

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1619 OF 2018

1. AASHNA ROY

.....Complainant(s)

Versus

1. YOGESH DEVESHWAR & ANR.

CHAIRMAN, ITC COMPANY LTD, 37, JAWAHARLAL
NEHRU ROAD,
KOLKATA-700071

WEST BENGAL

2. ITC HOTELS LTD

FORTUNE PARK HOTELS LTD ITC GREEN CENTRE, 10,
INSTITUTIONAL AREA, SECTOR-32,

GURGAON

HARYANA

.....Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT

HON'BLE DR. S.M. KANTIKAR,MEMBER

For the Complainant : For the Complainant : Ms. Aashna Roy, In Person

For the Opp.Party : For the Opposite Parties : Mr. Debal Kumar Banerji, Sr. Advocate
Mr. L.K. Bhushan, Advocate
Ms. Raashi Beri, Advocate

Dated : 25 April 2023

ORDER

1. The Consumer Complaint No. 1691 of 2018 was filed by the Complainant, Ms. Aashna Roy against the Opposite Parties, ITC Limited and its Chairman (hereinafter to be referred to as “the Opposite Party”), alleging deficiency in service on their part in cutting the hairs against her instructions. The said Complaint was allowed by this Commission vide Order dated 21.09.2021 directing the Opposite Party to pay a compensation of ₹2,00,00,000/- (Rupees Two Crores only) to the Complainant for wrong cutting the her hair. The said Order was challenged by the Opposite Party before the Hon’ble Supreme Court by filing the Civil Appeal No. 6391 of 2021. The Hon’ble Supreme Court, by its Order dated 07.02.2023 while affirming the finding of this Commission regarding deficiency in service on the part of the Opposite Party, had remanded the matter to reconsider the quantum of compensation and granted liberty to the Complainant to file the material to substantiate her claim.

02. The brief facts of the case are that the Complainant visited the saloon of the Hotel of ITC Maurya, New Delhi on 12.04.2018 for hair styling so that she would have a clean and groomed appearance before the Interview Panel where she was to appear after a week. She requested for one Ms. Alem for her hair cutting, but owing to her unavailability, the Complainant was assisted by another hair dresser namely, Ms. Christine. Complainant gave specific instructions to the said hair dresser as "long flicks/layers covering her face in the front and at the back and 4 inch straight hair trim from the bottom". Due to her high-powered spectacles (removed at the time of hairstyling), the Complainant could not clearly see herself in the mirror during her hair styling. Complainant was told by Ms. Christine that she was being given a "London Haircut". When the hair styling was complete, Complainant was shocked to notice that the hair dresser Ms Christine had chopped off her entire hair leaving only 4 inches from the top and barely touching to her shoulders which was quite contrary to the instructions given to her by the Complainant. With respect to the afore-mentioned incident, complaints were made to Mr. Zubin Songadwala, General Manager of the Saloon and Mr. Dipak Haksar, CEO of ITC Limited but to no avail. It is the case of the Complainant that later on, an offer for free hair extension service was provided to her by the Salon wherein, she was informed that the in-house hair dresser, one Mr Vicky would do the Mohair treatment under the supervision of Ms Alem. Complainant went for her treatment on 3.05.2018, however once again it turned out to be a fiasco for her as excess Ammonia was used during the treatment which completely damaged her hair and scalp resulting into lot of irritation and burning in the scalp which made her hair hard and rough. According to the Complainant, she faced humiliation and embarrassment due to her short hair as she never had short hair before. For both these incidents, she made complaints to the higher authorities but it was futile as no action was taken. Being aggrieved, she filed the Consumer Complaint No. 1619 of 2018 before this Commission, seeking a written apology and a compensation to the tune of ₹3 crores for harassment, humiliation, mental trauma, loss of career, loss of income and loss of future prospects etc.

03. The said Complaint was disposed of by this Commission vide Order dated 21.09.2021 by observing as under:-

"20. With regard to the Preliminary Objection taken by the Opposite Parties that the Complainant is not a "Consumer" as defined u/s 2 (1)(d) of the Act since no consideration was paid for hair cutting and treatment, we do not find any substance in the said contention. It cannot be believed that the Opposite Party No.2 which is established for profit motive, would provide free services with huge infrastructure, trained staff and management. As stated above, the Complainant has made the payment of ₹1,770/- from the Card issued by the Master Card, however, the said payment was declined. Exhibit RW-3/1 is the copy of invoice dated 12.04.2018 when the Complainant visited to Salon for hair cutting and Exhibit RW-3/2 is the transaction slip declining the transaction of ₹1,770/-. As such, it is manifestly clear that the Complainant was asked by the Opposite Party No.2 to pay a sum of ₹1,770/- as the charges for the hair cutting and accordingly invoice was generated. However, while paying the said consideration through a Master Card, the transaction was failed. But still, the Opposite Party No.2 chose to provide her hair cutting service since the Complainant used to come to the Salon since 2004 and the payment might have been paid by her later on. But as the Complainant complained of about the wrong hair cutting and for which the Opposite Party No.2 had tendered apology in WhatsApp, the Opposite Party No.2 did not insist to the Complainant for making the said payment. Even, from the WhatsApp Chat dated 15.04.18, it can be seen that Ms. Christine was suspended for three days. There is no doubt that realizing the mistake done by its staff, the Opposite Party No.2 offered the free hair treatment to the Complainant and Complainant was not attended to for a gesture. Hence, we are of the considered view that the Complainant is a Consumer.

21. Another Preliminary Issue raised by the Opposite Parties is that the claim made by the Complainant in the Complaint is highly exaggerated and inflated and this Commission has no pecuniary

jurisdiction to entertain the Complaint. It is no doubt that under the Act 1986, pecuniary jurisdiction was to be determined by taking the value of the goods or services and compensation, if any, claimed. Meaning thereby that the value of goods or services as also the compensation is to be added to arrive at a conclusion as to whether the National Commission has the jurisdiction or not. A three Member Bench of this Commission in the case of Ambrish Kumar Shukla & Ors. Vs. Ferrous Infrastructure Pvt. Ltd. – I (2017) CPJ1 (NC) while dealing with the question of Pecuniary Jurisdiction of the Consumer Fora, has held that for the purpose of determining the pecuniary jurisdiction of a Consumer Forum under Act 1986, the consideration paid or agreed to be paid by the consumer at the time of purchasing the goods or hiring or availing of the services, as the case may be, plus the amount of the compensation, is to be considered. The present Complaint has been filed under the Act 1986 and it was the value of the goods or services and the compensation claimed” taken into consideration while determining the pecuniary jurisdiction. As such, the question is answered in positive. However, it is made clear here that after coming into force the Consumer Protection Act 2019, the Pecuniary Jurisdiction of the Consumer Fora has to be decided only on the basis of value of goods or service paid as consideration.

22. A bare perusal of the WhatsApp Chat adduced by the Complainant would reveal that the Opposite Party had admitted the fault on their part and by offering the free hair treatment tried to cover it. There was also negligence on the part of the Opposite Party No.2 in giving hair treatment to the Complainant. The relevant portion of the Certificate issued by Dr. Ranjit Kumar Dass, MBBS to whom the Complainant visited for treatment of her scalp, is as under:-

“ This is to certify that Ms. Aashna Roy aged 42 years has been suffered from scalp disorder due to chemical treatment done by the Head of Hair Treatment.”

23. Now, the question for consideration before us is for what compensation the Complainant is entitled for. It is trite that the word “Compensation” is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation of physical, mental or even emotional sufferings, insult or injury or loss. On the question of determination of compensation for the loss or injury suffered by a Consumer on account of deficiency in service, the following observations by a three Judge Bench of the Hon’ble Supreme Court in Charan Singh v. Healing Touch Hospital & Ors., - (2000) 7 SCC 668 are also apposite:

“ While quantifying damages, Consumer Forums are required to make an attempt to serve the ends of justice so that compensation is awarded, in an established case, which not only serves the purpose of recompensing the individual, but which also at the same time, aims to bring about a qualitative change in the attitude of the service provider. Indeed, calculation of damages depends on the facts and circumstances of each case. No hard and fast rule can be laid down for universal application. While awarding compensation, a Consumer Forum has to take into account all relevant factors and assess compensation on the basis of accepted legal principles, on moderation. It is for the Consumer Forum to grant compensation to the extent it finds it reasonable, fair and proper in the facts and circumstances of a given case according to the established judicial standards where the claimant is able to establish his charge.”

24. Keeping in mind the observations of the Hon’ble Apex Court in a catena of judgments with respect to awarding compensation, we are of the considered view that the reasonable and just compensation is to be awarded to the Complainant. There is no doubt that the women are very cautious and careful with regard to their hair. They spend a handsome amount on keeping the hair in good condition. They are also emotionally attached with their hairs. The Complainant was a model for hair products because of her long hair. She has done modeling for VLCC and Pantene. But due to hair cutting against her instructions, by

the Opposite Party No.2 she lost her expected assignments and suffered a huge loss which completely changed her lifestyle and shattered her dream to be a top model. She was also working as Senior Management Professional and earning a decent income. She underwent severe mental breakdown and trauma due to negligence of the Opposite Party No.2 in cutting her hair and could not concrete her job and finally she lost her job. This apart, the Opposite Party No.2 is also guilty of medical negligence in hair treatment. Her scalp was burnt and still there is allergy and itching due to fault of the staff of Opposite Party No.2.

25. For the aforesaid discussion, the Complaint is allowed partly and we are of the considered view that it would meet the end of justice in case the Complainant is granted compensation of ₹2,00,00,000/- (Rupees Two Crore). Hence, we direct the Opposite Party No.2 to pay a compensation of ₹2,00,00,000/- (Rupees Two Crore) to the Complainant within a period of eight weeks from the date of receipt of a copy of the order. However, in view of the peculiar facts of the case, we left it open to the parties to bear their respective costs.

04. Questioning the legality of the Order dated 21.09.2021 passed by this Commission, the Opposite Party preferred Civil Appeal No. 6391 of 2021 before the Hon'ble Supreme Court. The Hon'ble Apex Court vide its Order dated 07.02.2023 upheld the finding of this Commission with regards to the deficiency in service by the Opposite parties. However, it remanded the matter back to this Commission for reconsidering the quantum of compensation awarded to the Complainant. The relevant paragraphs of the Order dated 07.02.2023 are as under:-

“ The question as to whether there was a deficiency in service or not would be a question of fact. The NCDRC, based upon the evidence led which included the affidavits, Photographs, CCTV footage, WhatsApp chats and other material on record, came to the conclusion that there was deficiency in service. We are not inclined to interfere with the said finding regarding deficiency in service as the same is based upon appreciation of evidence and thus would be a pure question of fact.

XXXXX

... In the facts of the case, we are of the view that the respondent if she has material to substantiate her claim may be given an opportunity to produce the same. Once deficiency in service is proved then the respondent is entitled to be suitably compensated under different heads admissible under law. Question is on what basis and how much. Let this quantification be left to the wisdom of the NCDRC based upon material if any that may be placed before it by the respondent.

In view of the above, we are left with no option but to set aside the order of NCDRC awarding Rs.2 crores as compensation for loss of income, mental breakdown and trauma and pain and suffering. We remit the matter to the NCDRC to give an opportunity to the respondent to lead evidence with respect to her claim of Rs.3 crores. In case such evidence is led then adequate right of rebuttal be given to the appellant. The NCDRC may thereafter take a fresh decision in accordance with the material that may be place on record on the issue of quantification of compensation. The appeal is allowed with the aforesaid directions.”

05. The Complainant, in compliance with the direction of the Hon'ble Supreme Court had filed an additional application on record on 21.02.2023 wherein she has submitted that she was to appear for an important interview for a senior position to be based in Delhi, wherein subject to her selection her salary with other perquisites would be amounting to ₹1 crore per annum. In support of her contention, she has filed an email dated 10.03.2018 from Mr. Pawan Goenka, Ex-Managing Director of Mahindra Group. The contents of the said email dated 10.03.2018 are as under:-

“Dear Ms. Roy,

Thank you for your interest in Mahindra. We are currently looking to fill a Senior Level Position based in Delhi where your profile has a good fit. I am forwarding your mail to my Senior Colleague Mr. Rajeev Dubey. His Office will get in touch with you to possibly organize a meeting.

The reply of the Complainant to the said email dated 10.03.2018 at 11.51 a.m. is as under:-

Dear Sir,

I hope you are doing well. I am enclosing my profile as per your discussion with Mr. Mukherjee for your kind perusal. I would be extremely delighted if given an opportunity to be a part of your organisation.

I have experience in all forms of communications and have extensively handled Government and Industry Affairs. I also have relevant expertise in Corporate Social Responsibility. I would be very keen to take my career forward and being value of your organisation under your able guidance. I would be looking forward to hearing from you. “

06. With regard to her Modelling and films career, she has submitted that she was having an offer of ₹1 crore i.e. ₹50 lakhs for an Annual Campaign of Hair Care Product & Film offer of ₹50 lakhs and she was likely to be offered a lot of other campaigns, movies, fashion related products but due to a blunder mistake done by the Opposite Party Salon all her dreams has washed out. To substantiate her claim with regard of her modelling carrier, she has placed on record copies of the advertisements/brochure of VLCC and Pantene along with her application. It has been further submitted by her that she was being offered a Feature Film and Hair Care Product Campaigns for which negotiations were going on with some of the best Production Houses. In support of the said submission, she has placed on record a copy of the Letter dated 11.12.2017 of M/s. Glitz Modelling and Production Pvt. Ltd. , New Delhi offering a Feature Film to her as Character Artist role with a remuneration of ₹60,00,000/- including promotion fee. It is contended by her that she was to be paid for a Modelling Assignment, a sum of ₹1-2 lakhs per 12- hour shift. She has also placed on record a copy of the letter dated 02.02.2018 of one Jeet Surendranath, Partner for Commercials offering ₹50,00,000/- as annual fee for hair-care modelling assignment and ₹20,00,000/- for fashion features and brand endorsements. She was also placed on record a certificate issued by Glitz Modelling and Production Pvt. Ltd. dated 21.02.2023 certifying as under:-

“This is to certify that Ms. Aashna Roy is known to me and has worked extensively with our organization, M/s. Glitz Modelling and Production Pvt. Ltd. – in well known brands, for advertisement and fashion shows.

She was also offered Featured Films and has been a wonderful person to work with. She has modelled from 2015-2018.”

07. It is submitted by her that as she was expecting more modelling assignments and was holding a bright prospect and profile, the amount claimed earlier is less and she has now enhanced her compensation to the tune of ₹5,20,00,000/- on account of loss of modelling assignments, fashion products, offer on the post of Senior Management Position, Loss of an offer for a movie, loss of future prospects and mental agony.

08. In reply to her Application, the Opposite Party has submitted that Complainant had merely filed a tabulation of her alleged loss, without producing any supporting documents or evidence in support of her alleged claims, and the same had been noted by the Hon'ble Supreme Court in its judgment dated 07.02.2023 also. Furthermore, most of the evidence put on record by the Complainant was either dim or illegible. It is also contended that there was no deficiency in the haircut provided to the Complainant and the Complainant had not proved that she had hip-long hair prior to the hair-cutting on 12.04.2018 and

that she had paid for such a service. It is also submitted that the Mohair treatment was provided, free of charge, to the hair and it had nothing to do with the scalp or cuticles, and thus there was no scope or occasion for the Complainant to claim that her scalp was damaged. Learned counsels for the Opposite Party submitted that the documents filed by the Complainant did not show that any discomfort experienced by her in July, 2018, August, 2018 and October, 2018 was due to the Mohair treatment given to her in May, 2018. They submitted that the claim of Rs. 1 crore for an alleged job offer and the amount of salary and other perquisites that would have been offered to the Complainant was based merely on assumptions as there was no confirmation of the same. Furthermore, there was no nexus between the said claim and the alleged deficiency and there was no connection between being offered a Senior Management role with the dissatisfaction of the Complainant with the services provided to her by the Opposite Party. It was submitted that Complainant had not filed any original photographs or posters of the said alleged ad campaigns neither did she prove when she did those advertisements. With regards to the contention of the Complainant that she had to undergo treatment for mental depression, trauma and anxiety it was submitted that in support she had filed a certificate dated 11.07.2018 by one Dr. Ranajit Kumar Das based in Kolkata, who was allegedly the same doctor who had allegedly treated the Complainant for her scalp disorder. It was submitted that not only did the certificate put on record lack the qualifications of the said doctor but the complainant also failed to prove that the said doctor was qualified to treat her for depression, and therefore, the same must not be relied upon.

09. Having bestowed our thoughtful consideration to the rival submissions of the Complainant appearing in person and the Learned Counsel for the Opposite Parties, we are of the considered opinion that there is no merit in any of the submissions made by the Learned Counsel for the Opposite Parties. It is pertinent to mention here that with regard to our finding of deficiency in service on the part of the Opposite Party, the same having been affirmed by the Hon'ble Supreme Court, has attained the finality. The only question for which the matter was remanded back to this Commission is to decide the quantum of compensation in view of the material to be adduced by the Complainant to substantiate her claim for compensation.

10. In compliance with the directions of the Hon'ble Apex Court, the Complainant has filed on record the various email offering a higher post/job to her, certificates and letter certifying that she was doing the modelling for various hair care products during the period from 2015 to 2018. Having gone through the evidence led by the Complainant in support of her claim, there cannot be any doubt that she was doing modelling for the hair-care products and as such to maintain the hair style and to take care of her hair was crucial for his high profile and bright career of modelling. She went for hair style to the Opposite Party on 12.04.2018. She received an email dated 10.03.2018 from Mr. Pawan Goenka, Ex-Managing Director of Mahindra Group offering her a Senior Level Position. The said proposal was under consideration or in pipeline till 2nd week of April, 2018 which can be verified from the emails dated 08.04.18 and 09.04.2018. But due to wrong cutting of her hairs by the Opposite Party she had undergone the depression, trauma and anxiety and a threat of loss of further or anticipated assignments and perhaps she could not finalize her assignment with the Mahindra Group due to frustration and emotional attachment with her hair. She has also produced on record photocopies of modelling with Pantene under the head of "FREEDOM Hair" and VLCC which advertised the services like Hair Spa, threading eyebrows etc. With regard to the submissions made by the Learned Counsel for the Opposite Party that the documents filed by her are only the photocopies and as such no reliance can be placed on these documents, in our considered view the said submissions does not hold any water. The Complainant was in the modelling career and for every assignment for promotion of any hair care brand, she was being paid a higher remuneration or fee. After losing her hair, she was under distress and trauma as she was expecting destroy of her modelling career. She was also under treatment for her hair extension which also did not help her a lot. Perhaps due to her this situation, she was not in a position or expected to take care of all these documents and maintain in original with a hope that she will file a suit against the Opposite Party

and to prove her claim she has filed these documents.

11. For the aforesaid reasons, we are of the view that the Complainant has sufficiently substantiated her claim for compensation by leading the cogent evidence. However, having carefully considered all the submissions of the Complainant and evidence led by her, in our view, no case has been made out by her for enhancement of the claim. Taking into consideration the various materials/documents filed by the Complainant, we are of the considered opinion that the interest of justice will be met if the Complainant is awarded ₹2,00,00,000/- (Rupees Two Crore) as compensation. We accordingly award ₹2,00,00,000/- (Rupees Two Crore) as compensation. However, since, a long time has passed from the date of passing of our earlier order dated 21.09.2021, in our view, the Complainant is entitled to be compensation by way of interest.

12. In view of the above, we direct the Opposite Party to pay a sum of ₹2,00,00,000/- (Rupees Two Crores only) to the Complainant alongwith interest @9% p.a. from the date of filing of the Complaint i.e. 19.07.2018 till payment, within a period of six weeks from the date of receipt of a copy of this order.

12. It is further directed that the amount of ₹25,00,000/- lying deposited with this Commission on transfer from the Hon'ble Supreme Court be released by the Registry to the Complainant within a period of four weeks.

13. The Complaint is disposed of in above terms.

CORRIGENDUM

Dated : 26th APRIL, 2023

IN THE PREAMBLE OF ORDER DATED 25TH APRIL, 2023

In the preamble of the Order dated 25th April, 2023 passed by the National Consumer Disputes Redressal Commission, the case number is not correctly shown due to typographical error, which requires to be corrected. As such the corrigendum is being issued.

FOR : **CONSUMER COMPLAINT NO. 1691 OF 2018**

READ : **CONSUMER COMPLAINT NO. 1619 OF 2018**

.....J
R.K. AGRAWAL
PRESIDENT

.....
DR. S.M. KANTIKAR
MEMBER