIN ROAD, ADARSH NAGAR-HILL  
FORT, OPP. NEW MLA QUARTERS,  
HYDERABAD.-500063  
TELANGANA

2. .

.

.

3. .

.

.

4. THE SENIOR STATE MEDICAL COMMISSIONER.  
EMPLOYEES STATE INSURANCE CORPORATION, 108,  
PANCHADEEP BHAVAN, JOSHI MARG, LOWER PAREL.  
MUMBAI.

5. THE MEDICAL COMMISSIONER.  
EMPLOYEES STATE INSURANCE CORPORATION. CIG  
MARGH.  
NEW DELHI.

6. THE SENIOR STATE MEDICAL COMMISSIONER,  
EMPLOYEES STATE INSURANCE CORPORATION, 108,  
PANCHADEEP BHAVAN, N.M. JOSHI MARG, LOWER  
PAREL,  
MUMBAI  
MAHARASHTRA

.....Respondent(s)

**BEFORE:**

**HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER**

FOR THE APPELLANT : MR. VEDALA HENRY, ADVOCATE

FOR THE RESPONDENT : MR. AMIT KUMAR, ADVOCATE FOR R-1, 2 & 3

**Dated : 11 July 2024**

**ORDER**

1. The present First Appeal (FA) has been filed by the Appellant against Respondent(s) as detailed above, under section 19 of Consumer Protection Act 1986, against the order dated 06.09.2017 of the State Consumer Disputes Redressal Commission, Telangana, Hyderabad (hereinafter referred to as the 'State Commission'), in Consumer Complaint (CC) no. 208/2015 inter alia praying to pass orders allowing the prayers made in CC/208/2015 and pass order awarding a further compensation of Rs.70,00,000/-.

2. The Appellant was Complainant and the respondent(s) were OPs in the said CC/208/2015 before the State Commission. Notice was issued to the Respondents. Respondents filed counter affidavit on 29.09.2022; Parties filed Written Arguments/Synopsis on 21.02.2022 (Petitioner/Complainant) and 23.11.2023 (Respondents/OPs) respectively.

3. Brief facts of the case, as emerged from the FA, Order of the State Commission and other case records are that:-

- i. The complainant, employed as a nurse at a private hospital in Hyderabad, is a member of the Employees State Insurance Corporation (ESIC), with medical insurance benefits applicable to her entire family. In 2011, her daughter, late Shanthi Ayani, aged 25, experienced frequent fever and cough, requiring treatment at various hospitals in Hyderabad, with ESIC making payments to these local hospitals. Despite considerable expenses incurred by the complainant, her daughter's health did not fully recover, and subsequent analysis revealed she was suffering from blood cancer. Following tests at Hyderabad, Christian Medical College in Vellore, and Tata Memorial Centre in Mumbai, it was recommended that her daughter undergo Bone Marrow Transplantation (BMT). Tata Memorial Centre provided an estimate of Rs.50 lakhs for the treatment. The complainant sought assistance from the opposite parties for her daughter's treatment. Although OP-1 issued a letter of credit to Tata Memorial Centre on 20.11.2012, Tata Memorial Centre requested the amount be deposited prior to treatment. Subsequently, OP-2 issued another letter of credit on 18.04.2013, requesting approval from OP-3 (Medical Commissioner, ESIC, New Delhi) to deposit the estimated amount.
- ii. Despite repeated requests and representations, OP-3 did not provide timely approval for the required amount to be deposited with Tata Memorial Centre. An enquiry initiated by OP-2 into the complainant's contribution confirmed the genuineness of her case. The complainant also addressed representations to the Hon'ble Prime Minister and the National Human Rights Commission. As her daughter's health deteriorated, the complainant filed WP No.29570 of 2013 before the Hon'ble High Court, seeking a direction to release the advance amount to Tata Memorial Centre. The High Court, through WPMP No.36729 of 2013 dated 10.10.2013, granted an interim direction to the

OPs to approve and sanction the advance amounts. Despite issuing a notice on 12.10.2013 to comply with the High Court's order, the OPs intentionally ignored it, preventing her daughter from undergoing treatment at Tata Memorial Centre. Consequently, her daughter was admitted to Apollo Hospital for chemotherapy on 21.10.2013, where she passed away on 21.11.2013. The complainant subsequently filed a contempt case against the OPs for willful disobedience of the High Court's order.

4. Vide Order dated 06.09.2017, the State Commission has allowed the complaint and directed OPs (OP-1, 2 & 3) to pay jointly and severally compensation of Rs. 5,00,000/- to the complainant together with costs of Rs. 10,000/-.

5. Appellants has challenged the Order dated of the State Commission mainly/inter alia on following grounds:

- i. The Order passed by the State Commission is arbitrary, unjust, and against the principles of natural justice. The State Commission did not adequately appreciate the factual and legal aspects of the case to award just and suitable compensation to the complainant, considering the apparent negligence on the part of the OPs. Furthermore, while the State Commission acknowledged the negligent and indifferent attitude of OP-3, which led to the death of the complainant's daughter, the awarded compensation of Rs. 5,00,000/- is inappropriate considering the severity of the negligence and indifference exhibited by the chief administration of the ESI Corporation (OP-3).
- ii. Additionally, the State Commission failed to consider the discrimination shown by OP-3 in issuing orders to deposit advance amounts for other patients while intentionally avoiding to deposit the required advance amount for the complainant's daughter's treatment. This discrimination occurred under the pretext of conducting two inquiries before issuing a Letter of Credit for the estimated treatment cost of Rs.50,00,000/-. OP-3 purportedly withheld the release of the advance amount necessary to commence treatment.
- iii. The State Commission failed to recognize that the compensation and damages awarded should not only reflect the negligence, indifferent attitude, and discrimination of the OPs but also the agony and suffering endured by the complainant's daughter on her death-bed and by the complainant himself. The compensation awarded should appropriately address what was avoided by the OPs due to their negligent and indifferent behavior, and should serve as a deterrent to ensure that such behavior is corrected and not repeated. The compensation of Rs.75,00,000/- is justified in this context.

- iv. Furthermore, the award against the negligence and indifference of the main respondent, OP-3, should be more significant than awards typically given in cases of motor vehicle accidents or medical negligence by doctors. This is because the negligence of OP-3 resulted in the death of the complainant's daughter and involved deliberate avoidance and withholding of necessary funds. The attitude of OP-3 goes against the spirit and objectives of the ESI Act, and therefore, the awarded compensation must be exemplary and substantial to deter such behavior in the future.
6. In the Counter affidavit filed by OPs/Respondents, they have stated as follows:-
- i. The Employees' State Insurance Act, 1948, is a social security legislation aimed at providing medical care and cash benefits to workers in various sectors. The scheme is financed through contributions from both employers and employees, with the ESI Corporation responsible for administering the scheme. The Petitioner, an insured woman working at Swapna Health Care in Hyderabad, details the medical treatment sought for her dependent daughter suffering from Blood Cancer AML. The daughter was referred to Tata Memorial Center, Mumbai, for Allogenic Stemcell Transplantation, which was estimated to cost Rs. 50,75,000/-. Approval for the treatment was sought and received from the relevant authorities. However, doubts arose regarding the petitioner's entitlement to benefits under the ESI Act, leading to an investigation into her eligibility. After investigation by the Social Security Officer and subsequently by Vigilance (South Zone), it was confirmed that the petitioner was eligible for benefits.
- ii. Despite the approval for treatment being issued on 18.04.2013, delays ensued due to the ongoing investigation. The steps were taken to release the amount for treatment at Tata Memorial Centre, Mumbai, and the empanelled hospital in Hyderabad referred the patient to Mumbai for treatment. The hospital requested an advance payment of Rs. 50.75 lakhs for the patient's treatment, adhering to the standard procedure for expenditure approval and release. During the advance sanction process, verification of the insured woman's eligibility for ESI scheme benefits was necessary. Once eligibility was confirmed, the advance amount was sanctioned and a cheque was issued to Tata Memorial Centre, Mumbai. Subsequently, the petitioner filed a writ petition before the Hon'ble Court of Andhra Pradesh, resulting in an interim order directing immediate approval and sanction of the advance amount for the treatment at Tata Memorial Centre, Mumbai. In response to a vigilance report, further investigation was conducted, and it was concluded that there was no fraud or malfeasance.
- iii. Efforts were made to expedite the process, including reminders and requests for immediate action from the regional and state medical commissioners. However, despite these efforts, the petitioner's daughter passed away before collecting the cheque due to

delays in the procedural aspects and ongoing investigations. The deceased dependent received the necessary treatment at various hospitals, including those affiliated with the corporation, and a substantial amount had already been spent on her treatment. The delays were attributed to procedural complexities and the involvement of officers from different states, and sincere apologies were offered for any inconvenience caused.

- iv. The Headquarters Office conveyed the sanction of the required amount for Kum. M. Shanti Ayani's case on 03.12.2013, to facilitate advance payment. Upon receipt of this sanction, a bill dated 06.12.2013, was prepared. It was noted by the Vigilance that the upper limit for coverage under ESI was Rs. 15,000/- per month from May 2010 onwards, and any increase in salary would result in the insured woman being out of coverage. Additionally, it was reported that Smt. Nirmala Kumari became aware of her daughter's cancer diagnosis in January 2011, which was confirmed by medical records. The combined reading of these aspects suggested that the employer's actions were aimed at ensuring continuous ESI coverage for the insured woman and her family members, thereby making them eligible for medical and other benefits under the ESI Act. The Vigilance report from the South Zone was forwarded to the Headquarters Office on 22.08.2013. The Deputy Director (Vigilance, South Zone) in his report stated that the insured woman was registered with the employer in 2009, and her details were entered into the ESI Corporation portal in 2011 during the migration process.
- v. Records indicated that the insured woman was covered from October 2008 onwards but went out of coverage due to an increase in her salary from April 2009 to April 2010, following the increase in the ceiling limit effective from 01.05.2010. The patient underwent chemotherapy treatment at Apollo Hospital, Jubilee Hills, on 21.10.2013, and passed away on 21.11.2013. The Corporation had already spent an amount of Rs. 48,84,085/- towards her treatment at Apollo Hospital, Hyderabad. There was no intention on the respondent's part to avoid payment to the patient. Any delays were attributed solely to procedural aspects involving officers from three states.

7. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the FA, based on their FA/Reply, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

- i. The counsel for Complainant/Petitioner asserted that the State Commission acknowledged that respondent/OP-3 took one year and one month to deposit the required 10% of the granted amount in cash, despite it being crucial to save the life of the complainant's daughter, who was suffering from blood cancer. Additionally, the State Commission found that the negligent and indifferent attitude of OP-3 led to the

unfortunate demise of the complainant's daughter. However, it did not adequately consider the severity and extent of negligence when awarding the relatively modest compensation of Rs.5,00,000/-. It is imperative for the National Commission to recognize that the conduct of OP-3 blatantly opposes the spirit and objectives of the ESI Act. Therefore, the awarded compensation should serve as a deterrent and be substantial.

- ii. The counsel further argued that the compensation for negligence and indifference by the main respondent/ OP-3, should surpass that awarded in cases of motor vehicle accidents or medical negligence by doctors. While motor vehicle drivers may have limited time to react, the negligence in this case involved deliberate actions over an extended period, leading to tragic consequences. The compensation awarded must not only address the negligence and indifference of the OPs but also aim to relieve the agony and suffering endured by the complainant's daughter and the profound grief experienced by the complainant. The National Commission must take cognizance of the discrimination demonstrated by O.P.No.3, who failed to release the advance amount for treatment despite issuing orders for other patients. This deliberate negligence warrants significant compensation to rectify the harm caused.
  
- iii. The counsel for Respondents/OPs asserted that the Employees' State Insurance Act 1948 is a Social Security legislation designed to provide medical care and cash benefits in various contingencies such as sickness, maternity, disablement, and death due to employment injury. It covers workers employed in various sectors including shops, hotels, restaurants, cinemas, road motor transport undertakings, newspaper establishments, and educational and medical institutions, provided their monthly wages do not exceed Rs. 15,000/- per month. The ESI Scheme is funded through contributions from both employers and employees, with the Principal Employer responsible for depositing the respective contributions at a rate of 1.75% of the wages for employees earning up to Rs. 15,000 per month.
  
- iv. In the present case, the petitioner/Complainant, an insured woman working at M/s Swapna Health Care (Swapna Nursing Home) in Hyderabad, has a dependent daughter suffering from Blood Cancer "AML." Upon recommendation by the Oncologist at ESI Hospital, Sanathnagar, the patient was advised to undergo "Allogenic Stemcell Transplantation" at Tata Memorial Center, Mumbai. The Senior State Medical Commissioner, Mumbai, forwarded the estimate for the treatment to the Medical Commissioner, ESI Corporation, New Delhi, for approval and sanction of the required amount. Approval letters were issued for the referral and treatment at Tata Memorial Center, with the request for sanction of advance payment, valid until 31.12.2013.

- v. The upper limit for coverage under ESI from May 2010 onwards was Rs. 15,000/- per month. Any increase in salary would render the insured woman out of coverage. The Vigilance report suggested the employer's actions aimed at ensuring continuous ESI coverage for the insured woman and her family members. Records indicate that the insured woman was covered under ESI from October 2008 onwards but went out of coverage due to an increase in her salary from April 2009 to April 2010, in line with the increased ceiling limit effective from 01.05.2010.
- vi. The counsel for OPs further asserted that the complainant filed WPN0.29570/2013 before the Hon'ble Court of A.P., which, on 10.10.2013, issued an interim order in WPMP No.36729 of 2013, directing the OPs to immediately approve and sanction the advance amount as per the entitlements of the complainant for the treatment of her daughter at Tata Memorial Centre, Mumbai. This order was forwarded to the Hqrs. Office for information and further action on 11.10.2013. The Hqrs. Office directed the Regional Director, Andhra Pradesh, Hyderabad, via letter dated 21.10.2013, to investigate the case and submit a report. The senior State Medical Commissioner, Mumbai, once again wrote to the Medical Commissioner at New Delhi on 28.10.2013 for the sanction of the advance. Subsequently, the Regional Director, Hyderabad, re-investigated the case and submitted the report to the Hqrs. Office on 29.10.2013, opining that there was no fraud or malafide intention regarding the coverage of the Insured Woman.
- vii. The Senior State Medical Commissioner, Mumbai, reiterated the need for advance payment in the case of Kum. M. Shanti Ayani on 28/29.10.2013. The Senior State Medical Commissioner, Hyderabad, also reminded the Hqrs. Office on 04.11.2013 to expedite the decision-making process in compliance with the Hon'ble Court orders. On 03.12.2013, the Hqrs. Office conveyed the sanctioned amount for Kum. M. Shanti Ayani's case, and a bill dated 06.12.2013 was prepared and sent to Finance & Account (O/o State Medical Commissioner, Hyderabad) for issuing a cheque in favor of M/s Tata Memorial Centre, Mumbai. Despite diligent efforts to expedite the process, including contacting Kum. Shanti Ayani's father, who indicated he would collect the cheque on Monday (09.12.2013), he failed to appear as promised. Unfortunately, due to this delay, Kum. Shanti Ayani passed away on 21.11.2013. It is submitted that the Corporation had already spent a significant amount towards her treatment at Apollo Hospitals, Jubilee Hills, Hyderabad. There was no intention on the OPs' part to avoid payment to the patient, and any delays were due to procedural aspects involving officers of three states.

8. The Appellant has challenged the order of the State Commission only with regard to quantum of compensation. In her complaint, she has sought a compensation of Rs.75 lakhs while the State Commission awarded only Rs.5 lakhs. Hence, the limited question to be seen in the present First Appeal is with respect to the quantum of compensation, as question of deficiency in service on the part of the Respondents has already been decided by the State Commission and this order has not been challenged by the Respondents, and hence has become final against the Respondents herein. During the hearing on 12.02.2024, Counsel for the Appellant herein stated that the Appellant would be willing to use a major portion of the compensation awarded by this Commission for the public welfare by way of creating a trust in the memory of their deceased daughter and such amount/interest on such amount, which can be put as corpus, can be used for helping poor girls for their education/health. Hence, the Appellant herein was directed to file an Affidavit their proposal in this giving broad contours of such a proposal. In compliance of the said order, the Appellant filed an Affidavit dated 26.02.2024 expressing their willingness to utilize some amount of the compensation for charitable purposes by creating a trust with certain corpus fund out of the compensation to help in providing education to poor girls etc. The Counsel for the Appellant submitted during the final hearing on 19.03.2024 that as the financial condition of the Appellant is not that good, they may be given at least some amount of additional compensation by this Commission and the rest can be used as corpus for the proposed trust for charitable purposes. The Counsel for Respondents on the other hand submitted during the hearing that in case this Commission decides to accept the request of the Appellant for putting some amount compensation as corpus in the proposed trust, a representative of the respondent organization i.e. ESI Corporation, especially the officer based at Hyderabad, may be opted as one of the member of the proposed trust.

9. In the Affidavit dated 26.02.2024 (filed on 28.02.2024), the Appellant has stated as follows:-

*“ 2. I humbly submit that on 12-02-2024 my counsel has submitted arguments on my behalf. During the arguments, my counsel submitted that I have an intention to do charitable work creating a Trust with certain Corpus Fund out of the compensation amount that may be enhanced by this Honourable Commission in the above said appeal in the memory of my deceased daughter, Shanthy Ayani.*

*3. I humbly submit that remembering deceased my daughter who waited eagerly for necessary treatment with a hope to live, I wish to help in providing education to poor girls who long to study, to help provide medical treatment for those poor and helpless suffering sick people, to provide food and clothing to those who are really in need. Further to do any deed or act of charity in times of need and necessity in the circumstances that may arise by natural calamities, To provide humanitarian aid and help in the situations and circumstances that may come in times dire need.*



4. *I humbly submit that I believe that doing such charitable work will console and alleviate our agony and suffering for the loss of my only daughter due to the negligence of those respondent officials. Though I wish to do such charitable work by helping the suffering and need people in different respects, I am not in good position financially. If this Honourable National Commission enhances the prayed compensation causing justice to the life of my deceased daughter, I would be in a position to do meaningful charitable work to help at least one life to live, if not many lives, and to help suffering people by my intended charitable work. For such charitable work, the reason and source may be the death of my daughter and the justice being done by this Honourable National Commission only.”*

10. In this case, the State Commission partially allowed the complaint awarding the compensation of Rs. 5 lakh against Rs. 75 lakh sought by the complainant in his complaint. The FA has been filed for enhancement of the compensation from Rs. 5 lakh to 75 lakh. The Respondents have not challenged the Order of the State Commission hence it has become final as against them. During the hearing it was stated that the daughter of the complainant was undergoing treatments for blood cancer at TATA Memorial Centre, Mumbai and they were eligible for medical expenses from ESI Corporation (the Respondent). The Appellant has drawn our attention to letter dated 20.11.2012 from ESI Corporation addressed to Director, TATA Memorial Hospital, whereby they have asked the TATA Memorial Hospital to give treatment to the patient/ daughter of the Appellant herein) on credit basis and submit the Bill. They have also drawn our attention to estimate dated 27.11.2012 amounting to Rs.50,75,000/- approval to TATA Memorial Centre was granted vide letter dated 18.04.2013.

11. As per this estimate dated 27.11.2012 charges at serial no. 1 and 2 amounting to Rs.10,75,000/- were to be deposited before the search for unrelated donor while the remaining 40 lakh mentioned at serial no. 3a and 3b was to be deposited once a potential unrelated donor was identified. Approval was granted by ESI vide letter dated 18.04.2013. However, no amount was paid (not even Rs.10.75 lakh). As per letter dated 02.07.2013, proposal was sent by the Office of Senior State Medical Commissioner ESI Corporation, Mumbai to Medical Commissioner ESIC, Headquarters New Delhi seeking approval and sanction of advance amount of Rs. 50.75 lakh (along with four other cases). Thereafter, vide letter dated 03.07.2013 (page 83) Senior State Medical Commissioner, Mumbai issued approval to TATA Memorial Centre, Mumbai but no amount was deposited to TATA Memorial Centre. The Appellant have approached the High Court of Andhra Pradesh and there was a direction issued to the Respondent to immediately approve and sanction the advance amount as per the entitlement of the Appellant for treatment of her daughter. However, due to one or the other reason the Respondent Corporation issued a cheque of Rs. 50.75 lakh only on 06.12.2013, but unfortunately the daughter of the Appellant died on 21.11.2013 i.e. about two weeks before the date of issuance of the said cheque and due to the delay on the part of the Respondent the daughter of the Appellant could not get required treatment.

12. The eligibility of the Appellant to receive the amount of Rs.50.75 lakhs from the Respondents, which was ultimately sanctioned by the Respondents and Demand Draft/Cheque dated 06.12.2013 for Rs.50.75 lakhs was prepared for disbursing to the Appellant towards treatment expenses of her daughter is not in dispute. Unfortunately, daughter of the Appellant died on 21.11.2013. It was after more than one year of the request for release of the said amount that such a payment was made ready. The only justification given for such an inordinate delay in sanctioning and disbursing the amount is that the doubt arose regarding Appellant's entitlement/eligibility for availing benefits under ESI Scheme leading to doubts of her eligibility, ultimately the investigations confirmed that Appellant was eligible for the amount. However, it was too late by the time, the amount was made ready for disbursement. Has this money been released much earlier, the possibility of the daughter of the Appellant herein surviving/living longer could have been possible. By no stretch of imagination, such an inordinate delay for more than one year in sanctioning/releasing the amount, to which the Appellant was otherwise eligible, can be justified. Hence, the Respondent herein as an organization i.e. Employees State Insurance Corporation (ESIC) and its officers at various levels/ in different offices, at Hyderabad/Mumbai/Head office at New Delhi are responsible for such an inordinate delay. Hence, we confirm the findings of the State Commission with respect to deficiency in service on the part of the Respondent organization ESIC as well as its officials and hold that the Respondents were deficient in providing services entitling the Appellant herein to compensation. However, in the given facts and circumstances of the case the compensation of Rs. 5.00 lakh only awarded by the State Commission is too meagre to alleviate the mental agony and suffering of the Appellant, who ultimately lost her daughter on account of inordinate delay on the part of Respondents.

13. In **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. vs DLF Southern Homes Pvt. Ltd. & Ors.** (2020) 16 SCC 512, the Hon'ble Supreme Court held that the word "compensation" has a broad connotation, including actual or expected loss and extending to compensation for physical, mental, or emotional suffering, insult, injury, or loss. The provisions of the Consumer Protection Act (CPA) enable a consumer to claim compensation and empower the commission to redress any injustice done.

14. In **Charan Singh v. Healing Touch Hospital** (2000) 7 SCC 668, the Hon'ble Supreme Court held that Consumer Forums, while quantifying damages, must strive to serve justice by awarding compensation that not only compensates the individual but also aims to change the service provider's attitude. The calculation of damages depends on the specific facts and circumstances of each case, and no universal rule can be applied. Compensation must be assessed based on legal principles and moderation, with the Consumer Forum determining what is reasonable and fair. Additionally, the quality of the respondent's conduct in cases of proven negligence is crucial. The National Consumer Forum can award compensation without pecuniary limits, unlike the District Forum and State Commission, which have jurisdictional limits of Rs 5.00 lakhs and Rs.20 lakhs respectively under the Consumer

Protection Act, 1986. The Court emphasized that a mathematical calculation of salary alone should not determine the compensation's realism or excessiveness.

15. In **Suneja Towers (P) Ltd. v. Anita Merchant**, (2023) 9 SCC 194, the Hon'ble Supreme Court held that the quantum of compensation and punitive damages depends on the facts and circumstances of each case. When awarding such damages, the forums should specify all relevant factors and the basis for quantification. The Court noted that awarding compound interest is neither envisaged by the statute nor supported by any contractual terms or usage between the parties.

16. In the case of **Hyundai Motor India Ltd. v. Shailendra Bhatnagar**, 2022 SCC OnLine SC 483, the Hon'ble Supreme Court addressed the issue of damages awarded against the appellant, acknowledging that they may exceed the actual loss suffered by the respondent and may not accurately reflect the monetary loss incurred. However, the Court noted that Section 14 of the Consumer Protection Act, 1986 permits the awarding of punitive damages. The Court emphasized that punitive damages can be justified when the defect in question has the potential to cause serious injury or significant loss to the consumer, especially concerning the safety features of a vehicle.

17. In the case of **Magma Fincorp Ltd. v. Rajesh Kumar Tiwari**, (2020) 10 SCC 399, the Hon'ble Supreme Court delineated the principles regarding damages in cases of breach of contract. When the damages caused by a breach are severe and extensive, the party in breach may be required to compensate the party not in breach to restore them to their position before the breach occurred. Additionally, apart from compensatory damages, punitive damages or nominal damages may be imposed on the party in breach. Punitive damages are awarded when the breach is reprehensible and warrants punishment, while nominal damages are awarded when there is no real harm caused by the breach. The proviso to Section 14(1)(d) of the Consumer Protection Act, 1986 empowers the District Forum to grant punitive damages when deemed fit. The Court emphasized that punitive damages should only be granted in exceptional circumstances, where the actions of the party in breach are so reprehensible that punishment is warranted. For instance, if a financier wrongfully repossesses without notice, causing extensive pecuniary loss or damage to the hirer's goodwill and reputation, punitive damages may be awarded by a forum constituted under the Consumer Protection Act.

18. After giving a thoughtful consideration to the entire facts and circumstances of the case and the inordinate delay in sanctioning/disbursing the amount to which the Appellant herein was entitled, which ultimately led to the untimely and unfortunate death of the daughter of the Appellant, we are of the considered view that compensation of Rs.5 lakhs awarded by the State Commission is too meagre. The Appellant in the present case definitely deserve a much higher compensation. Its true that no amount of compensation can fill the void created

in the life of the Appellant and her family on account of loss of their daughter. Keeping in view their voluntary proposal to create a trust in the name and memory of their deceased daughter for the welfare of the girls by utilizing the compensation amount, we are inclined to substantially enhance the compensation in this case. Considering that an amount of Rs.50.75 lakhs was ultimately sanctioned for disbursal, we fix this amount itself as a total amount of compensation to be payable on account of serious deficiency in service on the part of the Respondents. This amount shall be payable by the Respondents with simple interest @ 6% p.a. with effect from the date it was sanctioned and bill/ Cheque was prepared i.e. 06.12.2013 till the date of actual payment by the Respondents herein. The total amount payable as per this order shall be deposited by the Respondent ESI herein with the Registry of this Commission within 45 days from today, failing which, amount payable at the expiry of 45 shall carry interest @9% p.a. Out of the total amount so deposited, Registry shall immediately release an amount of Rs.15.00 lakhs to the Appellant herein. The Registry shall put the balance amount in the interest bearing fixed deposit with a Public Sector Bank as per the prevailing practice. As soon as the trust is registered and intimation in this regard is received from the Appellant and the District Magistrate/District Collector concerned, Registry shall release the balance amount from out of the amount deposited by the Respondents, along with up to date interest, in the name of the trust through a demand draft. Liability of Respondents -1 to 3 shall be joint and several.

19. The utilization of the compensation amount awarded as per this order will be subject to following conditions:-

19.1 Out of the total amount of compensation payable as per para 16 above, i.e. Rs.50.75 lakhs along with interest @6% p.a., an amount of Rs.15 lakhs shall be paid to the Appellant herein, which she will be free to use for any purpose deemed fit/necessary. The balance amount (hereinafter referred to as the "Trust Corpus Amount/Corpus Fund") shall be put as a corpus in a trust to be set up in the name/memory of the deceased daughter of the Appellant for the welfare activities of the poor girls of the area/District/State, like their education, health etc.

19.2 Following broad principles/conditions will be followed with respect to the creation/running of the trust:

- i) A public trust shall be registered under the appropriate Act of the State Government in the State/District, where the Appellant is presently residing or intends to reside permanently. The trust shall be named suitably with the name of the deceased daughter of the Appellant subject to the conditions of Registration.

ii) District Magistrate/District Collector of the District, where the trust is registered, shall be the Ex-officio Chairperson of the proposed trust with a minimum of two members of the family of the deceased, including the Appellant herein, to be the trustees. Further, Sr. State Medical Commissioner, ESI, Hyderabad or his representative, not below the rank of a gazette officer, as nominated by the Sr. State Medical Commissioner, Hyderabad, shall be one of the trustee. Rest of the composition of the trust can be decided by the District Magistrate/District Collector in consultation with the family members of the deceased, keeping in view the provisions of the law. The Trust will constitute a Governing Body/Executive Committee, in accordance with Trust Rules, with District Magistrate/District Collector as the Ex-officio Chairperson. Atleast one member of the family of the deceased shall have an executive role in the trust.

iii) The Trust Corpus Amount shall be kept in interest bearing fixed deposits with Banks/other income earning securities as per the decision of the Governing Body/Executive Committee of the trust. Only interest received/income earned from corpus fund shall be utilized for benefit/welfare activities of the poor girls of the area in the sectors of health, education, social security or such other related sectors as decided by the Governing Body/Executive Committee of the trust in accordance with scheme(s) formulated in this regard. The principal corpus fund shall not be utilized for such activities. A maximum of 10% of the interest/income amount can be utilized for various administrative purposes of running the trust, including remuneration of some officials engaged on part time basis, if considered necessary. In the first year, as there may be no income from interest/earnings, to facilitate the process of registration of the trust, making it operational, an amount, not exceeding Rs. 2.00 lakhs, subject to actual need, out of the proposed total corpus fund can be utilized. The Trust will be free to receive donations and spend the same for the welfare activities as decided by the Governing Body/Executive Committee.

iv) The trust should be got registered within a maximum of three months from the date of this order after completing all the required formalities in this regard. The District Magistrate/District Collector will take the initiative in this regard in consultation with the family members of the deceased, who will contact the District Magistrate/District Collector immediately. Registry shall also send a copy of this order directly to the District Magistrate/District Collector concerned for compliance and Report and follow up the matter till the time Trust is registered and amount deposited with the Registry is released.

20. First Appeal is allowed accordingly as per above stated orders and order of the State Commission stands modified to that extent.

21. The pending IAs in the case, if any, also stand disposed off.

.....  
**DR. INDER JIT SINGH**  
**PRESIDING MEMBER**