

A CHANDIGARH NURSING HOME AND ANR.

v.

SUKHDEEP KAUR

(Civil Appeal No. 5931 of 2022)

B SEPTEMBER 09, 2022

[M. R. SHAH AND KRISHNA MURARI, JJ.]

- Consumer Protection Act, 1986 – s.21(b) – Constitution of India – Article 142 – Respondent, a minor suffered from wrong diagnosis and treatment leading to rashes on her body beyond control – Complaint filed by her through her father alleging medical negligence against appellants – District Forum directed the appellants to pay Rs.1 lakh with interest – Appeal by appellants, dismissed by State Commission with cost – Revision application filed by appellants, dismissed by National Commission, compensation enhanced to Rs.10 lakhs – On appeal, held: At no point of time, the respondent challenged the order passed by the District Forum aggrieved by the quantum of compensation – Therefore, the order passed by the District Forum attained finality insofar as the respondent is concerned – Further, at the most, the National Commission could have dismissed the revision application unless it specifically exercises a suo moto revisional power u/s.21(b) – In the present case, it does not appear that the National Commission exercised the suo moto revisional power – Even otherwise, in absence of any cogent reasons and/or material, the National Commission is not justified in enhancing the amount of compensation – Amount of compensation varies from person to person, looking to the damages and/or disability suffered – Merely because in some cases, the compensation has been enhanced, it cannot be enhanced in other cases – Impugned order passed by the National Commission set aside – However, on facts, in exercise of the powers u/Article 142, compensation enhanced to Rs.4 lakhs.*

Disposing of the appeal, the Court

- HELD:** 1. The District Forum awarded a sum of Rs. 1 lakh as compensation to the original complainant. However, the original complainant did not carry the matter further to the State Commission and the appellants herein – original opponents being

aggrieved by the order of District Forum preferred the appeal before the State Commission. The State Commission dismissed the appeal and the appellants herein – original respondents being aggrieved by the order passed by the State Commission preferred the revision petition/application before the National Commission. At no point of time, the original complainant challenged the order passed by the District Forum aggrieved by the quantum of compensation determined by the District Forum. Therefore, as such, the order passed by the District Forum attained finality insofar as the original complainant is concerned. In a revision application preferred by the original respondents – appellants herein challenging the order passed by the District Forum confirmed by the State Commission, the National Commission while dismissing the revision application has enhanced the amount of compensation. At the most, the National Commission could have dismissed the revision application unless the National Commission specifically exercises a suo moto revisional power in exercise of the powers under Section 21(b) of the Consumer Protection Act, 1986. In the present case, from the impugned judgment and order passed by the National Commission, it does not appear that the National Commission exercised the suo moto revisional power. Even the appellants herein – original revisionists were not put to notice that the National Commission is to enhance the amount of compensation in exercise of the revisional power - the suo moto revisional jurisdiction. The appellants herein – original revisionists are taken by surprise and the National Commission without giving any opportunity to them has enhanced the amount of compensation. Therefore, on this ground also, the impugned judgment and order passed by the National Commission enhancing the amount of compensation in the revision application preferred by the appellants herein is unsustainable. Even otherwise, in absence of any cogent reasons and/or material, the National Commission is not justified in enhancing the amount of compensation to Rs. 10 lakhs. While enhancing the amount of compensation to Rs. 10 lakhs, the National Commission has just referred to few decisions of this Court in paragraph 14 and thereafter has straightaway enhanced the amount of compensation. The amount of compensation varies from person to person, looking to the damages and/or disability

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- A suffered/sustained. Merely because in some cases, the amount of compensation has been enhanced, in other cases, the amount of compensation cannot be enhanced. While enhancing the amount of compensation to Rs. 10 lakhs as such, the National Commission has not at all discussed the disability suffered by the complainant. Therefore, also, the impugned judgment and order passed by the National Commission enhancing the amount of compensation to Rs. 10 lakhs is unsustainable. However, at the same time, looking to the negligence held to be proved and the trauma and the sufferings by the complainant, and that at the relevant time the compensation determined was Rs. 1 lakh only
- B and it is stated that the family has spent thousands of rupees for her treatment and medicines and that even today the complainant has not recovered completely and is under treatment, the amount of Rs. 1 lakh awarded by the District Forum is required to be enhanced in exercise of the powers under Article 142 of the Constitution of India to do the substantial justice to the complainant. The impugned judgment and order passed by the National Commission enhancing the amount of compensation to Rs. 10 lakhs is quashed and set aside. However, in exercise of the powers under Article 142 of the Constitution of India and for the reasons stated, the appellants to pay a total sum of Rs. 4 lakhs (instead of Rs. 1 lakh awarded by the District Forum) to the respondent herein, after deducting whatever amount as deposited by the appellants. The appellants to pay to the original complainant balance amount after deducting the amount already deposited, within a period of six weeks from today, failing which, it shall carry an interest @ 7.5%. [Paras 7-7.2, 8][437-F-H; 438-A-H; 439-A-B, D-E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5931 of 2022.

- G From the Judgment and Order dated 03.01.2022 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 4677 of 2013.

Gopal Sankaranarayana, Sr. Adv., Mayank Pandey, Adv. for the Appellants.

K. K. Mohan, Adv. for the Respondent.

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The Judgment of the Court was delivered by A

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 03.01.2022 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the “National Commission”) in Revision Petition No. 4677 of 2013 by which in a revision petition preferred by the appellants herein – original respondents, the National Commission has enhanced the amount of compensation from Rs. 1 lakh awarded by the District Forum to Rs. 10 lakhs, the original respondents have preferred the present appeal. B

2. The issue involved in the present appeal is in a very narrow compass. C

3. The facts leading to the present appeal in nutshell are as under:- D

3.1 The respondent herein – the original complainant, a minor filed a consumer complaint before the District Forum through her father alleging medical negligence against the appellants herein, who suffered from wrong diagnosis and wrong treatment, which led to rashes on her body, and which became beyond control. It was alleged that the doctor, who treated her was a BAMS (Ayurveda Doctor) and was not competent to prescribe allopathic medicines, which amounts to medical negligence. E

3.2 The District Forum by order dated 11.03.2010 directed the appellants to pay an amount of Rs. 1 lakh alongwith interest @ 9% from the date of order holding that there was a negligence on the part of the appellants. F

3.3 Feeling aggrieved and dissatisfied with the order passed by the District Forum, the appellants preferred an appeal before the State Consumer Disputes Redressal Commission, Punjab (hereinafter referred to as “State Commission”). At this stage, it is required to be noted that so far as the original complainant is concerned, it is an admitted position that the original complainant did not prefer any appeal before the State Commission to enhance the amount of compensation and it was the appellants, who preferred the appeal before the State Commission. The State Commission dismissed the said appeal with cost of Rs. 10,000/- G

3.4 Being aggrieved by the judgment and order passed by the State Commission dismissing the appeal and confirming the order passed by the District Forum awarding a sum of Rs. 1 lakh towards the H

- A compensation, it was the appellants, who preferred the revision petition/application before the National Commission.

3.5 While dismissing the revision petition/application preferred by the appellants herein, the National Commission has enhanced the amount of compensation to Rs. 10 lakhs. Being aggrieved by the order passed

- B by the National Commission enhancing the amount of compensation to Rs. 10 lakhs, that too, in the revision petition/application preferred by the appellants, the original opponents/appellants have preferred the present appeal.

- C 4. Shri Gopal Sankaranarayana, learned Senior Advocate has appeared on behalf of the appellants and Shri K.K. Mohan, learned counsel has appeared on behalf of the respondent – original complainant.

5. Shri Gopal Sankaranarayana, learned Senior Advocate appearing on behalf of the appellants has assailed the findings recorded by the District Forum, confirmed by the State Commission and the National

- D Commission, on the negligence held to be proved on the part of the appellants. However, as there are concurrent findings recorded by the District Forum, the State Commission and the National Commission on the negligence on the part of the appellants, we see no reason to interfere with the said finding of facts in exercise of powers under Article 136 of the Constitution of India.

- E 5.1 However, at the same time, learned Senior Advocate appearing on behalf of the appellants is right in submitting that in a revision application preferred by the appellants aggrieved by the order passed by the District Forum, awarding a sum of Rs. 1 lakh towards compensation, and that when neither any appeal was preferred by the original

- F complainant before the State Commission, nor thereafter any further appeal and/or revision application was filed by the original complainant before the National Commission, the National Commission was not justified in enhancing the amount of compensation in the revision application/petition preferred by the appellants. It is also the case on

- G behalf of the appellants that even otherwise and as such while awarding an enhanced compensation of Rs. 10 lakhs, the National Commission has not at all considered any disability and according to the learned Senior Advocate appearing on behalf of the appellants as such there is no basis at all to award Rs. 10 lakhs towards the compensation.

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5.2 Learned Senior Advocate appearing on behalf of the appellants has submitted that while enhancing the amount of compensation to Rs. 10 lakhs, the National Commission has considered some decisions of this Hon'ble Court referred to in paragraph 14 of the impugned judgment and order. However, according to the learned Senior Advocate appearing on behalf of the appellants, the amount of compensation depends upon the facts and circumstances of each case and depends upon the disability and/or suffering by the complainant and it varies from case to case. It is submitted that merely because in some cases, the amount of compensation has been enhanced in other cases, the amount of compensation is not required to be enhanced automatically.

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6. On the other hand, Shri K.K. Mohan, learned counsel appearing on behalf of the original complainant – respondent has heavily relied upon Section 21(b) of the Consumer Protection Act, 1986. Relying upon Section 21(b) of the Consumer Protection Act, 1986, it is submitted that the National Commission has suo moto revisional jurisdiction and therefore, even in absence of any appeal and/or revision application preferred by the complainant, the National Commission can enhance the amount of compensation in exercise of suo moto revisional jurisdiction conferred under Section 21(b) of the Consumer Protection Act, 1986. In the alternative, it is submitted by Shri Mohan, learned counsel appearing on behalf of the respondent that looking to the physical condition of the complainant and even today she is suffering, therefore, this Court may not interfere with the impugned judgment and order passed by the National Commission enhancing the amount of compensation.

7. Having heard the learned counsel appearing on behalf of the respective parties, it emerges that the District Forum awarded a sum of Rs. 1 lakh as compensation to the original complainant. However, the original complainant did not carry the matter further to the State Commission and the appellants herein – original opponents being aggrieved by the order of District Forum preferred the appeal before the State Commission. The State Commission dismissed the appeal and the appellants herein – original respondents being aggrieved by the order passed by the State Commission preferred the revision petition/application before the National Commission. At no point of time, the original complainant challenged the order passed by the District Forum aggrieved by the quantum of compensation determined by the District Forum. Therefore, as such, the order passed by the District Forum attained

- A finality insofar as the original complainant is concerned. In a revision application preferred by the original respondents – appellants herein challenging the order passed by the District Forum confirmed by the State Commission, the National Commission while dismissing the revision application has enhanced the amount of compensation. At the most, the National Commission could have dismissed the revision application unless the National Commission specifically exercises a suo moto revisional power in exercise of the powers under Section 21(b) of the Consumer Protection Act, 1986. In the present case, from the impugned judgment and order passed by the National Commission, it does not appear that the National Commission exercised the suo moto revisional power. Even the appellants herein – original revisionists were not put to notice that the National Commission is to enhance the amount of compensation in exercise of the revisional power - the suo moto revisional jurisdiction. The appellants herein – original revisionists are taken by surprise and the National Commission without giving any opportunity to them has enhanced the amount of compensation. Therefore, on this ground also, the impugned judgment and order passed by the National Commission enhancing the amount of compensation in the revision application preferred by the appellants herein is unsustainable.
- E 7.1 Even otherwise, in absence of any cogent reasons and/or material, the National Commission is not justified in enhancing the amount of compensation to Rs. 10 lakhs. While enhancing the amount of compensation to Rs. 10 lakhs, the National Commission has just referred to few decisions of this Court in paragraph 14 and thereafter has straightaway enhanced the amount of compensation. It is to be noted that the amount of compensation varies from person to person, looking to the damages and/or disability suffered/sustained. Merely because in some cases, the amount of compensation has been enhanced, in other cases, the amount of compensation cannot be enhanced. While enhancing the amount of compensation to Rs. 10 lakhs as such, the learned National Commission has not at all discussed the disability suffered by the complainant. Therefore, also, the impugned judgment and order passed by the National Commission enhancing the amount of compensation to Rs. 10 lakhs is unsustainable.
- H 7.2 However, at the same time, we are of the opinion that looking to the negligence held to be proved and the trauma and the sufferings by the complainant, and that at the relevant time the compensation determined

was Rs. 1 lakh only and it is stated that the family has spent thousands of rupees for her treatment and medicines and so stated in the counter affidavit that even today the complainant has not recovered completely and is under treatment, we are of the opinion that the amount of Rs. 1 lakh awarded by the District Forum is required to be enhanced in exercise of the powers under Article 142 of the Constitution of India so as to do the substantial justice to the complainant. We are of the opinion that if the amount of compensation is enhanced to a total sum of Rs. 4 lakhs (instead of Rs. 1 lakh awarded by the District Forum), the same shall meet the ends of justice.

8. In view of the above and for the reasons stated above, the impugned judgment and order passed by the National Commission enhancing the amount of compensation to Rs. 10 lakhs is hereby quashed and set aside. However, in exercise of the powers under Article 142 of the Constitution of India and for the reasons stated herein above, we direct the appellants to pay a total sum of Rs. 4 lakhs (instead of Rs. 1 lakh awarded by the District Forum) to the respondent herein, after deducting whatever amount as deposited by the appellants. We direct the appellants to pay to the original complainant balance amount after deducting the amount already deposited, within a period of six weeks from today, failing which, it shall carry an interest @ 7.5%. The original complainant is permitted to withdraw the amount already deposited by the appellants with interest accrued thereon, which shall be paid to the original complainant by account payee cheque and/or on giving the particulars of the bank account, the same be deposited/credited in the bank account of the original complainant.

The present appeal is disposed of accordingly in the aforesaid manner.

Divya Pandey
(Assisted by: Roopanshi Virang, LCRA)

Appeal disposed of.