

K.G. Sathyanarayan vs Bharat Petroleum Corporation Ltd. And ... on 19 May, 2006

Equivalent citations: 3(2006)CPJ8(NC)

ORDER

S.N. Kapoor, Member

1. This First Appeal is directed against the order dismissing the complaint claiming compensation for loss suffered due to fire occasioned on account of explosion of gas cylinder/leakage of gas in Complaint No. 118 -decided by State Consumer Disputes Redressal Commission, Karnataka.

2. Facts giving an occasion to file this appeal may be stated briefly as under:

According to the complainant/appellant on 17.2.1996 at about 2.00 am, while he was in deep sleep at his residence "Muthi Laxmi Niwas", he along with others suddenly heard the noise of gas cylinder explosion, woke up and switched on the light and the moment he switched on the light, the entire room engulfed in a bowl of fire. The complainant tried to save his wife and daughter. But in this process he got burn injuries. It also caused extensive damage to his house. The complainant was using L.P. Gas Cylinder of Bharat Petroleum Corpn. at his residence, supplied by dealer M/s. Rohan Gas Distributors. According to the complainant, the incident took place due to leakage of gas. FIR was lodged. The police visited the complainant on 17.2.1996, prepared a statement. According to the complainant, he was in shock and he signed the statement without reading it. Since he suffered burn injuries to the extent of 20%, he was admitted in the hospital and during hospitalisation for 17 days, he incurred an expenditure of Rs. 13,027 towards medicines, hospitalisation charges, etc. The fire damaged the main door, the window, the wiremesh and the glass-panes, curtains, cloths, pants, shirts, sarees, baby dress and sofa set also. His work efficiency was retarded due to burn injuries and scars and white patches on his right arm e and palm, etc. According to the complainant appellant, the fire took place on account of defective regulator of the cylinder.

3. The opposite party No. 2, the Rohan Gas Distributor, replaced the cylinder, regulator and the hose-pipe on the date of accident itself in order to cover the track of defective cylinder, regulator and hose-pipe.

4. The complainant in his complaint, claimed the following amounts:

1. Medical Expenses : Rs. 13,027.65

2. Damages to the properties : Rs. 40,650.00

3. Loss of one month's salary : Rs. 7,615.00

4. Mental agony and shock : Rs. 5,00,000.00

5. Interest at 18% p.a. from 17.2.1996 till the date of filing the suit : Rs. 4,00

_____ Total : Rs. 5,65,292.65 _____

5. In addition to the above, he claimed the interest @ 18% p.a. on the above said sum.

6. Bharat Gas Corpn. Ltd. O.P. respondent No. 1 contested the claim of the complainant/ appellant contending that in view of contradiction with FIR the complainant was not sure about the date and approximate time of the incident. It was denied that the replacement of cylinder, regulator and hosepipe on 17.2.1996 took place in order to cover the track of defective regulator, etc. It was done only on sympathetic grounds for gas was required for day-to-day use. The fact of admission of the complainant in hospital had been disputed due to his presence at the time of preparation of Mahazar. It was also denied that the complainant signed the statement made before the Police without reading the same. His submission that due to the burn injuries his work efficiency had retarded and his image of professional efficiency had been tarnished on account of the white patches in his right arm, palm, etc., was also denied. It was also denied that the complainant had to spend Rs. 20,000 to repair the main door, the window, the wire-mesh, etc., which were alleged to have been destroyed in the fire, the expenditure of Rs. 2,000 towards conveyance to attend the hospital for treatment has also been disputed. Joint and several liability of the respondent/opposite party-1 along with others has been denied. According to them, the fire accident actually occurred due to the leakage of hose pipe connected to the regulator and it was so confirmed by the Surveyor. L.P.G. Equipment Research Centre, examined and tested the hose pipe and according to their report, the accident took place due to the use of poor quality of rubber tube which was not suitable for use of LPG. The bills filed have also been disputed. The fire had taken place due to the negligence on the part of the complainant, who was careless enough to keep both the regulator and hotplate switches on when the household went to sleep, though they claimed to have known the safety instructions. Firstly there was no liability and if there was any liability, it was of the distributor, Bharat Petroleum Corpn. Ltd. was not liable at all.

7. The plea of the respondent distributor, in addition, to the pleas taken by the Bharat Petroleum Corporation Ltd. about the negligence of the complainant was that it was not fault of the distributor but fault was exclusively of the complainant. In case for any reason the distributor was held liable then the distributor was covered under Insurance Policy to cover the risk.

8. The New India Assurance Co. Ltd. disputed its liability claiming that the fire had not taken place during installation of the gas cylinder and as such the Insurance Company was not liable.

9. Before the State Commission, from the side of complainant Shri K.G. Sathyanarayana; from the side of the respondent No. 1, Bharat Petroleum Corporation Ltd., their Sr. Sales Officer, Narendera Babu; and from the side of respondent No. 2, the distributor, one Mr. Muralidhar were examined as witness. Report of the LPG Equipment Research Centre was also produced.

10. The State Commission did not find any deficiency on the part of either of the opposite parties/respondents and consequently dismissed the complaint.

11. Feeling aggrieved by the dismissal of the complaint the present appeal has been filed.

12. Having heard the learned Counsel for the parties and having gone through the record, the FIR, the statement and the affidavits and the report of the Chief Research Manager, our findings about deficiency in service would be evident from the discussion which follows hereinafter.

13. It is evident that the rubber tube was of very poor quality and was not suitable for the use of LPG. As a result the tube developed cracks on the surface. The ends of the tube swelled and softened and this allegedly resulted in continuous leakage and subsequent accident. However, there is no observation about effect of heat on the tube caused by fire.

14. First let us consider the report of the LPG Equipment Research Centre, Bangalore, produced in respect of gas cylinder, regulator and the tube sent to them. They had examined these articles in response to letter B:LPG:ACC dated 20.12.1996. According to the conclusion of Shri A.P. Chelvaryan, Chief Research Manager, was to the following effect:

Conclusion

1. The cylinder, valve and pressure regulator are in sound condition. Hence it is unlikely that the above said accident is due to the failure of any of these equipments.

2. The rubber tube used is of very poor quality and is not suitable for use with LPG. As a result, the tube developed cracks on the surface, The ends of the tube swelled and softened. The Hot Plate end of the tube which is constantly exposed to higher temperature developed cracks faster compared to the other end and got detached from the Hot Plate nozzle. This resulted e in the continuous leakage and subsequently accident.

15. Seeing the evidence on record, it is difficult to totally accept the version of the complainant about the explosion of the cylinder as a consequence of fire. The only conclusion which could be reached is that the tube which was used was not proper due to its poor quality, cracks were caused; gas leaked and fire took place.

16. We are also required to take into consideration the scare and panic and consequential wrong step taken by the complainant in switching on the light, which could have caused this kind of accident.

17. In view of the report, one may not be inclined to accept in ordinary course that the gas cylinder and regulator were not proper. But, one could not be oblivious to the fact that the cylinder, regulator and the tube should have been sent immediately for testing and if possible on the date of accident itself. It was sent for test on 20.12.1996 nearly 10 months after the accident on 17.2.1996. No

explanation is forthcoming why it was not sent immediately. Consequently, the submission of the learned Counsel in this regard is not wholly without substance. But at the same time even after 10 months, the cylinder and regulator were found in order and it was only rubber tube which was said to be leaking. Thus, the possibility of leaking of gas from cylinder or regulator itself is ruled out in the light of contradictory stand taken by the complainant about the explosion of cylinder being the cause of noise and accident and burning of the door planks, etc. on the one hand and the fact that it was not the case of the complainant that cylinder was changed on 16.2.1996 itself.

18. In order to appreciate the matter respective duties cast on the consumer and on the Bharat Petroleum Corporation Ltd., and the distributor, Rohan Gas Distributor, terms of the agreement between Bharat Petroleum Corporation Ltd. and Distributor are required to be seen.

Duties of the Distributor

19. They are mentioned in Clauses 11, 16, 17 and 18 as follows:

11. The Distributor shall faithfully and diligently observe and carry out all directions, orders, terms and conditions as may be issued by the Corporation from time-to-time and as may be contained in the Corporation's "Bharat Gas Manual" and any amendments or modifications as may be made by the Corporation thereto from time-to-time. The Distributor hereby confirms that he has received the copy of the Bharat Gas Manual and any amendments or modifications as may be made by the Corporation thereto from time-to-time. The Distributor hereby confirms that he has received the copy of the Bharat Gas Manual and the General Directions as circulated by the Corporation on the date of this Agreement and agrees to abide by and perform the same.

16. The Distributor shall, at his own cost maintain adequate trained and competent staff, to do installation work and for connecting appliances to cylinders and/or refills and pressure regulators and to attend to the work of repairing appliances and providing free technical service to the customers in accordance, with the general instructions given or laid down by the Corporation. The Distributor, his employees, agents and sub-agents shall not repair or attempt to repair any cylinder and/or pressure regulator and/or any part thereof which may be damaged or defective or thought to be so, but shall immediately forward such cylinder and/or pressure regulator as the case may be to the Corporation for repairs. The Distributor shall be liable to the Corporation the cost of repairs to cylinder and/or pressure regulators that are damaged whilst the same are in the custody of the Distributor and/or of the customers in the said area.

17. In all contracts or engagements entered into by the Distributor with the customers for sale of LPG and/or the sale and/or installation and repairs of appliances and/or connections thereof with LPG cylinder (filled or empty) and/or refills and/or pressure regulators and/or attached equipment the Distributor shall act and shall

always be deemed to have acted as a principal and not as an agent or on account of the Corporation, and the Corporation shall not in any way be liable in any manner in respect of such contracts and/or engagements and/or in respect of any act or omission on the part of the distributor, connections, repairs or otherwise. The Distributor shall be bound to inform the customers in writing of this provision, through correspondence or at the time of enrolment of the customer.

18. The following provisions relating to indemnity by the Distributor in respect of all claims including third party claims shall apply to this Agreement during the duration of this Agreement and even after the termination thereof in respect of any transaction arising in respect of the dealings between the parties hereto under this Agreement. For the purpose of this clause the expression "Distributor" shall include a sub-distributor, agent, servant, licensee, employee or other person nominated or appointed by the Distributor or otherwise having any direct or indirect interest in this Agreement or storing, licensing, handling, loading, unloading, delivering, selling, marketing, distributing or transporting LPG cylinders, whether filled or empty and equipment relating thereto.

(a) The Distributor shall at all times fully and effectively indemnify and keep indemnified the Corporation, its estates and effects from and against all losses, damages, claims, suits, legal proceedings and otherwise howsoever arising from or in connection with any loss or injury to person or property in connection with any of the matters covered by this Agreement or arising in the course of any of the contingencies referred to above or otherwise howsoever.

(b) Without effecting the generality of the indemnity referred to hereinabove, the Distributor shall fully and effectively indemnify and keep indemnified the Corporation, its successors, assigns, estate and effect officers, employees and agents from and against all losses, damages, claims, liabilities, suits, legal proceedings or otherwise howsoever arising out of any claims made by all third parties whether on account of injury to person or loss of life or injury, loss or damage to any property and occasioned directly or indirectly and irrespective of the cause or quantification of such loss or damage and in particular in respect of third party claims covering all types of risks and whether on account of any neglect, breach or default in the observance and performance of the Rules and Regulations from time-to-time framed by the Corporation and/or any statutory authority and prevailing in respect of the storage, handling, loading, unloading, licensing, sale, distribution, marketing, transport, connection or disconnection at customers' sites or otherwise, supply, delivery and collection of cylinders, filled or empty, and/or the Corporation's equipment and/or Bharat gas or otherwise howsoever on account of non-implementation, non-observance or non-performance of the instructions contained on the prescribed Bharat Gas Manual or otherwise instructions issued by the Corporation from time-to-time, or by reason of the breach, non-observance or non-conformation with the provisions of the Petroleum Act, 1934, Indian Explosive

Act, 1984, Gas Cylinder Rules, 1981 and all other Rules, Regulations and Bye-laws made thereunder or any other Statute, Rules, Bye-laws or Acts in respect thereof or in relation to any Municipal licence or permission issued for the purpose of storage by any Central or State Government or legal or statutory public body or authority as may be applicable from time-to-time or otherwise howsoever arising to the end and intent that the Distributor's indemnity to the Corporation shall be enforceable by the Corporation under all circumstances envisaged including any loss or damage that may have resulted on account of any negligence or irregular use or handling by any person for and on behalf of the Distributor or by the customer or any person for and on behalf of the customer and such indemnity shall be unconditional and irrevocable and shall not be discharged, absolved or relieved on the ground that the loss or damage has arisen on account of any act or omission of any person over whom the Distributor has no control.

No Warranty by the Corporation

(a) It is specifically agreed and declared between the Corporation and the Distributor that the Corporation has not given nor shall be deemed to have given or agreed to any express or implied warranty as regards the manufacture or use of the LPG cylinders or any other equipment or appliances that may be supplied and delivered under this Agreement and the Corporation shall not be responsible or liable for any defects, manufacturing or otherwise, arising there from.

(b) The Corporation shall, under no circumstances be liable or responsible for any loss, or damage to the Distributor or to the customers, their servants, employees and agents or any other person whomsoever arising on account of any transaction under this Agreement or as a result of the LPG cylinders of the said equipment being in any way defective or in unfit condition.

19. The Distributor shall during the continuance of this agreement and valid for a period of three months from the date of the termination thereof at his own cost and expense take out adequate and proper Godown and Goods Insurance from a well reputed Insurance Company against all risks including Third Party risk to persons and properties, fire and explosion risk, riot risk, comprehensive motor vehicle policy risk, workmen's compensation and injury policy. As and when called upon by the Corporation the Distributor shall produce such insurance policy and the renewals thereof for inspection and verification by the Corporation. The Distributor shall fully and punctually abide by all the terms, conditions and covenants contained and set out in such insurance policy and shall not do or omit to be done any act, deed or thing whereby such insurance policy is invalidated, cancelled or rescinded by the Insurance Company.

(Emphasis supplied)

20. It is evident that the Distributor shall, at his own cost maintain adequately trained and competent staff, to do installation work and for connecting appliances to cylinders and/ or refills and pressure regulators and to attend to the work of repairing appliances and providing free technical service to the customers in accordance with the general instructions given or laid down by

the Corporation. The Distributor, his employees, agents and sub-agents shall not repair or attempt to repair any cylinder and /or pressure regulator and /or any part thereof which maybe damaged or defective or thought to be so, but shall immediately forward such cylinder and/or pressure regulator as the case may be to the Corporation for repairs. The Distributor shall be liable to the Corporation for the cost of repairs to cylinders and/or pressure regulators that are damaged whilst the same are in the custody of the Distributor and/or of the customers in the said area.

Precautions to be taken by the Consumer

21. It is not disputed that safety instructions given in safety card were issued to the consumer at the time of sanctioning of LPG connection. The complainant was supposed to follow and was under obligation to inform the respondent No. 2 whenever any defect is noticed. Once in every 2 years the house-holder had to change the rubber tube even though no apparent defect is noticed in the tube.

22. In the instant case, according to the appellant, the complainant failed to observe these instructions; gas leaked due to defective tube and it resulted in accident. In this regard, it would be worthwhile to refer to the cross-examination of the complainant. It is not in dispute that the safety card was issued to the complainant which enabled the complainant to know how to switch on and switch off the gas and safety measures to be taken in the event of leakage of gas; and where the gas cylinder was required to be kept. He has further admitted that he knew as to what should be done when there was indication of the leakage of gas. Accordingly, one was required to open the doors and windows of the room and at the same time, the fans and lights should not be switched on. He further admitted that the hose pipe should be changed in every two years by standard pipes issued by the company concerned. However, he claimed that he paid Rs. 60 towards changing the tube. But no 'receipt' could be produced for it was allegedly burnt in fire.

Contributory Negligence

23. The material placed on record does not leave any doubt in our mind that it was the worn-out and defective tube, which was the root-cause for the leakage of gas. The accident took place on account of contributory negligence of the complainant who switched on the light when the leaked gas was present all around. In ordinary course precautions were necessary keeping some margin for the fact that incident took place in night, drowsy complainant might have unwittingly switched on the light point. There is in fact no other logical conclusion that can be arrived at from the facts and circumstances of this case. He has not explained how he was able to protect his wife and daughter when there was fire all around in the bedroom, and how he alone sustained injuries. We are not convinced with his explanation as to under what circumstances he signed the Mahazar which belies some of his contentions. Nor, we are convinced of his explanation that he had kept the windows of the house open since it was not hot summer in the month of February in Bangalore. We are not inclined to believe that opposite party-2, at the instance of opposite party-1, replaced the cylinder, tube and the regulator hurriedly on the day of the accident itself for the purpose of hiding their fault. We would rather believe opposite parties 1 and 2 that they changed it in order to avoid inconvenience to the complainant in cooking food for his family. It is interesting to note that in the written arguments filed, the complainant, after testing the water, has come up with a modified

version of the incident in the following words:

...On 17.2.1996 at 2.00 a.m. there was a loud noise due to sudden blast of doors, windows, window panes and there was fire due to exposure of gas, from LPG gas cylinder, used by the complainant at his residence, belonging to the first opposite party. Fire and blast occurred simultaneously within a fraction of second.

24. In view of the evidence on record particularly the report of the Chief Research Manager of the LPG Equipment Research Centre, we are taking the view that the complainant-respondent and the Distributor both have contributed to the accident by their negligence. It may be mentioned that LPG Equipment Research Centre (for short LERC) is one and the only Research Centre recognised by the Department of Scientific and Industrial Research and registered under Societies Registration Act, 1962 and further it is also recognised by the Bureau of Indian Standard. These facts are not disputed before us. Consequently, we do not have any inhibition in accepting this report and proceed to decide the matter accordingly.

25. According to Clause 16, the distributor shall, at his own cost maintain adequate trained and competent staff, to do installation work and for connecting appliances to cylinders and / or refills and pressure regulators and to attend to the work of repairing appliances and providing free technical services to the customers in accordance with the general instructions given or laid down by the Corporation. If the trained staff was kept for providing free technical service to the customers in accordance with the general instructions, the staff after noticing defect or low quality tube should have advised and could have refused even to supply the gas cylinder without changing connecting tube.

26. In view of the aforesaid facts and circumstances, it would be evident that by not insisting as changing the tube and installing gas cylinder despite defective tube, M/s. Rohan Gas Distributors failed to ensure a duty cast on them under the distributors agreement to give necessary technical advice. Thus, the distributor failed to perform its duty to ensure safety of the consumer and, thus, lend assistance in creating an occasion for gas leak which resulted in the accident. The complainant also contributed to the accident by unwittingly switching on the light point when he was not supposed to do it under the safety instructions. Thus, both have contributed to the accident.

Liability of the Insurance Company

27. The Insurance Company had issued a letter dated 24th May, 1995 enclosing a stamp receipt for a sum of Rs. 6,812 to cover LPG Comprehensive Insurance Policy and the policy number was allotted 48110438. The policy was under preparation in consultation with the Federation of M/s. Rohan Gas Distributors and the same would be supposed to be posted in due course. However, the risk stood covered from 30th April, 1995 to 30th April, 1996 as per the letter of Branch Manager of New India Assurance Co. dated 24th May, 1995 accompanied with receipt of the amount of Rs. 6488.00 + Rs. 324 towards service charges amounting to Rs. 6,812. The terms and conditions of the policy are evident from the subsequent policy issued for the period 5th May, 1997 to 4th May, 1998.

Personal Accident Policy on Unnamed Basis, Covering LPG Consumers.

28. Since Insurance Policy is admitted we feel that Insurance Company is liable to indemnify M/s. Rohan Gas Distributors.

29. M/s. Rohan Gas Distributors had takes miscellaneous accidental policies and according to the policy cover note filed Section VII provided for public liability to the following extent:

The Company will indemnify the insured in respect of all sums which the insured is legally liable to pay as compensation and litigation expenses incurred by the insured with the company's written consent in respect of accidental death or bodily injury to any person other than a person under the insured's service and insured's family and/or accidental damage to property caused during installation of gas cylinders by the insured or by his employee or by his authorised agent at the premises of insured's customers or whilst such cylinders from the insured's premises or in the course of being carried for installation in the premises of the insured's customers or whilst such empty cylinders are in the course of being carried from the premises of the insured's customers to the insured's premises and also whilst lying at the insured's premises specified in the schedule not exceeding in all for the compensation and litigation expenses the limit of Rs. 10,00,000 (Rupees one lakh) for any one accident or a series of accidents arising from any one event and Rs. 25,00,000 (as stated in the schedule) for all accidents during any one period of insurance.

(Emphasis supplied)

30. It would appear that the policy does not specifically provide a cover to a consumer who has taken a gas connection. However, the matter would be covered in public liability cover in Section VII referred to hereinabove.

31. Thus, it is evident that the distributor had taken the insurance policy to cover the loss of accidental damage to property during installation of gas cylinder by the insured. Thus, Insurance Company would be liable to pay the amount to indemnify the insured distributor M/s. Rohan Gas Distributors under the policy from 5th May, 1995 to 4th May, 1996 to the extent of Rs. 10.00 lakh for anyone accident, and interest thereon for the delayed payment.

32. In this light, we feel that the said distributor as well as the complainant, both were equally negligent and contributed to the accident.

Vicarious Liability of B.P.C.L

33. Now the question arises as to whether along with the distributor, B.P.C.L. should also be held liable or not. In this regard, we would like to draw the attention to the observations of the Hon'ble Supreme Court in Indian Oil Corporation v. Consumer Protection Counsel, Kerala and Anr. II (1994) CPJ 21 (SC). In that case aforesaid Clause 17 came to be considered and in paras 13 and 14

following observations were made:

13. In order to decide this question it is necessary for us to look at Clause 1(a) of Exh. Rule 2. That is the memorandum of agreeable between Indian Oil Corporation and M/s. Karthika Gas Agency. That establishes the relationship between Indian Oil Corporation, the appellant and Karthika Gas Agency as Distributor of the Corporation, on principal-to-principal basis.

Clause 17 of the agreement is as under:

In all contracts or engagements entered into by the Distributor with the customers for sale for L.P.G. and/or the sale and/or installation and/or repairs of appliances and/or connections thereof with LPG Cylinders (filled or empty) and/or refills and/or pressure regulators and/or attached equipment the Distributor shall act and shall always be deemed to have acted as a principal and not as an agent or on account of the Corporation, and the Corporation shall not in any way be liable in any manner in respect of such contracts and/or engagements and/or in respect of any act or omission on the part of the Distributor, his servants, agents and workmen in regard to such installation, sale, distribution, connections, repairs or otherwise. The Distributor shall be bound to inform the customers in writing of this provision, through correspondence or at the time of enrolment, of the customer.

(14) Thus, it is clear that the relationship is one of principal-to-principal basis. The reliance by the authorities below that the circumstances, documents and conduct of parties proved the relationship as of principal and agent is difficult to understand. This is a case in which the 2nd respondent M/s. Karthika Gas Agency has given an unauthorized connection it was a legal connection nothing would have been easier than to produce the subscription voucher. Such a voucher as rightly pointed out by the learned Counsel for the appellant, is important and will bind an appellant-Corporation. The authorities below have not given due importance to the subscription voucher. Section 8(2) of the LPG Control Order reads as under:

No person shall possess or use liquefied petroleum gas filled in cylinder or in bulk form unless he has received supply thereof from a distributor or from an Oil Company.

34. The learned Counsel appearing on behalf of M/s. Rohan Gas Distributor submitted that in the case of Indian Oil Corporation v. Consumer Protection Council, Kerala and Anr. , facts were different. In that case M/s. Karthika Gas Agency, had given an unauthorized connection and it is not so in this case and it was submitted that it was a legal connection. As has been observed by the Supreme Court in para 14 nothing would have been easier than to produce the subscription voucher this connection was not an unauthorised connection, is an undisputed fact and this itself would be very important piece of evidence and would be binding on the corporation.

35. Learned Counsel also referred to the judgment of this Commission in *Flam Gas Service v. Aklesh Kumar Bansal and Ors.* In that case also the case of *Indian Oil Corporation v. Consumer Protection Council, Kerala and Anr.* was referred to but later part of para 14 was not mentioned in that judgment.

36. It is notable that Liquefied Petroleum Gas is an essential commodity and regulated under Section 3 of the Essential Commodities Act, 1955. In order to fulfil that obligation, the Central Government had issued an Gazette notification extraordinary dated 26.4.2000 by issuing the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 and it came into force on the date of its publication. The gas cylinder valve, cylinder, liquefied petroleum gas are specifically defined in Section 2(f)(c)(i).

37. In Sub-clause 3 of Clause 3 and Sub-clauses (a) to (e) of Clause 4 read as under:

3. (3) "No distributor of a Government Oil Company shall supply liquefied petroleum gas filled in cylinder to any person unless he,

(a) has been registered and granted a connection for liquefied petroleum gas under the public distribution system, or (b) holds a valid authorization from the Government Oil Company.

(4)(a) no person shall fill any cylinder with liquefied petroleum gas or transfer liquefied petroleum gas from one cylinder to another cylinder or from one container to another container unless authorized by the Chief Controller of Explosives;

(b) transport or stove a cylinder filled with liquefied petroleum gas except in an upright position;

(c) store or use or cause to be stored or used a cylinder filled with the liquefied petroleum gas except in a cool, dry, well-ventilated and accessible place under cover, away from boilers, open flames, steam pipes or any potential source of heat;

(d) remove the seal prior to use of the cylinder:

Provided that the distributor or his authorized representative or the delivery person may remove such seal in the presence of the consumer either for testing, checking or installation of the cylinder;

(e) use cylinder, pressure regulator and gas cylinder valve other than those specified in Schedules II and III.

(Emphasis supplied)

38. If we look into the Sub-clause (3) of Clause 3 as well as Sub-clause (1) of Clause 4 of the said order, it would lead to irresistible conclusion to the effect that the distributor has been registered

and granted a connection for liquefied petroleum gas under the public distribution system and holds a valid authorization from the Government Oil Company.

39. Notwithstanding Clause 17, if under authority of the Government Oil Company like Bharat Petroleum Corporation Ltd. any distributor is authorized, the distributor would be acting only under authority of the company and not independently. The observation in latter part of para 14 of the judgment in Indian Oil Corporation's case referred to hereinabove, compel us to hold that Hindustan Petroleum Corporation could not avoid its liability as principal notwithstanding the agreement between the two. Supposing for the sake of argument Clause 17 prevails absolutely then it would not be in tune with Clause (a) of Sub-clause (1) of Clause 4 for it is the duty of HPL only to fill any cylinder with liquefied petroleum gas or transfer liquefied petroleum gas from one cylinder to another cylinder or from one container to another container unless authorized by the Chief Controller of Explosives. The distributor has no such right in view of the specific provision added to the sub-section which is confined to removal of the seal in presence of the consumer either for checking or installing of cylinder.

40. It is not possible to accept that any Petroleum Company could escape from the responsibility after authorizing the distributor in accordance with the said order of 2000 and could allow the distributor to ignore safety precautions to be taken by employee, etc. of the distributor in installing gas cylinder. The fact that the warranty has not been given by Bharat Petroleum Corporation Ltd. to the distributor in terms of the agreement would not be sufficient to allow it to just appoint distributor, leaving the distributor to observe or not to observe safety precautions in stalling gas cylinder with or without worn out tube and then to get rid of its liability in such incidents.

41. It would, thus, appear that though insofar as the liability between the Hindustan Petroleum and the Distributor is concerned, that may be governed by the agreement but it would not take away the right of the consumer by necessary implications. If the distributor is acting under authority of the Government's Oil Company then the Government Oil Company would not be able to absolve itself from the liability today compensation in such like matters on account of deficiency in service in not properly advising in terms of the agreement in case the trained staff does not perform their duty to check the gas connection and tube etc. and instruct about other safety measures. The B.P.C.L. would itself be vicariously liable to pay for compensation in deficiency in service. Relief and Compensation

42. Now coming to the question of relief and quantum of compensation, the complainant/appellant claimed a sum of Rs. 5,65,292.65, the breakup of which is shown as under:

(i) Medical expenses	Rs. 13,027.65
(ii) Damages to the properties	Rs. 40,000.00
(iii) Loss of one month's salary	Rs. 7,615.00
(iv) Mental agony and shock	Rs. 5,00,000.00
(v) Interest at 18% p.a. from 17.2.1996 till the date of filing the suit.	Rs. 4,000.00

	Rs. 5,65,292.65

43. Insofar as the medical expenses claimed by the complainant, there is no dispute that the incident had occurred and surely the complainant had suffered injury and his property was damaged. In the fitness of things, in ordinary course, we might have granted Rs. 13,027.65 as medical expenses and around Rs. 35,000 for repairs to the damage caused to the building of the complainant/respondent.

44. As regards the loss of one month's salary we feel, that it could also be considered seeing the circumstances that he suffered burnt injuries to the extent of 20% and remained admitted in the hospital for 17 days. It would have also been appropriate to award a compensation of Rs. 1.00 lakh for in fact his working efficiency has been adversely affected due to the burn injury.

45. However, after careful consideration of the documents on record, cross-examination of the parties and minutely going through the evidence on record, we find that both the parties had contributed to the accident by their negligence as stated above. Accordingly, we are of the view that the complainant deserves to be compensated only to the extent of 50%, in view of his contributory negligence in the accident. Accordingly, he would be titled to get 50% of the total loss assessed at Rs. 1,48,027.65 (rounded of to Rs. 1,48,000) i.e.. Rs. 74,000 with interest @ 9% p.a. from the date of complaint.

46. In the above circumstances, Bharat Petroleum Corporation Ltd. and M/s. Rohan Gas Distributors are held jointly and severally liable to pay a sum of Rs. 74,000 with interest @ 9% p.a. from the date of complaint. However, M/s. Rohan Gas Distributors are entitled to be indemnified by New India Assurance Co. Ltd., respondent No. 3 to extent of amount covered by the policy plus 9% interest thereon.

47. In view of the facts and circumstances, parties are left to bear their own costs.

48. The respondents shall pay to the appellant this amount within a period of six weeks from the date of this order.

49. The appeal is allowed in the above terms.