

**IN THE CONSUMER DISPUTES REDRESSAL COMMISSION,
THRISSUR**

Present : Sri. C.T. Sabu, President
Smt. Sreeja. S., Member
Sri. Ram Mohan R., Member

27th day of January 2025
CC 620/15 filed on 12/10/2015

Complainant : T.M. Lorence, VI/437, Thalakkottoor House,
P.O. Mattom, Thrissur.
(By Adv. A.D. Benny, Thrissur)

Opposite Parties : 1) Proprietor, Sree Guruvayoor Indane Service,
P.O. Guruvayoor, Thrissur.
2) The Chief Area Manager, Indian Oil Corporation Ltd.,
Kozhikode Area Office, 2nd Floor, PMK Towers,
Civil Station Post, Wayanad Road,
Kozhikode – 673 020.

Amended as per IA 701/16
Dtd. 15/11/16 3) United India Insurance Co. Ltd., Divisional Office,
No.17, 226, Canada Building, Dr. D.N. Road, Fort,
Mumbai – 400 001.
(OP 1 By Adv. Beky M Perumpillil, Cochin
OP 2 By Adv. P. Mohanakrishnan, Thrissur
OP 3 Ex-parte)

FINAL ORDER

By Sri. Ram Mohan R, Member :

1) Complaint in brief, as averred :

The complaint is filed under Section 12(1) of the Consumer Protection Act, 1986. The complainant, statedly, is a consumer of the 1st and the 2nd opposite parties, the Consumer number being 20907. The 1st opposite party is the proprietor of Sree Guruvayurappan Indane Services, whereas the 2nd opposite party is the Chief Area Manager, Indian Oil Corporation Ltd., Kozhikode Area Office, Kozhikode. M/s United India Insurance Company Ltd., Divisional Office, Mumbai was additionally impleaded as the 3rd opposite party, at the instance of the 2nd opposite party (IA 701/16). The complainant alleges

that the LPG cylinder made available to him by the 1st and the 2nd opposite parties, thunderously exploded at 2.30 a.m. on 07/12/13. The LPG cylinder in question was claimed to have been kept unused by the complainant. The explosion which caused extensive damage to the complainant's house, was duly informed to the 1st and the 2nd opposite parties and they statedly visited the premises and photographs taken. The complainant alleges that the explosion was the result of the 1st and the 2nd opposite parties' supply of a defective LPG cylinder to him. The complainant claims to have been inflicted with a loss worth Rs.2.5 lakh which the opposite parties statedly agreed to make up. The complainant alleges that the opposite parties failed to carry out their promise of paying the compensation. The lawyer notice caused by the complainant statedly elicited no result. Hence the complaint. The complainant prays for an order directing the opposite parties to pay him compensation worth Rs.2.5 lakh, apart from costs.

2) NOTICE :

The Commission having issued notice to the opposite parties, the 1st and the 2nd opposite parties appeared and filed their written version before the Commission. The 3rd opposite party who was impleaded as per the Commission's order dtd.15/11/16 (IA 701/16), failed to file their written version before the Commission, despite their having received the Commission's notice to that effect. Proceedings against the 3rd opposite party were seen resultantly set ex-parte.

3) Version of the 1st opposite party :

The 1st opposite party does not dispute the complainant's being a consumer of theirs and admits that the LPG cylinder in question was delivered by them to the complainant on 04/11/2014. The 1st opposite party affirms that the said cylinder that they delivered to the complainant was defect-free at the

time when it was delivered to him. The LPG cylinder is claimed to be delivered to the complainant after performing all the pre-delivery checkings. They also allege that the LPG cylinder in question was kept in a shed adjacent to the complainant's house and therefore claims that no damage was caused to the complainant's house. They also dispute the quantum of compensation claimed by the complainant. The 1st opposite party, inter-alia, contends that the 2nd opposite party is only an employee of the manufacturer company named Indian Oil Corporation Ltd and that the complaint is bad in law as the manufacturing company with which the complainant bears privity of contract, is not impleaded as a party in the complaint.

4) Version of the 2nd opposite party :

The 2nd opposite party - Chief Area Manager of the manufacturing company, does also not dispute the complainant's being a consumer of theirs. They also admitted the occurrence of the blast, as well. The 2nd opposite party states that they, on investigation, apprehend that a spark occurred due to electrical short circuit, ignited the leaked LPG and caused fire and this in turn heated the LPG cylinder and caused explosion of the same. It is also their stance that they bear a public liability insurance policy with M/s United India Insurance company vide Insurance Policy No. 021700/46/14/37/00000041 valid from 02/05/2014 to 01/05/2015. They state that the initial claim intimation in respect of the complainant was forwarded to the insurance company on 10/12/2014 and further documents for settlement of claims sent on 26/03/2015. It is alleged that the insurance company has not initiated any action to settle the account. They also dispute the quantum of compensation sought for by the complainant. The 2nd opposite party also denies their responsibility to pay any compensation to the complainant as they already bear a public liability insurance policy with M/s United India Insurance Company.

They also affirm their stance that even if the complainant is entitled to get any compensation, the same is to be obtained by the complainant from the United India Insurance Company Ltd., and not from the 2nd opposite party. Hence they deny any deficiency in service or unfair trade practice on their part.

5) Evidence :

The complainant produced documental evidence that had been marked Exts. P1 to P4, apart from affidavit and notes of argument. The 1st opposite party produced documental evidence that had been marked Ext. R1 to R7, apart from affidavit and notes of argument. The 2nd opposite party produced documental evidence that had been marked Ext. R8 to R16, apart from affidavit and notes of argument. The proceedings against the 3rd opposite party being ex-parte, no evidence adduced on their part. The complainant underwent cross as PW1, whereas the 1st opposite party and his witness underwent cross as RW1 & RW2, respectively. The 2nd opposite party underwent cross as RW3.

6) Deliberation of evidence and facts of the case :

Ext. P1 is copy of the complainant's lawyer notice to the opposite parties. Ext. P2 series comprise acknowledgment cards (4 Nos.). Ext. P3 is TSV Form No.400000040350993 dtd.14/08/2015 issued by M/s Indian Oil Corporation (Marketing Division), in favour of the complainant. Ext. P4 (SP) comprises photographs (13 Nos.) relating to the alleged explosion.

Ext. R1 is copy of complainant's lawyer notice to the opposite party (copy of Ext. P1). Ext. R2 is copy of the letter dtd. 08/12/2014 issued by the complainant to the 1st opposite party. Ext. R3 is copy of the letter dtd. 02/02/15 submitted by the complainant to M/s United India Insurance Company Ltd.. Ext. R4 is copy of the reminder notice dtd. 07/03/15 addressed to the 1st opposite party. Ext. R5 is print out of Statement dtd. 31/01/2015 in respect of delivery of cylinder to the complainant. Ext. R6 is an extract of Policy No.

440202/48/2015/1239 dtd. 14/07/2014 issued by the Oriental Insurance Company Ltd. Ext. R7 is copy of Ext. R4. Ext. R8 is copy of public liability / product liability insurance claim dtd. 26/03/15 submitted by Manager (LPG – S), Kozhikode AO of Indian Oil Corporation Ltd.. Ext. R9 is LPG accident report - format ‘A’ submitted by the 2nd opposite party. Ext. R10 is LPG accident report format ‘B’ submitted by the 2nd opposite party. Ext. R11 comprises photocopies of photographs in respect of the explosion. Ext. R12 is print out of the communication regarding explosion between the Manager - (LPG – S) and the 2nd opposite party. Ext. R13 is print out of the public liability policy No. 021700/46/14/37/00000041 issued by the United India Insurance company Ltd in favour of M/s Indian Oil Corporation Ltd and others, the period of insurance being from 02/05/2014 to 01/05/2015. Ext. R14 is land tax receipt No. 65482 of Book No. 6548175 dtd. 25/08/14 in favour of the complainant. Ext. R15 is copy of Adhaar card No.4317 9336 8189 in respect of the complainant. Ext. R16 is photo copy of acknowledgment receipt in respect of petition No. 168321/2014 dtd. 08/12/2014.

7) Points of deliberation :

- (i) Whether the complaint is bad in law, as averred by the 1st opposite party, for non-joinder of necessary parties ?
If found in the negative :
- ii) Whether there is any deficiency in service or unfair trade practice on the part of any or all the opposite parties.
- iii) Whether the complainant is entitled to receive any compensation from any or all the opposite parties ? If so, its quantum ?
- iv) Costs ?

8) Point No.(i)

The gist of the complaint is that the complainant claims to have undergone extensive damage consequent to the explosion of the LPG cylinder bottled and delivered by the 2nd and the 1st opposite parties, respectively, which explosion is allegedly attributed to the defective nature of the LPG cylinder in question. The 1st opposite party - distributor is the opposite party who raised the question of non-joinder of the manufacturing company as a party to the proceedings, whereas the 2nd opposite party - Chief Area Manager of the manufacturing company hardly did raise any doubt or dispute in this regard. The complainant appears to have turned a deaf ear to the 1st opposite party's contention regarding non-joinder of the manufacturing company as a party to the proceedings. Given the peculiar nature of the case at hand, we wish to give a pointed analysis of the case specifics and the question of law involved. It is trite law that "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. It also thus becomes imperative that if the necessary party is not impleaded, the suit or complaint itself is liable to be dismissed. At the same time "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all the matters in dispute in the complaint, though it need not be a person in favour of or against whom the decree or order is to be made. Undoubtedly, in the case at hand, the manufacturing company was a "proper party" whose presence would certainly have enabled the Commission to completely, effectively and adequately adjudicate upon all the matters involved. In that perspective of the manufacturing company's presence as a proper party to the proceedings, the complainant ought to have given a thoughtful consideration of the contention raised by the 1st opposite party with respect to the non-joinder of the manufacturing company as a party to the proceedings, which the complainant failed to do. But in the instant case, the 2nd opposite party – Chief Area Manager

of the manufacturing company has expressed no doubt regarding his competence and locus-standi and also has no dispute regarding the necessity of impleading the manufacturing company itself as a party to the proceedings, either to easily adjudicate the matter or to effectively carry out any interim or final order passed in the matter. It is common law that for being a necessary party, the celebrated “twin test” has to be satisfied. The first one is that there must be a right to some relief against such party in respect of the disputes involved in the proceedings and the second one is that no effective decree can be passed in the absence of such party. This fact is underscored by the Hon’ble Apex court by its judgment ***dtd. 27/09/2022 in Civil Appeal No 5755 -5556 of 2011 reported as 2022 live law (SC) 802***. Here, the 2nd opposite party appears in his official capacity as Chief Area Manager of the manufacturing company and has expressed no doubt regarding his competence to litigate and also has no dispute regarding the necessity of the presence of the manufacturing company itself as a separate party to the proceedings. Therefore, the complainant’s right against the manufacturing company is impliedly admitted answerable by the 2nd opposite party and consequently the Commission faces no impediment at all in passing an effective decree either in favour or against the complainant. Hence, in the case at hand, the result of the twin test goes in favour of the complainant.

Point No.(i) is therefore answered in the negative and we find that the complaint is not bad in law for non-joinder of parties.

9) Point No (ii) & (iii) :

Admittedly, the inference arrived at by the 2nd opposite party after investigation is that “a spark occurred due to electrical short circuit, which ignited the leaked LPG and caused fire. This in turn heated the LPG cylinder and caused explosion of the cylinder”. Ext. R9 & R10 documents also endorse these facts. Ext. R9 & R10 documents unanimously emphasise that the pressure

regulator, concerned, was undamaged. Both Ext. R9 & R10 documents further underscore by the description of accident made therein that “customer had received the cylinder from the delivery boy on 04/11/2014 and kept the cylinder in the outhouse without connecting the same with any stove”. A conjoint and close reading of all these facts would bare the fact that there was leaked LPG inside the room, despite the cylinder’s being kept unconnected to any stove, and that this leaked LPG got ignited by the electrical short circuit - generated spark and this led to the blast. It thus becomes unambiguously evident that the ***raison-d’etre*** for the blast is the presence of the LPG that leaked out from the LPG cylinder which was, admittedly, kept unconnected to any stove. The presence of leaked LPG, despite the cylinder’s being kept unconnected to any stove, is indicative of the fact that the LPG cylinder in question was defective. A consumer having a dual cylinder connection will certainly have to order for refill before the exhaustion of the currently used cylinder, so as to ensure uninterrupted use of LPG. In such a scenario, a consumer enjoying a dual cylinder connection, may naturally have to keep his refilled cylinder unused for a couple of weeks or even for more than a month, waiting for the complete exhaustion of the cylinder that is being currently used. LPG being a highly inflammable gas, the cylinders comprising such gas shall be robust enough to ensure that they are absolutely leak free, while kept idle or being used. If the LPG cylinder does not fulfil such robustness expected of it, it is certainly a deficiency in service on the part of the manufacturing company. Bottling and making such defective cylinders available to the consumers for their use, at the same time, constitute an unfair trade practice, as well, on the part of the manufacturer.

Moreover, the witness of the 1st opposite party – the delivery boy of the 1st opposite party who delivered the cylinder in question to the complainant, admitted during his deposition before the Commission as RW2, that he does not

have the technical skill and expertise to conduct all the pre-delivery checks of the LPG cylinders. The 1st opposite party – distributor of the cylinders which are bottled by the manufacturing company, who is expected to act in strict compliance of the specifications and guidelines given by the latter, if employs such incompetent persons like RW2 as delivery staffer of theirs, such fault and imperfection on the part of the distributor is attributed to the supervisory and administrative flaw or lapse on the part of the manufacturing company which constitute yet another sort of deficiency in service and adoption of unfair trade practice on the part of the manufacturing company itself. The distributor cannot be faulted for the blast occurred owing to the defect in the LPG cylinder in question. Moreover, the 2nd opposite party does not have any stance that the 1st opposite party distributor has committed any flaw or exhibited any laxity in duly and timely reporting the incident to the manufacturer. As rightly pointed out by the counsel for the 1st opposite party distributor, the Hon'ble National Commission expressed the same view by its order ***dtd. 31/10/19 in RP 53 & 54 of 2017 reported as 2020 I CPR (NC) 90***. All considered, we are of the firm view that there is deficiency in service as well as adoption of unfair trade practice on the part of the 2nd opposite party, in so far as their having manufactured / bottled a defective LPG cylinder and caused the same to have been delivered to the complainant which eventually had turned out to be the ***raison-d'être*** for the blast in question, is concerned.

10) Point No.(iii) & (iv) :

As elaborated under point No.(ii) above, there is deficiency in service as well as adoption of unfair trade practice on the part of the 2nd opposite party in so far as their having manufactured / bottled a defective LPG cylinder and caused the same to have been delivered to the complainant which eventually had turned out to be the ***raison-d'être*** for the blast in question, is concerned.

The 1st opposite party dealer avers that the blast of the unused cylinder took place in the shed adjacent to the house of the complainant and disputes the alleged damage inflicted on the complainant's house. But Ext. R9 copy of the LPG accident report format A submitted by the 2nd opposite party, clearly describes under para 1 therein that the complainant's residence is a "**Three bed room, individual house with outhouse**". Therefore, the complainant could not be faulted for in respect of his having kept the unused LPG cylinder in the outhouse of his house. Ext. R8 – copy of claim form submitted by the Manager (LPG - S) of the office of the 2nd opposite party, bears description of the damage caused consequent to the explosion in question as "**out house fully demolished, out house collapsed, mixie and utensils burnt, wall, gate broken, Tin sheet roof broken, window glass broken**" and also reveals evaluation and assessment of damage worth Rs.1.5 lakh. Ext. R9 & R10 – copies of LPG accident report Format A and Format B submitted by the 2nd opposite party also describe the damage as "**mixie, out house wall broken, gate broken, roof collapsed, electric wiring burnt, kitchen platform broken, utensils damaged**". Ext. R12 print out of the communication trail between the 2nd opposite party and the Manager (LPG - S) of his office, also clearly indicates that the damage caused by the blast is worth Rs.1.5 lakh. Besides, the 2nd opposite party by deposition as RW3 before the Commission, expressly deposed that they have no objection in providing the complainant compensation worth Rs.1.5 lakh through policy settlement. Evidently, it is an admitted fact that the material damage occurred in the blast is worth nothing less than Rs.1.5 lakh. At the same time it is axiomatic that the material damage worth Rs.1.5 lakh inflicted by the blast, would certainly cause inexplicable agony and hardship – both mental and physical, on the complainant. The concept of a house often symbolises one's sense of security and stability. It may be also reflect one's concerns and satisfaction, as the case may be, with one's current living conditions, as well. A tidy and well kept house could signify a sense of comfort and safety, whereas one in disrepair is

indicative of dissatisfaction. The fault and imperfection on the part of the 2nd opposite party herein, had put the complainant's house into disrepair, which might certainly have inflicted agony and hardship – both mental and physical, as well, on the complainant. The complainant shall necessarily have to be compensated for both the material damage inflicted on him as well as for the agony and hardship - both mental and physical, that he underwent. We are of the considered view that the complainant is entitled to receive from the 2nd opposite party, a sum of Rs.1,50,000/- (Rupees One lakh fifty thousand only) towards compensation for the material loss he sustained owing to the blast of the LPG cylinder, a sum of Rs.50,000/- (Rupees fifty thousand only) towards compensation for the agony and hardship – both mental and physical, that he underwent and a sum of Rs.10,000/- (Rupees Ten thousand only) towards costs. The 2nd opposite party claims that the complainant if entitled for any compensation, shall realise such compensation from the 3rd opposite party under Ext. R13 policy. But the complainant does not have any privity of contract with the 3rd opposite party. Ext. R13 policy is admittedly availed by the manufacturer from the 3rd opposite party insurer. Hence, the 2nd opposite party can, if they wish so, lawfully realise the sum that they pay to the complainant, from the 3rd opposite party insurer, in accordance with the terms and conditions laid down under Ext. R13 policy.

In the result, the 1st opposite party is exonerated from the liabilities arising from the complaint and the complaint is allowed against the 2nd opposite party. The 2nd opposite party herein is directed to pay the complainant :

- a) a sum of Rs.1,50,000/- (Rupees One lakh fifty thousand only) as compensation for the material loss that he suffered from the blast,
- b) a sum of Rs.50,000/- (Rupees fifty thousand only) towards compensation for the agony and hardship - both mental and physical,

that he underwent consequent to the damage occurred from the blast,
and

c) a sum of Rs.10,000/- (Rupees Ten thousand only) towards costs,
all with 9% interest p.a. from the date of filing of the complaint till the
date of realisation. The 2nd opposite party shall comply with the above direction
within 30 days of receipt of a copy of this order.

As elaborated supra, the 2nd opposite party is at liberty to lawfully realise
the sum that they pay to the complainant, from the 3rd opposite party insurer in
accordance with the terms and conditions laid down under Ext. R13 policy.

Dictated to the Confidential Assistant, transcribed by her, corrected by
me and pronounced in the open Commission this the 27th day of January 2025.

Sreeja S.
Member

Ram Mohan R
Member

C. T. Sabu
President

Appendix

Complainant's Exhibits :

- Ext. P1 copy of the complainant's lawyer notice to the opposite parties.
- Ext. P2 series comprise acknowledgment cards (4 Nos.).
- Ext. P3 TSV Form No.400000040350993 dtd.14/08/2015 issued by M/s Indian Oil Corporation (Marketing Division), in favour of the complainant.
- Ext. P4 (SP) comprises photographs (13 Nos.) relating to the alleged explosion.

Complainant's witness :

PW 1 T.M. Lorence

1st Opposite party's Exhibits :

- Ext. R1 copy of the complainant's lawyer notice to the opposite party copy of
Ext. P1.
- Ext. R2 copy of the letter dtd. 08/12/2014 issued by the complainant to the 1st
opposite party.
- Ext. R3 copy of the letter dtd. 02/02/15 submitted by the complainant to M/s
United India Insurance Company Ltd..

- Ext. R4 copy of the reminder notice dtd. 07/03/15 addressed to the 1st opposite party.
- Ext. R5 print out of Statement dtd. 31/01/2015 in respect of delivery of cylinder to the complainant.
- Ext. R6 extract of Policy No. 440202/48/2015/1239 dtd. 14/07/2014 issued by the Oriental Insurance Company Ltd.
- Ext. R7 copy of Ext. R4.

2nd Opposite party's Exhibits :

- Ext. R8 copy of public liability /product liability insurance claim dtd. 26/03/15 submitted by Manager (LPG – S), Kozhikode AO of Indian Oil Corporation Ltd.
- Ext. R9 LPG accident report format 'A' submitted by the 2nd opposite party.
- Ext. R10 LPG accident report format 'B' submitted by the 2nd opposite party.
- Ext. R11 comprises photocopies of photographs in respect of the explosion.
- Ext. R12 print out of the communication regarding explosion between the Manager – (LPG – S) and the 2nd opposite party.
- Ext. R13 print out of the public liability policy No. 021700/46/14/37/00000041 issued by the United India Insurance company Ltd infavour of M/s Indian Oil Corporation Ltd and others, the period of insurance being from 02/05/2014 to 01/05/2015.
- Ext. R14 land tax receipt No. 65482 of Book No. 6548175 dtd. 25/08/14 in favour of the complainant.
- Ext. R15 copy of Adhaar card No.4317 9336 8189 in respect of the complainant.
- Ext. R16 photo copy of acknowledgment receipt in respect of petition No. 168321/2014 dtd. 08/12/2014.

Opposite Parties' Witnesses :

RW 1 Balakrishnan

RW2 Joy

RW3 Roshni J

Ram Mohan R
Member