

(2011) 07 NCDRC CK 0059

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Sujata Nath

APPELLANT

Vs

Popular Nursing Home

RESPONDENT

Date of Decision: July 8, 2011

Citation: 2011 0 NCDRC 380 : 2011 3 CPJ 239 : 2011 3 CPR 282

Hon'ble Judges: R.C.Jain , S.K.Naik J.

Advocate: Rana Mukherji , Uttara Babbar

Judgement

1. THE above named complainant has filed this complaint before this Commission seeking total compensation of Rs. 1,50,00,000/- (Rupees one crore fifty lakhs only) with interest @ 18% p.a. till the date of actual payment of compensation alleging medical negligence and deficiency in service on the part of opposite parties in giving treatment to her. THE precise allegation of negligence and deficiency in service being that during the course of her treatment for the fracture of her hip and pelvis joint, blood was transfused to her and the said blood was infected as a result of which the complainant became HIV positive due to which she has suffered in various ways and would require huge funds for HIV medication. THE breakup of the amount of Rs. 1,50,00,000/- claimed by the claimant from the opposite parties on account of the alleged deficiencies in service is as under: - Sl. No. Particulars Amount claimed (in Rupees)

1. For medical expenses incurred at Patna and Kolkata till date Rs. 15,00,000/- 2. For expenses incurred till date towards Lodging, Food, transport between Itanagar and Kolkata for treatment at Kolkata Rs. 5,00,000/- 3. For future expenditure on HIV medication @ Rs. 15,000/- per month for 25 years Rs. 45,00,000/- 4. For future medical expenses related to the progressive failure of the immune system Rs. 35,00,000/- 5. For mental agony and harassment caused to the Complainant Rs. 50,00,000/- 6. Total Claim Rs. 1,50,00,000/- (alongwith interest @ 18% till the actual date of payment of compensation) Alongwith the complaint, the complainant has filed copies of the medical record of her treatment at Popular Nursing Home, Patna.

Various bills and cash memos of the expenses incurred in connection with her treatment at the said Nursing Home as also at some other Medical Centre of Kolkata.

2. WE have heard Mr. Rana Mukherjee and Ms. Uttara Babbar, Advocates learned Counsel for the complainant on the entertainability of the present complaint by this Commission. In particular we enquired from the learned counsel for the complainant as to the basis of quantification of the claim at Rs. 1.5 crores. Ld. Counsel for the complainant submitted that complainant is free to claim the compensation as per her own assessment keeping in view the extent of the loss and injury suffered by her. In any case, the submission is that going by the peculiar facts of the present case, the complainant has not made any excessive claim inasmuch as the kind of injury and stigma suffered by the complainant due her becoming a HIV positive patient and the treatment of which she may require huge money. In support of his contention, learned counsel for the complainant has placed reliance on a number of decisions of the Honble Supreme Court viz. [Tara Devi Vs. Sri Thakur Radha Krishna Maharaj, (1987) 4 SCC 69]. In the case of Nandita Bose Vs. Ratanlal Nahata, (1987) 3 SCC 705 the Honble Supreme Court held. In the later case, the Honble Supreme Court has held as under: The principles which regulate the pecuniary jurisdiction of civil courts are well settled. Ordinarily, the valuation of a suit depends upon the reliefs claimed therein and the plaintiffs valuation in his plaint determines the court in which it can be presented. It is also true that the plaintiff cannot invoke the jurisdiction of a court by either grossly over-valuing or grossly under-valuing a suit. The court always has the jurisdiction to prevent the abuse of the process of law. But the question whether she was entitled to claim mesne profits or damages in respect of the period subsequent to February 1, 1985 could not have been disposed of at a preliminary stage even before the trial had commenced. That question has to be decided at the conclusion of the trial alongwith other issues arising in the suit. Having regard to some of the decisions on which reliance is placed by the appellant in the course of the appeal we are of the view that the matter is not free from doubt. There cannot be any quarrel with the legal position reiterated by the Honble Supreme Court. However, it is equally well settled that if a complainant grossly overvalues or undervalues its complaint by bringing it with the jurisdiction of a particular forum, the complaint can be directed to be returned for proper presentation. In the present case, assuming for the sake of arguments that the averments and allegations made by the complainant are correct and complainant may be able to substantiate the same one day, the important question is as to

whether the complainant can validly or legitimately claim and granted compensation as high as Rs. 1.5 crores.

From the head wise breakup (Supra) of the compensation, it is manifest that out of the total sum of Rs. 1.5 crores, the complainant has claimed a sum of Rs. 50,00,000/- towards mental agony caused to her and Rs. 45,00,000/- for future expenditure on HIV medication @ Rs. 15,000/- per month for 25 years and further a sum of Rs. 35,00,000/- for future medical expenses relating to the progressive failure of the immune system. The complainant has not disclosed the basis of arriving at the said figures despite opportunity granted for the purpose. What has been submitted is that the complainant has suffered irreparable loss and injury and to mitigate her present and future conditions, the amount claimed is not excessive. We are unable to accept the said statement because the compensation claimed or which a Consumer Forum can grant on the defect or deficiency being established has to be commensurate with the loss or injury suffered by the complainant and cannot be arbitrary, imaginary or for a remote cause. We are not trying to prejudge the issue but at the same time we cannot be oblivious of the legal position that even if the complainant is able to establish her case about the negligence and deficiency in service as alleged by her in the complaint, a Consumer Forum will not be able to grant her compensation exceeding Rs. One crore in any view of the matter. We are therefore, of the considered opinion that the complainant ought to have made a just and reasonable claim for compensation, which could be entertained and answered by the competent as Consumer Fora i.e. a District Forum or a State Commission, which has pecuniary jurisdiction to decide the complaint where compensation upto Rs. One crore is claimed. Even otherwise, we may note the complainant is a Government servant of Arunachal Pradesh and all the opposite parties are based in Patna, Bihar. In these circumstances, it appears to us that this complaint before this Commission is nothing but an attempt to abuse the jurisdiction of this Commission.

3. THUS, having considered the matter, we are of the view that the complainant should suitably amend her complaint so as to make the claim of compensation within the legitimate / reasonable limits and to file the same before the appropriate Consumer Forum.

In the result, the complaint is ordered to be returned to the complainant for presentation before appropriate/competent Consumer Forum after making suitable amendment in the complaint in accordance with law.