



ICLG

The International Comparative Legal Guide to:

Product Liability 2018

16th Edition

A practical cross-border insight into product liability work

Published by Global Legal Group, in association with CDR, with contributions from:

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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design

F&F Studio Design

GLG Cover Image Source

iStockphoto

Printed by

Stephens & George
Print Group
June 2018

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ISBN 978-1-912509-14-0

ISSN 1740-1887

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EDITORIAL

Welcome to the sixteenth edition of *The International Comparative Legal Guide to: Product Liability*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of product liability.

It is divided into two main sections:

Seven general chapters. These chapters are designed to provide readers with an overview of key issues affecting product liability law, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in product liability laws and regulations in 23 jurisdictions.

All chapters are written by leading product liability lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Adela Williams and Tom Fox of Arnold & Porter for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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PREFACE

I'm delighted to have been asked to introduce the sixteenth edition of *The International Comparative Legal Guide to: Product Liability*.

The guide continues to be an ideal reference point with seven excellent general chapters covering significant developments in European, Asian and US law. This edition also has a special focus on product recalls, a practical guide around costs issues and considerations in the context of group actions in England & Wales and finally commentary on liability and insurance matters in the context of driverless cars.

As always, the bulk of the edition remains the enormously helpful country question and answer section, covering 23 jurisdictions, new to the guide this year being Albania and Kosovo.

I frequently have cause to make reference to the guide for matters concerning product liability all over the world and will continue to do so as the guide remains a thoroughly informative and comprehensive publication.

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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 the National Commission set up under the Consumer Protection Act, 1986.

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

No, the State does not 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 (manufacturers, importers, distributors, wholesalers, 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; manufacturers; assemblers; dealers; 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, the consumer may sue the manufacturer along with the seller, particularly under the law of tort. This is an option for the consumer.

1.4 May a regulatory authority be found liable in respect of a defective/faulty product? If so, in what circumstances?

A regulatory authority can be held liable where it is negligent in inspecting, reporting or lack of exercise of monitoring control. For example, if it passes food products which do not meet the standards prescribed by law.

The Food Safety Officer under Food Safety and Standards Act, 2006 (FSSA) shall be liable to a penalty which may extend up to one lakh rupee if he/she is found to be guilty of an offence under section 39 of the Act.

1.5 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 the District Forum under the Consumer Protection Act can require direct withdrawal of all hazardous goods from the 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 the District Forum, such person shall be punishable with a term of not less than one month, but which may be extended to three years or a fine of 2,000 rupees, but which may be extended to 10,000 rupees, or both. Also, Section 25 of the said Act empowers the District Forum 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 an order passed by a district court, then such person may move an application before the District Forum which shall issue a certificate to the collector of the district, and such collector shall proceed to recover the said amount from such person as arrears of the land revenue.

1.6 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 of not 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 be extended 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 with 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? Is it necessary to prove that the product to which the claimant was exposed has actually malfunctioned and caused injury, or is it sufficient that all the products or the batch to which the claimant was exposed carry an increased, but unpredictable, risk of malfunction?

In order to recover damages under tort of negligence, a plaintiff must prove the 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.

The burden lies with the party alleging a fault has been made by the other party or the goods were defective. There needs to be a proximate cause and effect relationship and goods are considered defective where there is a high risk of malfunction.

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.

2.4 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 they are required by the buyer. If, while selling goods under a contract, the defendant expressly excludes his liability, he cannot be made liable for the loss caused to the 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. Section 16(2) is not so limited, although it does not apply when the buyer examines the goods with regards to defects and such examination ought to have revealed the defects. 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).

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, the defendant will be liable for injury caused to the buyer as a consequence thereof (*Clarke v Army and Navy Cooperative Society Ltd* [1903] 1 K.B. 155).

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

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

For the third category, things neither dangerous *per se*, nor known to be so by the transferor, but are in fact dangerous, the application of *Donoghue v Stevenson* principle requires the manufacturer to take reasonable care (when something is to reach the ultimate consumer without any possibility of intermediate examination) and is liable for not taking such care despite there 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 the plaintiff to prove fault could have been discovered by the 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, 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 the 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 the decree against him should be only to the extent of his fault. The court may apportion damages between tortfeasors for the purpose of respective liability *inter se* (*Amnithiben v SC, ONGC*). In *Amnithiben v SC, ONGC* [1976] ACJ (72) (Guj.), due to the negligence of the driver of a jeep and the driver of a bus, there was an accident and a passenger sitting in front of a jeep was thrown and killed. The ratio of the negligence of the driver of the bus compared to the driver of the jeep was 75:25. A decree against

the defendants was passed making them liable jointly and severally to pay damages. Apportionment of damages was *inter se* made to work out the respective liability of the defendants. The limitation period to begin a case for recovery is generally three years from the 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?

Under the Consumer Protection Act, 1986, 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 where there are numerous consumers having the same interest, they 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 a class action can be filed by any trade association, consumer or registered consumer association or by the Central or State Government, where one or more consumers have a common interest. (Section 2(1) (b) Consumer Protection Act, 1986.) In *Consumer Protection Council, Rourkela v Indian Oil Corporation Ltd & OTHERS, ORIGINAL PETITION NO. 224 OF 2001*, dated 16 August, 2007, the National Consumer Disputes Redressal Commission (NCDRC) dealt with a case wherein the Consumer Protection Council, Rourkela, a voluntary organisation, had filed a complaint against the Indian Oil Corporation Indane LPG that the refill received by consumers was less than the represented weight. The NCDRC directed the Ministry of Petroleum, as well as the Ministry of Consumer Affairs, to ensure that all marketing companies issue necessary instructions and that the distributors will provide the delivery person with a proper weighing scale for the purpose of weighing the LPG Gas Cylinder in the presence

of customers. They are also required to give it due publicity by publishing the same in the vernacular language of each and every State, and in English and Hindi in newspapers, as well as providing a similar type of advertisement on TV for consumer information.

The NCDRC directed the Indian Oil Corporation to pay a sum of 50,000 rupees to the Complainant-Council to meet the expenses incurred by it in protecting the interest of consumers, and to continue to protect the interest of consumers, for a period of four weeks.

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 is disposed of within one to two years. Once the complaint is received by the District Forum, the District Forum may either admit or reject a complaint, generally within 21 days from the date from receipt thereof. Once the complaint is admitted, the District Forum shall refer a copy of the admitted complaint within 21 days from the date of its admission to the opposite party, directing it to give its version of the case within a period of 30 days or such extended period (not exceeding 15 days) as may be granted by the forum.

The Consumer Protection Act requires the District Forum to decide a complaint within a period of three months from the date of receipt of the notice by the opposite party where the complaint does not require analysis or testing of commodities, and within five months if it requires analysis or testing of commodities. Further, the Consumer Protection Act prescribes that an appeal filed before the State Commission or the National Commission shall be heard and finally disposed of within a period of 90 days from the date of its admission.

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 matters on preliminary issues such as *res judicata*, limitation periods, 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 the 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 the court thinks it is necessary to determine important facts. Depositions, reports, and cross-examination all take place during the 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 upon which it relies. The court may also entertain applications seeking relief of discovery or production of records depending on the 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 Baskhi 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 required to be pursued first or available as an alternative to litigation e.g. mediation, arbitration?

Parties to a contract may agree to adopt alternative means of dispute resolution (ADR) in their contract 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.

Alternative means of dispute resolution are not generally adopted in product liability cases wherein the consumer is aggrieved. Statutory forums, such as consumer forums, decide such cases.

4.12 In what factual circumstances can persons that are not domiciled in your jurisdiction, 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 a service or sells goods in India. This judgment obtained by a plaintiff can be enforced in India if the 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 an Indian court, by virtue of Section 38 of the Code of Civil Procedure, a decree may be executed either by the court which passed it or by the court to which it is sent for execution. According to Section 51 of the Code of Civil Procedure, an 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 occurs.

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 a discretion to disapply time limits?

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

The age of the claimant does not affect limitation. The court has discretion to extend time or condone delay if the plaintiff proves that 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. A 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 the plaintiff for damaged goods, medical expenses, and lost money. Recoverable non-economic damages include awards for pain and suffering and 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 arises from such breach, or which the parties knew, when they entered into 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?

Apart from the Consumer Protection Act where consumer associations can file a combined action to seek remedies as provided in Section 14 of the said Act, under Article 32 and Article 226 of the Constitution of India, any person may file a public interest litigation in larger public interest, wherein courts grant relief in case of infringement of fundamental rights of the public. The Supreme Court (under Article 32) and high courts (under Article 226), depending on facts of a case, can grant injunctions, damages, oversee the implementation of legislation or draft appropriate guidelines in the absence of a specific legislation.

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, the relevant 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 the claimant if he wins a case.

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

Yes. Legal Aid clinics have been set up under 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 funds 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, the Public Liability Insurance Act, 1991, aims to provide 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 an insurance policy so that he is insured against liability in case of death or injury to a person, or damage to any property, arising as a result of 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.

7.6 In advance of the case proceeding to trial, does the Court exercise any control over the costs to be incurred by the parties so that they are proportionate to the value of the claim?

No; the court does not exercise any control over costs to be incurred by parties so that it is proportionate to the value of the claim. However, it can direct the respondent to pay the costs of litigation if the consumer succeeds.

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 your jurisdiction.

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 are providing effective redressal of consumer complaints.

In *M/s Avery India limited v M/s kaybee Sulphates limited*, MANU/CF/0002/2014, the respondent/complainant filed a consumer complaint against the petitioner alleging deficiency in service in not setting up the weigh-bridge at his Industrial Unit and supplying him a defective transfer lever. The National Consumer Rights Redressal Commission held that the respondent did not qualify as a consumer since it runs a sulphate industry and had purchased the weighbridge from the petitioner for the purpose of above industry only. Further, the commission observed that it was a commercial transaction between the petitioner and the respondent and the same is not a consumer dispute.

In another case, *Tata Motors v Rajesh Tyagi, and HIM Motors Showroom, I* (2014)CPJ132(NC), the Commission held that it was the duty of both the manufacturer and dealer to attend to the defect when a consumer complained of the defect in a vehicle and make it defect-free, and if they were not in position to do so, they should either refund the cost of vehicle or provide a new vehicle to the consumer.

In the matter of *Rediff.com India limited v M/s Urmil Munjal, II*(2013)CPJ522(NC), the Commission held that both the District Forum and State Commission did not hold the respondent, an online shopping platform, liable for any defects in the goods supplied, but for failure to inform the complainant about the manner in which defective goods were to be returned to their seller and the Commission upheld the decision of the forum.

In *Raj Bala v Managing Director, Skoda Auto India Pvt Ltd & Anr* (Revision petition decided on 23.10.13 from the order dated 26.09.2012 in First Appeal Nos. 824/2009 of the Delhi State Consumer Disputes Redressal Commission), the National Consumer Dispute Redressal Forum considered a case where there was no inherent defect found in a vehicle, as per a report given by an expert, which may necessitate its replacement or refund of the value of the vehicle to the Complainant. The District Forum, *vide* their order,

had already allowed a sum of 40,000 rupees to the complainant for inconvenience caused to the Complainant for taking the vehicle to a workshop frequently within a short period and also directed the Respondents to extend the warranty of the vehicle by at least one year. The said order was not challenged by the Respondents before any higher authority. The State Commission had also endorsed the order of the District Forum and the Commission upheld the same.

Courts in India have upheld the 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 Courier* (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 manufacturer was confined to repairing the defect. Compensation was, however, awarded to the complainant for travel charges which were incurred due to the fault of the car manufacturer.



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