

PETITIONER:
CHARAN SINGH

Vs.

RESPONDENT:
HEALING TOUCH HOSPITAL & ORS.

DATE OF JUDGMENT: 20/09/2000

BENCH:
K.G.Balakrishnan, M.B.Shah

JUDGMENT:

Dr. A.S.Anand, CJI:
L.....I.....T.....T.....T.....T.....T.....T...J

This appeal under Section 23 of the Consumer Protection Act, 1986 is directed against an order of the National Consumer Disputes Redressal Commission, New Delhi (hereinafter the "National Consumer Forum") dated 9th August, 1999 dismissing a complaint filed by the appellant, without expressing any opinion on the merits of the case, but granting liberty to the appellant to "make a realistic claim" and move the State Commission or the District Forum, as the case may be in accordance with law. The National Consumer Forum 1

further directed that time spent before it, should be taken into account for purpose of computing period of limitation by the appropriate forum where the appellant moves his complaint, With a view to dispose of this appeal, we would refer only to minimal relevant facts as emerge from the record before us. In 1993, according to the appellant, he went to the Healing Touch Hospital, respondent No.1 for treatment of stomachache and burning sensation while passing urine. He was examined by respondent No.2, Dr. A.J.S. Juneja, who admitted him in respondent No.1 hospital on 12.1.1993 for an operation for removal of "stone from the Urethra". At the time of operation, it was respondent No. 4, Dr. Sunil Seth, who administered spinal anesthesia to the appellant. Operation was performed. Certain complications, according to the appellant, arose on account of negligence of respondent No.1 hospital and its team of doctors, both in the administration of spinal anesthesia and performing the operation. According to the appellant, he was paralysed on the right hand side of his body. He complained and was prescribed some medicines and discharged from the hospital. Despite taking the prescribed medicines, there was no

improvement. He also started passing blood along with urine. On 1st February, 1993, the appellant again went to respondent No. 1 hospital and met respondent No. 2, Dr. Juneja, who once again admitted him to the hospital. On 9th of February, 1993, the appellant was advised to undergo another operation to stop passing blood with urine. The appellant claims that he was taken to the operation theatre

and after administering anesthesia to him, when he was in a drowsy state, respondents No. 2 and 3, obtained his signatures on some papers. On 10.2.1993, after the appellant regained consciousness, respondents No.2 and 3 told him that he would be discharged from the hospital within a couple of days. The left side of his body was, however, still paralytic and he complained about it to the doctors at the hospital. According to the appellant, on 18.2.1993, he was discharged from respondent No.1 hospital in the same paralytic condition. He was prescribed some medicines which he kept on taking. Since, paralytic condition continued, the appellant went back to respondent No.1 hospital where respondent No.2 asked him to 'go away' and not to return to the hospital ever again. Appellant claims that, he, thereafter went to Medical Diagnostic Centre, Hauz Khas, New Delhi. On examination of his discharge slip and after

undertaking certain other tests, the appellant was told by the Diagnostic Centre, that his left kidney had been removed. The appellant was shocked to hear this and went to respondent No. 3 in the hospital, who told him to meet respondents No.2 and 4. He asked them how they had removed his left kidney during the second operation without his knowledge or consent. No body was willing to talk to him in the hospital and he was made to go from one doctor to another. Finally, he was turned away from the hospital without providing any explanation. According to the appellant, as a result of the negligence of doctors at respondent No.1 hospital, he has become disabled and handicapped with his right side being paralysed, for which he has to use crutches. His kidney has also been 'legally' removed. He states that, as a result, he also lost his job with M/s. Durga Lakshmi Builders where he was serving prior to his operation. He states that he had to spend a fortune for paying the exorbitant bills of the doctors and the hospital besides medicines, tests and for his upkeep. The appellant, thereupon, filed a complaint in the National Consumer Forum and claimed Rs. 34 lakhs by way of compensation from the respondents in 1993 on various grounds, under different heads.

The respondents were put to notice. They filed their counter statements and replies, to which the appellant also filed his rejoinder. While the matters rested thus, the National Consumer Forum passed the impugned order referred to above, six years after the complaint was filed, on 9th August, 1999. Hence this appeal. The appellant appeared in person before us in this appeal and the Court issued notice. It appeared to the Court that on account of his disabilities and handicap, the appellant was not in a position to properly assist the Court. We, therefore, requested Ms. Indira Jaising, learned senior counsel, who was present in Court, to appear as amicus curiae, which she readily agreed. We have heard learned counsel for the parties. The impugned order of the National Consumer Forum is very brief. While dismissing the complaint and relegating the appellant to approach either the District Forum or the State Commission, the National Consumer Forum inter alia observed: "...The Complainant was drawing a salary of Rs.3,000/- plus allowances. This is his allegation which is not admitted by the Opposite Party. Even if we accept this contention is correct and even if we accept that as a result of wrong treatment given in the Hospital he has

suffered permanent disability the claim, of Rs 34 lakhs made by the complainant is excessive. We are of the view that this exaggerated claim has been made only for the purpose of invoking the jurisdiction of this Commission..." (Emphasis ours) The National Consumer Forum, in our opinion, was not fair in disposing of the complaint of the appellant by styling his claim as "excessive" or "exaggerated", after six years of the pendency of the complaint, and asking the appellant to move the State Commission or the District Forum by making "a realistic claim" whether the claim of the appellant was "realistic", "exaggerated" or "excessive", could only have been determined after the appellant had been given an opportunity to prove the case he had set up and established his claim under various heads. It was not fair to call his claim "unrealistic", "exaggerated" or "excessive" without giving the appellant an opportunity to substantiate his case. Ms. Indira Jaising, learned Amicus, submitted that according to the appellant he had suffered paralysis on the right side and had also become permanently disabled and his one kidney had been illegally removed. The appellant had on that account suffered pain and suffering. He had also undergone heavy expenditure for his.

operations, upkeep, medicines etc. He had lost his job. Learned counsel submitted that the appellant should have been given an opportunity to substantiate his claim and the National Consumer Forum was not justified to observe that the claim put forward by the appellant was "unrealistic", "exaggerated" or "excessive" after referring to the salary of the appellant only. According to Ms. Jai Singh, the National Consumer Forum, was not right in scuttling an enquiry into the claim of the appellant, in limine after keeping him waiting for six long years. According to her, the impugned order vitiates the spirit with which the Consumer Protection Act was enacted. Learned counsel for the respondents, however, submitted that the claim of the appellant was "exaggerated" and "excessive" and the Forum rightly rejected it, without giving any finding on merits so as not to prejudice the case of the appellant before the District Forum or the State Commission. After hearing learned counsel for the parties and perusing the record, we are constrained to say that we are not happy with the manner in which the complaint of the appellant has been disposed of.

Consumer Protection Act is one of the benevolent pieces of legislation intended to protect a large body of consumers from exploitation. The Act provides for an alternative system of consumer justice by summary trial. The authorities under the Act quasi-judicial powers for redressal of consumer disputes and it is one of the postulates of such a body that it arrive at a conclusion on reason. The necessity to provide reasons, however, brief in support of its conclusion by such a forum, is too obvious to be reiterated and needs no emphasising. Obligation to give reasons not only introduces clarity but it also excludes, or at any rate minimizes, the chances of arbitrariness and the higher forum can test the correctness of those reasons. Unfortunately we have not been able to find from the impugned order any reasons in support of the conclusion that the claim of the appellant is "unrealistic" or "exaggerated" or "excessive". Loss of salary is not the sole factor which was required to be taken into consideration. While quantifying damages, consumer forums

are required to make an attempt to serve 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 established judicial standards where the claimant is able to establish his charge. It is not merely the alleged harm or mental pain, agony or physical discomfort, loss of salary and emoluments etc. suffered by the appellant which is in issue - it is also the quality of conduct committed by the respondents upon which attention is required to be founded in a case of proven negligence. It must be remembered that National Consumer Forum has jurisdiction, without pecuniary limitations, to award proper compensation, even less than the one claimed in a given case, depending upon the established facts and circumstances of that

particular case and the evidence led by the parties. The District Commission and the State Forum, on the other hand, have pecuniary jurisdictional limitations for granting compensation beyond their jurisdictional limits. Under Section 11(1) of the Consumer Protection Act, 1986, the District Forum has jurisdiction to entertain complaints where the value of the goods or services and compensation, if any, claimed does not exceed Rs.5 lakhs. Section 17(a) of the Act provides that State Commission shall have jurisdiction to entertain complaints where the value of goods or services and compensation, if any, claimed exceeds Rs.5 lakhs, but does not exceed Rs.20 lakhs. In view of these jurisdictional limitations of the District Forum and the State Commission, these bodies would not be able to award compensation, even if satisfied in a given case that the complainant was entitled to more compensation than what he had claimed, beyond their pecuniary jurisdiction. That apart, in the present case, complaint petition filed by the appellant for compensation was pending before the National Consumer Forum for six long years. The pleadings had been completed. The National Consumer Forum should have taken the complaint to its logical conclusion by asking the parties to adduce

evidence and rendered its findings on merits. A mathematical calculation based only on the amount of salary being drawn by the appellant could not be the sole factor to be taken into consideration to stifle the claim of the appellant "unrealistic" or "exaggerated" or "excessive". The appellant has virtually condemned unheard after waiting for six long years. The legislative intent, for enacting the legislation, of a speedy summary trial, to settle the claim of the complainant (consumers) has been respected in its breach. The spirit of the benevolent legislation has been overlooked and its object frustrated by non-suited the appellant in the manner in which it has been done by the National Consumer Forum. The consumer forums must take

expeditious steps to deal with the complaints filed before them and not keep them pending for years. It would defeat the object of the Act if summary trials are not disposed of expeditiously by the forums at the District, State or National levels. Steps in this direction are required to be taken in the right earnest. We, therefore, accept this appeal, set aside the impugned order of the National Consumer Forum and remand the complaint filed by the appellant to the National Consumer Forum for its disposal in accordance with law.

We clarify that what we have said above shall not be construed as any expression of opinion on the merits of the case, or the rights of the parties. The complaint shall be decided on its own merits in accordance with law. We request the National Consumer Forum to dispose of the complaint of the appellant expeditiously. Before parting with this order, we wish to place on record our appreciation for the assistance rendered by learned Amicus, Ms. Indira Jaising.