



## House on Fire?

Sometimes you bear the brunt for nobody's fault

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"Circumstantial evidence is a very tricky thing. It may seem to point very straight to one thing, but if you shift your own point of view a little, you may find it pointing in an equally uncompromising manner to something entirely different"

Arthur Conan Doyle, *The Adventures of Sherlock Holmes*

Once in a while, in the inside pages of a daily newspaper, you end up reading a small news piece, mostly used by editors as fillers, on 'house catching fire due to cooking-gas leakage'. Such news subtly reminds you of a few safety measures that you generally forget about while handling inflammables.

At the same time, such news mostly misses out on a significant piece of fact – that if you cannot prove the 'leakage', then neither will the gas company compensate you, nor will you be able to claim any compensation from the insurance company against the damages caused due to fire. Unfortunately, recent developments suggest that even consumer forums cannot come to your rescue in such cases.

### Sixteen years of loss and no gain

Sushila Devi is one of the many thousand subscribers of Hindustan Petroleum (HP) and has been taking her regular supply from the company's authorised agency, NK Cooking, in Patna, Bihar. According to her, as part of her routine, in March 2000 she got her supply of subsidised gas at Rs 158.40. As always, she fitted the same herself and lit it sometime later. However, instead of lighting like usual, the gas caught fire, the kitchen went up in flames, and the fire burnt Devi's sari and gave her painful burns.

Assuming that the suppliers of the faulty, probably leaking cylinder were responsible, Devi sued the agency. Sixteen years later, before the highest authority of consumer rights, she lost her case and was

denied any claim on the basis of a simple justification – she could not prove or justify her claim.

Before reaching the National Commission, the case was decided by Bihar's state commission, where it had reached when Devi filed a revision petition after losing the case at district level. All the benches in the hierarchy tried to understand if there was any defect in the cylinder delivered to Devi – the onus of proving the same was on her.

Devi could bring no evidence on record to prove the same. Furthermore, the fact that she took the cylinder from the LPG dealer and installed it 'herself' put her in the wrong. The dealer/agency maintained that they had delivered the right cylinder and probably Devi did not install/fix it properly with her stove, and that was what could have caused the fire. They maintained that the agency's rules and regulations specified that their liability was limited to accidents that occurred either in transit or while installation by their employees or their authorised representatives.

As for the insurance of the agency's insurer, it is also limited to a particular time and event – primarily, the accidents that occurred during the transit of cylinders from the agency godown to the consumer's residence as well as accidents caused wherein the agency's employee is involved, including during the installation of cylinder. Hence, the consumer cannot claim anything from the agency's insurer for accidents caused at their home wherein agency is not involved.

Unfortunately, in Devi's case the same stance of the agency and the insurance company was maintained and accepted by all consumer commissions, starting from the district level to the National Commission. So, 16 years later, she ended up losing more time and resources moving from one forum to another.

### More Points to Note

Issues similar to those in Devi's case had been discussed in several judgements pronounced by various courts across India. In 1995, in the matter of of Indian Oil Corporation versus Consumer Protection Council, Kerala, and others, the Supreme Court (SC) had clarified the responsibilities of gas dealer as well as the manufacturer. As per SC, the relationship between the dealer and the manufacturer "is of principal-to-principal basis and not of principal-agent. Hence, everyone (both of them) are individually responsible for their own acts." Further, "We need to check the subject matter on case to case basis and also as per the 'agreement' between the dealer and the manufacturer. The facts and circumstances will only establish if both are jointly and severely responsible."

### Res ipsa loquitur – Some Hope for Consumers

Let us look at the procedure as a whole followed in distribution of LPG gas cylinders from the manufacturing point to the consumer, as detailed in the 1995 landmark judgement mentioned above.

All cylinders in the bottling plant are subjected to 'leak testing' so as to verify whether there is any

### Practical lessons to learn from Sushila Devi's case

1. While you must check the cylinder for its weight, spend an extra minute in checking the gas cylinder for any leakage. Do that in the presence of the supplier's representative.
2. Cylinders also have an expiry date. It is marked under the ring on the top of the cylinder, and you must check that. Cylinder used after the expiry date are prone to leakage.
3. You could be an expert in installing the cylinder with the stove, but it will be a good idea to let the supplier do it for you. In case an accident happens during the process, their insurance company will be liable to compensate.
4. If you cannot prove your claim before the commissions or courts, you could be wasting your time. Be sure of enough evidence and witnesses before challenging the lower commission's verdict. Get right advice and seek support from organisations that work towards consumer protection.
5. Apart from everything else, you must keep checking for smell of gas in the house, leaking gas pipes and burners, and must turn off the knob above the cylinder as a safety precaution. None of you wish to see fire at home; justice in courts, etc., is secondary.



leakage from the cylinder valve or the ring inside the cylinder valve. All cylinders thereafter have to pass through water-test bath to find out any leakage from the neck and body of the cylinder. After this supposedly rigorous check, gas-filled cylinders are securely dispatched from the bottling plant and are received by the LPG dealers at their godowns. There, too, all cylinders are checked for correctness of weight and safety. Any cylinder found leaky or defective in any manner has to be segregated and returned to the bottling plant.

However, in case of an accident, when no one – dealer or distributor – is found negligent and have seemingly performed their duties, the principle of ‘res ipsa loquitur’ can be applied in the court of law. It is a Latin phrase that means “the thing speaks for itself”.

Hence, if a consumer can somehow prove that he had taken all reasonable steps to avert foreseeable harm and that the loss incurred during the accident

as well as the circumstances/environment that led to the accident ‘speak for themselves’, then *res ipsa loquitur* can become an important vehicle in nailing negligent parties and bringing them to justice.

In practice, there are many cases where *res ipsa loquitur* has been invoked. Most of these cases are where the defendant is unable to show affirmatively either that he took all reasonable precautions to avoid injury or that the particular cause of the injury was not associated with negligence on his part.

In the matter of Madhuri Govilkar versus Hindustan Petroleum Corporation, Pelicon Gas Agency, and National Insurance Company (order dated October 2006), the National Commission had held both the company and the agency responsible for negligence and asked their insurance company to compensate. The incident, as narrated by the complainant, spoke for itself and was enough to prove negligence on defendant’s part.