

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 6391 OF 2021

ITC LIMITED

...APPELLANT(S)

VERSUS

AASHNA ROY

...RESPONDENT(S)

J U D G M E N T

VIKRAM NATH,J.

1. This appeal under Section 23 of the Consumer Protection Act, 1986 assails the correctness of the order dated 21st September, 2021 passed by the National Consumer Disputes Redressal Commission¹ in Consumer Complaint No.1619/18 between Aashna Roy versus Yogesh Deveshwar and another. The NCDRC by the said order allowed the complaint filed by the sole respondent herein and awarded compensation of Rs.2 crores to be paid by the

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Reason:

¹ 'the NCDRC'

Opposite Party No.2 before the NCDRC i.e. the present appellant.

2. The background giving rise to the filing of the complaint by the respondent is briefly stated herein:

2.1 The respondent visited the saloon of the Hotel 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 the hair dresser who regularly used to cut her hairs on several previous visits to the saloon. As Ms Alem was not available, another hair dresser namely Ms Christine was assigned to do the hair styling of the respondent. The respondent, despite her not being satisfied with the services rendered by Ms Christine on previous occasions, accepted her services on the assurance of the Manager of the saloon that Ms Christine has shown great improvement in her performance over a period of time.

2.2 The respondent gave specific instructions to the said hair dresser in the following terms: “long flicks/layers covering her face in the front and at the back and 4-inch straight hair trim from the bottom”. The respondent was instructed to keep her head down and as she wears high powered spectacles (removed at the time of hairstyling), she could not clearly see herself in the mirror as to what the hair dresser was actually doing. According to the respondent, the instructions given were simple and would not take much time but when the hair dresser took more than an hour to do the hair styling, she questioned the hair dresser as to why she was taking so much time. She received an answer from the hair dresser that she was giving her “the London Haircut”.

2.3 When the hair styling was complete, to her utter surprise, she noticed 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 by her. She immediately complained to the Manager of the saloon Mr Gurpreet Acharya. As she had made a complaint, the Manager did not raise any bill. However, she left the saloon completely annoyed and frustrated.

2.4 According to the respondent, as a result of the faulty haircut, the respondent could not continue to lead her normal busy life as she no longer looked pretty; she had to face great humiliation and embarrassment; her career in the world of modelling was completely shattered; she went into a state of depression.

2.5 In connection with the fiasco which took place on 12.04.2018, the respondent made a complaint to the General Manager of the saloon Mr Zubin Songadwala to look into the matter and take appropriate action against the hair dresser. Mr Songadwala, instead of being courteous and apologetic to the respondent, was rude and said that she was free to take any action against the saloon. Thereafter, the respondent also called upon the Chief Executive Officer of ITC Limited

Mr Dipak Haksar and apprised him of the entire episode. It is also the case of the respondent that her hair was being sold by the saloon.

2.6 The saloon later offered the respondent services for extension of hair for the interview and also for free treatment to which she apparently agreed. The saloon arranged an external technical hair expert from MoeHair (an international brand) to extend the services. She was advised to repeat the treatment for 2-3 times.

2.7 The respondent again went for hair treatment on 3.5.2018. She was informed that the in-house hair dresser Mr Vicky would do the treatment under the supervision of Ms Alem. The respondent was given to understand that Mr Vicky was a trained hair dresser and very good in his work. Once again it turns out to be a fiasco for the respondent. Excess Ammonia was used during the treatment which completely damaged her hair and scalp resulting into lot of irritation and burning in the scalp. According to the respondent,

the hair dresser used his nails to scrub her scalp on the pretext that he was doing the exercise to open the hair cuticles. Whereas in effect it had caused abrasion in the scalp. However, when the cream was applied, it was laden with Ammonia resulting into severe burning sensation in the scalp.

2.8 She again complained about the damage caused whereafter a spray was used which gave her temporary relief. Thereafter, her hair had become hard and rough and the respondent could not even run her fingers through it. The discontentment and the annoyance expressed by the respondent was not taken well. The staff was abusive, rude and disrespectful. She was also threatened to face consequences on visit to ITC, Maurya. However, the complaints made by the respondent to the Manager of ITC Group of Hotels were an exercise in futility.

3. Left with no option, the respondent filed a complaint before the NCDRC alleging deficiency in service, seeking written apology from the management as also compensation

of Rs.3 crores for harassment, humiliation, mental trauma, loss of career, loss of income and loss of future prospects.

4. The NCDRC issued notices whereupon the Opposite Party No.1 before the NCDRC, namely Mr Yogesh Deveshwar took a defence that he was a non-executive Chairman of the ITC Limited and was not involved in the day-to-day operations of the company, as such he has been wrongly impleaded and the complaint deserves to be dismissed for misjoinder of parties. He also took several other objections on merits.

5. The appellant, arrayed as Opposite Party No.2 before the NCDRC, filed separate written objections and raised several objections: doubting the status of respondent being a consumer as the services rendered were free of charge, the claim of compensation was highly exorbitant, no documentary evidence had been adduced for such a huge claim, the complaint deserves to be dismissed for want of pecuniary jurisdiction. Even on merits the appellant put up its defence. A rejoinder affidavit was also filed by the

respondent before the NCDRC. Both the parties led evidence by way of affidavits. In addition, thereto some photographs, CCTV footages and also chats on social media and other material were also filed.

6. It would be worthwhile to record that before the NCDRC as also before this Court, the respondent appeared in person and argued the matter herself.

7. The NCDRC directed for deletion of the name of Mr Yogesh Deveshwar and further rejected the application by the respondent to implead Mr Sanjeev Puri, who is said to have taken over as Chairman of the ITC Limited after Mr Deveshwar on the ground that no deficiency in service was alleged against the said individual.

8. The NCDRC recorded a finding that the length of the hair of the respondent had been shortened contrary to her instructions. It also recorded a finding that on account of faulty hair styling the looks of the respondent may have changed. The NCDRC also recorded a finding that there was negligence on the part of the appellant in providing the hair

treatment to the respondent and also damage caused in the scalp. The NCDRC thereafter proceeded to deal with the quantification of the compensation. In this connection, it relied upon a judgment of this Court in the case of **Charan Singh** vs. **Healing Touch Hospital & Ors.**² Thereafter it refers to the importance of hair in the life of women and also the emotions and sentiments attached to it. The NCDRC further records that the respondent was a model for hair products and because of her long hair she had been a model for VLCC and Pantene. On account of the deficiency in service and the damage caused to her hair styling, 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. The NCDRC further recorded that the respondent underwent severe mental breakdown and trauma due to the negligence in the services provided to her and as a result of which she also lost her job. She also suffered burning sensation and irritation

² (2000) 7 SCC 668

in her scalp. For the above reasons, the NCDRC awarded a lumpsum compensation of Rs.2 crores to be sufficient to meet the ends of justice and, accordingly, allowed the complaint.

9. We have heard Mr K.V.Viswanathan and Mr Debal Kumar Banerji, learned senior counsel for the appellant and Ms Aashna Roy, the respondent-in-person and perused the material on record.

10. 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.

11. The next question is that, on account of such deficiency in service, what would be an adequate compensation taking

into consideration the various claims made by the respondent, either under different heads or a lumpsum amount. From a perusal of the impugned order of the NCDRC we do not find reference to or discussion on any material evidence to quantify the compensation.

12. In this respect, this Court repeatedly requested the respondent, who was appearing in person, to refer to the material which she had placed before the NCDRC with respect to her present job at the time when she undertook the hair styling on 12.04.2018. This Court also required her to produce the material regarding her advertising and modelling assignments in the past or for which she had entered into a contract or agreement for the present and future with any of the brands to show her expected loss. The respondent utterly failed to demonstrate from the record filed before the NCDRC or before this Court regarding the above queries.

13. In the absence of any material with regard to her existing job, the emoluments received by her, any past, present or future assignments in modeling which the respondent was

likely to get or even the interview letter for which the respondent alleges she had gone to the saloon to make herself presentable, it would be difficult to quantify or assess the compensation under these heads. What could be quantified was compensation under the head of pain, suffering and trauma. However, amount of Rs. 2 Crores would be extremely excessive and disproportionate. This Court, therefore, is of the view that the NCDRC fell in error by awarding compensation to the tune of Rs.2 crores without there being any material to substantiate and support the same or which could have helped the NCDRC to quantify the compensation.

14. The respondent was given an offer to engage a counsel which she denied. This Court thereafter offered her free legal aid also to be provided by the SCLSC which also she denied to accept. In the absence of any legal assistance, the respondent not being a person from the field of law may not be able to comprehend as to how and in what manner she needs to substantiate her claim. The NCDRC discussed regarding the importance of hair in a woman's life and also

that it could be an asset for building a career in modelling and advertising industry but then quantification of compensation has to be based upon material evidence and not on the mere asking.

15. 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.

16. 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 placed on record on the issue of quantification of compensation. The appeal is allowed with the aforesaid directions.

17. There shall be no order as to costs.

18. Pending application(s), if any, are disposed of.

19. This Court while issuing notice vide order dated 29.10.2021 had directed the appellant to deposit an amount of Rs. 25 lakhs, which has since been deposited with the Registry and is placed in fixed deposit. The above amount along with accrued interest be transmitted to NCDRC within 2 weeks. The NCDRC while deciding the matter afresh may pass appropriate orders with respect to the said amount.

.....J.
(ANIRUDDHA BOSE)

.....J.
(VIKRAM NATH)

NEW DELHI
FEBRUARY 07, 2023