

ITC Limited

v.

Aashna Roy

(Civil Appeal No. 3318 of 2023)

06 February 2026

[Rajesh Bindal* and Manmohan, JJ.]

Issue for Consideration

Issue arose whether the National Commission was justified in awarding a compensation of ₹2 crores to the respondent-model for a faulty haircut she took at the beauty salon in the appellant's Hotel.

Headnotes[†]

Consumer Protection Act, 1986 – Deficiency in service – Allegation of faulty haircut – Respondent-model visited the beauty salon in the appellant's hotel for haircut – Dissatisfied with the services rendered, she filed complaint before National Commission – Commission awarded a compensation of ₹2 crores to the respondent holding the appellant guilty of the deficiency in service and medical negligence – In an appeal thereagainst, this Court upheld the finding of fact recorded by the Commission regarding deficiency in service, however, set aside the amount of compensation awarded to the respondent since no material placed on record to justify the claim, and remitted the matter to the Commission and the sum of ₹25 lakhs deposited by the appellant before this Court was to be transmitted to the Commission – Review petition and Curative petition filed, which were dismissed – After remand, respondent enhanced her claim to ₹5.20 crores and produced documents on record before the Commission to substantiate her claim, while the appellant filed applications praying for production of original documents; and seeking permission to cross-examine the respondent which was not given – However, the Commission, again awarded ₹2 crores as compensation, and directed release of ₹25 lakhs in favor of the respondent – Correctness:

* Author

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Held: From the evidence placed on record, case not made out for such a huge compensation to the respondent – Damages cannot be awarded merely on presumptions or whims and fancies of the complainant – To make out a case for award of damages, especially when the claim is to the tune of crores of rupees, some trustworthy and reliable evidence has to be led – It is not a case where the Commission could award compensation by applying a thumb rule – Claim of compensation was for crores of rupees, for which some loss suffered by the respondent because of deficiency in service was required to be established – This could not be established by merely producing photocopies of the documents, wherein even discrepancies have been noticed – Even after remand, respondent not been able to make out a case for award of such huge compensation – On the basis of photocopies of the documents placed on record by the respondent, the Commission erred in awarding huge amount of compensation of ₹2 crores, which cannot be justified – Observation made by the Commission that because of the trauma suffered by the respondent, she may not have maintained the originals of the documents produced before the Commission, hence, reliance could be placed on mere photocopies, cannot be a justification for awarding such a huge compensation – Even if the photocopies were to be produced, there are other ways and means to justify the claim made on that basis – Even if the Code of Civil Procedure may not be strictly applicable, the Commission did not assess as to how the respondent suffered loss to the tune of ₹2 crores – Impugned order passed by the Commission modified to the extent that the amount of compensation, to which the respondent is entitled to, be restricted to the amount of ₹25 lakhs already released in her favor. [Paras 19-24]

Case Law Cited

Chief Administrator, HUDA v. Shakuntala Devi (2017) 2 SCC 301; *Charan Singh v. Healing Touch Hospital* [2000] Supp. 3 SCR 337 : (2000) 7 SCC 668; *Nizam's Institute of Medical Sciences v. Prasanth S. Dhanaka* [2009] 9 SCR 313 : (2009) 6 SCC 1; *Malay Kumar Ganguly v. Dr. Sukumar Mukherjee and Others* [2009] 13 SCR 1 : (2009) 9 SCC 221; *Dr. J.J. Merchant and others v. Shrinath Chaturvedi* [2002] Supp. 1 SCR 469 : (2002) 6 SCC 635; *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and Another* [2003] Supp. 4 SCR 450 : (2003) 8 SCC 752 – referred to.

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Consumer Protection Act, 1986; Evidence Act, 1872; Bharatiya Sakshya Adhiniyam, 2023.

List of Keywords

Award of compensation of ₹2 crores by National Commission; Faulty haircut; Deficiency in service; Medical negligence; Merely producing photocopies of the documents; Award of compensation of ₹25 lakhs.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3318 of 2023
From the Judgment and Order dated 25.04.2023 of the National Consumers Disputes Redressal Commission, New Delhi in CC No. 1619 of 2018

Appearances for Parties

Advs. for the Appellant(s):

Dr. A.M. Singhvi, Sr. Adv., M/s Dua Associates, L.K. Bhushan, Ms. Raashi Beri.

Caveator-in-person.

Judgment / Order of the Supreme Court**Judgment**

Rajesh Bindal, J.

1. Challenge in the present appeal is to the order¹ passed by the Commission² in the Complaint³ filed by the respondent whereby compensation of ₹2,00,00,000/- was awarded to her on account of deficiency in service.
2. Briefly, the facts available on record are that the respondent visited the beauty salon in the appellant's ITC Maurya Hotel at New Delhi

¹ Dated 25.04.2023

² National Consumer Disputes Redressal Commission

³ Consumer Case No.1619 of 2018

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on 12.04.2018 for her haircut. Being dissatisfied with the service rendered, the respondent filed a complaint before the Commission in July 2018. Vide order dated 21.09.2021, the Commission found the appellant guilty of the deficiency in service and medical negligence. A sum of ₹2,00,00,000/- was awarded as compensation to the respondent.

2.1 Aggrieved against the aforesaid order, the appellant preferred appeal⁴ before this Court. Vide judgement dated 07.02.2023, the aforesaid appeal was disposed of by this Court, while not interfering with the finding of fact recorded by the Commission regarding deficiency in service. However, the amount of compensation awarded to the respondent was set aside and the matter was remitted back to the Commission so far as quantum of computation was concerned. It was for the reason that there was no material placed on record by the respondent to justify her claim. In case any evidence was to be produced on record by the respondent before Commission, the appellant was entitled to rebut the same. A sum of ₹25,00,000/- deposited by the appellant before this Court was directed to be transmitted to the Commission. The appellant filed review petition⁵ against the aforesaid order. The same was dismissed by this Court on 11.07.2023. To complete the narration of fact recorded in the earlier round of litigation, it needs to be mentioned that the Curative Petition⁶ filed by the appellant was also dismissed on 30.01.2024.

2.2 After remand, the respondent enhanced her claim from ₹2,00,00,000/- to ₹5,20,00,000/- and produced certain documents on record before the Commission to substantiate her claim. The Commission, after consideration of the material produced on record by the parties, again awarded⁷ ₹2,00,00,000/- as compensation to the respondent along with interest @ 9% per annum from the date of filing of the complaint till payment is made.

4 Civil Appeal No.6391 of 2021

5 Review Petition Diary No.9795 of 2023 in C.A. No.6391 of 2021

6 Curative Petition (Civil) No.392/2023.

7 Vide Order dated 25.04.2023

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- 2.3 Aggrieved against the aforesaid order dated 25.04.2023 passed by the Commission, the present appeal has been filed by the appellant before this Court.

ARGUMENTS OF THE APPELLANT

3. Learned counsel for the appellant submitted that in the first round of litigation, no doubt, this Court upheld the finding of the Commission insofar as deficiency in service is concerned, but the quantum of compensation was set aside while recording a finding that there was no material placed on record by the respondent to justify the claim. After remand, the respondent produced photocopies of certain documents in her evidence before the Commission on 21.02.2023. To the aforesaid application filed by the respondent seeking to produce photocopies of certain documents in evidence, the appellant filed affidavit dated 16.03.2023 wherein the documents filed by the respondent were denied. Additionally, in the reply filed by the appellant to the respondent's aforesaid application, it was stated that most of the documents were dim or illegible and were mere photocopies. It was also stated that respondent is improving her case by adducing evidence and adding pleadings that were not present in her original complaint.
- 3.1 Along with the aforesaid affidavit, two other applications were also filed; one was for production of original documents, photocopies of which were sought to be produced by the respondent in evidence, and another for seeking permission of the Commission to cross-examine the respondent. Without considering the aforesaid applications filed by the appellant and despite the fact that all the documents produced by the respondent were categorically denied by the appellant, the Commission reiterated the earlier order while awarding the same amount of compensation to the respondent as was awarded in the first round of litigation.
- 3.2 It was a case of complete violation of principles of natural justice and the law for production and appreciation of evidence produced on record. All what the respondent had produced before the Commission along with an application, were photocopies of certain documents with no authenticity. The authors of those documents were not produced in evidence to

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endorse the genuineness thereof. This deprived the appellant of an opportunity to cross-examine those persons. Even the respondent did not enter witness box to state on oath and provide an opportunity to the appellant to cross-examine her. In this view of the matter, the impugned order passed by the Commission deserves to be set aside.

- 3.3 It was further argued that the amount of compensation claimed by the respondent was totally imaginary with no loss shown to have been suffered by her in any manner. Even from the photocopies of the documents produced on record by her, the amount of compensation claimed could not possibly be justified. It was merely a case of deficiency on account of alleged error in hair cutting, which in fact was not there. From the material placed on record by the appellant it was established that the respondent was satisfied with the services. The same was also evident from the appearance captured in the CCTV when she entered and left the hotel. The grievance raised by the respondent was not significant and even otherwise, the same was taken care of to her satisfaction.
- 3.4 Pointing out the defects in the evidence or non-reliability thereof as produced by the respondent, learned counsel for the appellant submitted that from two pay slips produced on record by the respondent for the months of April 2018 and May 2018 from M/s. AMC Marketing Research Associates, it is evident that before and after the alleged deficiency in service regarding faulty haircut, the respondent remained in service on the same pay package.
- 3.5 With reference to photocopy of the email from Pavan Goenka for some senior level position at Delhi, the submission is that it was not a job for modelling, there was nothing pointed out to show that because of alleged faulty haircut in April 2018, the respondent had lost that job opportunity. Even with respect to the photocopy of letter dated 09.04.2018 placed on record, it was argued that the same may be fabricated email as nothing transpired subsequently, as was disclosed by the respondent. No certificate under Section 65-B of the Indian Evidence Act, 1872 was produced to substantiate authenticity of the letter, only a printout of which was taken out from the computer has been produced.

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- 3.6 With regard to the modelling assignment certain photographs were attached by the respondent. However, the same do not depict as to which period those relate to. Nothing was produced on record regarding the signing amount paid to the respondent for the aforesaid assignment.
- 3.7 Further, a photocopy of the certificate of one Glitz Modelling and Production Pvt. Ltd. was produced by the respondent to indicate that she had been doing modelling assignment from 2015 to 2018 and was also offered role in a feature film. These also do not substantiate the claim of the respondent for the reason that the said certificate does not mention any date and no monetary aspects have been detailed out. Moreover, the existence of the said company may also be doubtful.
- 3.8 Similar is the position with reference to the photocopy of a certificate dated 11.12.2017 from Glitz Modelling and Production Pvt. Ltd. proposing a second lead role to the respondent in a feature film for which remuneration of ₹60 lakhs was shown. The aforesaid photocopy of the letter also did not substantiate the case of the respondent. She had never claimed that she had any experience of working in a movie. The aforesaid offer is said to be of 11.12.2017 and the alleged faulty haircut was on 12.04.2018. Nothing was placed on record to show that any developments had taken place in the intervening four months. Nothing was produced on record that the said film ever went on floor.
- 3.9 Photocopy of a letter dated 02.02.2018 from Jeet Surendranath, Partner, FAR Commercials, offering the respondent annual modelling assignment with a reputed haircare brand and other brand campaigns for ₹50 lakhs also does not take the case of the respondent any further as there is nothing to show that the aforesaid offer, if made to the respondent, was ever accepted by her. She continued to work with AMC Marketing Research Associates till May 2018, as per the letters produced on record by her. Moreover, the aforesaid letter was not on letterhead of the company, rather it was on a plain paper.
- 3.10 Similar is the position with regard to a certificate dated 11.07.2018 produced by the respondent from Dr. Ranajit Kumar Das. It was sought to be claimed that the respondent

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suffered from mental trauma, depression and anxiety. However, the fact remains that photocopy of the documents produced does not show that the aforesaid doctor is an expert on the subject. His qualifications are not even mentioned in the certificate. This document was not produced in the first round of litigation.

- 3.11 Photocopy of the certificate dated 13.02.2023 also cannot be relied on as the same is as vague as possible, not printed on any letter head and does not contain the payment details. It is a document dated 13.02.2023, i.e. almost after five years of alleged haircut. Though it is stated in the aforesaid certificate that the respondent had worked in a short film titled 'Japanese Wife', however, her name does not feature in that film. In any case, it coincides with her earlier employment. Performance in any film is a full-time job and it cannot be possible or permitted in case the respondent was working in another establishment at a senior position with handsome salary.
- 3.12 Even otherwise photocopies of the documents produced by the respondent, as referred to above, could not possibly be produced in the evidence on the basis of which an order could be passed. The authenticity and genuineness of the documents produced was required to be proved.
- 3.13 The appellant had produced an affidavit regarding spa in the Hotel stating that as per the requirement of the respondent, her hair was trimmed 4 inches from bottom. It was up to the satisfaction of the respondent. In the earlier WhatsApp chats, there was no mention of loss or agony suffered by the respondent; the minor issue raised by her was corrected. None of the documents produced in the second round of litigation was placed on record in the earlier round of litigation. In the first round of litigation, the amount of compensation claimed was ₹3,00,00,000/- which was enhanced to ₹5,20,00,000/- in the second round of litigation.
- 3.14 Learned counsel for the appellant further submitted that before the Commission, the appellant had produced a chart showing as to how much compensation was assessed in different types of case pertaining to deficiency in service.

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- 3.15 All these factors could be thrashed out by the appellant, had they been given an opportunity to cross-examine the respondent.
- 3.16 Summing up the arguments, it was submitted that the entire findings recorded by the Commission were based on conjectures and surmises with no admissible evidence on record. In support of his plea, reliance was placed by the learned senior counsel for the appellant on the judgments of this Court in ***Chief Administrator, HUDA v. Shakuntala Devi⁸, Charan Singh v. Healing Touch Hospital⁹ and Nizam's Institute of Medical Sciences v Prasanth S. Dhanaka¹⁰***.

ARGUMENTS OF THE RESPONDENT

4. In response, the respondent who appeared in-person, submitted that she is a highly educated woman, being a management post-graduate from I.I.M., Calcutta and also Diploma in Mass Communication. All what has been stated by the appellant is a bundle of lies. In the first round of litigation, this Court had upheld the findings of the Commission regarding deficiency in service. The matter was remanded back only for assessment of compensation. The respondent, being not legally trained, should not be deprived of amount of compensation for the financial loss and mental agony suffered by her on account of deficiency in service by the appellant. She had a prosperous career ahead, which was derailed by the appellant. Length and style of haircut of a woman always has relation with her confidence, which may be relevant for any managerial job on which she was working or for any meeting with officers and also for role in any movie or modelling assignment. There is nothing wrong in the evidence produced by the respondent before the Commission which has rightly been relied upon for assessment of compensation payable to her.
- 4.1 It was further argued that the respondent is running from pillar to post for the last 7 years and has still not been compensated adequately on account of deficiency in service. It is a lapse on the part of the appellant, who have not summoned and cross-

8 (2017) 2 SCC 301

9 (2000) 7 SCC 668

10 (2009) 6 SCC 1

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examined the employers and agencies who had offered her role in film or modelling assignment, in order to challenge the credibility of the documents produced by her. It is too late for the appellant to now claim that they had not been offered the opportunity once they had missed the bus. She also alleges that none of the copies of the applications filed by the appellant was received by her.

- 4.2 It is further argued that when the respondent had gone for haircut on 12.04.2018, she was working with AMC Marketing Research Associates. She had to quit the job in June 2018 on account of faulty haircut which led to loss of confidence in the corporate job. The submission is that mere technicalities should not come in the way for compensating the respondent for the loss and agony suffered by her. The consumer courts are not meant to strictly go in that aspect as they have been created to be consumer friendly.

RESPONSE OF THE APPELLANT

5. In response, learned counsel for the appellant submitted that to justify her claim of huge compensation of ₹5,20,00,000/-, the respondent has not placed on record any income-tax return which could have shown her income prior to the incident and thereafter.
6. Heard learned counsel for the parties and perused the relevant referred record.

DISCUSSION

FIRST ROUND OF LITIGATION

7. This Court in the earlier round of litigation vide Judgment dated 07.02.2023 upheld the findings of the National Commission regarding deficiency of service. The next issue arose as to the compensation to which the respondent may be entitled to on account of deficiency in service. In para 12 of the aforesaid judgment, this Court observed that the respondent was repeatedly requested to refer to any material placed before the Commission justifying her claim for compensation. It was regarding her advertisement and modelling assignments in past or for which she entered into contract for the present or the future. As the respondent had failed to refer to any material produced before

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the Commission in support of her claim, this Court did not find any justification in awarding huge compensation of ₹2,00,00,000/- under the head of 'pain, suffering and trauma'. There being no evidence produced in support of her claim, this Court had set aside the award of the Commission.

- 7.1 It was also noticed that as the respondent was appearing in-person, as also in the case of present proceedings, she was offered free legal aid which she refused to accept. Finally, in paras 15 and 16 it was observed that the respondent should be given opportunity to produce any material to substantiate her claim in case she has. Once deficiency in service is proved, the respondent is entitled to be suitably compensated. With respect to the question of quantum, the matter was remitted back to the Commission for affording opportunity to the respondent to lead evidence with regard to her claim. In case any evidence is led by the respondent, the appellant was also to be given adequate right to rebut the same. On the basis of the evidence so led, the Commission was to re-examine the matter afresh.
8. It is in the light of the aforesaid observations made by this Court that the evidence led by the respondent to justify her claim is to be examined.
9. It may be relevant to add here that in the complaint filed by the respondent initially, her claim was to the extent of ₹3,00,00,000/-. However, after the matter was remitted back to the Commission the claim of compensation was increased to ₹5,20,00,000/-.

SECOND ROUND OF LITIGATION

10. After the matter was remanded back to the Commission, the respondent filed the affidavit dated 21.02.2023. We deem it appropriate to extract the contents of the same:

"I, AASHNA ROY D/O LATE SH. ANANTA LAL ROY
R/O DDA HOUSING SOCIETY SECTOR E1, BLOCK
F1 FLAT 64, 6TH FLOOR, VAANT KUNJ, NEW DELHI –
110071, do hereby solemnly affirm & declare as under:-

1. That I am the deponent of the above said matter and I am well conversant with the fact and circumstances of the case and I am fully competent to swear the present affidavit of my behalf.

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2. I. say that the accompanying applications has been drafted by me and along with all the evidence and the contents of the same true to my knowledge and belief.”
11. A perusal of the aforesaid affidavit shows that it was a standard declaration made in isolation. Along with the aforesaid affidavit, the respondent had placed on record photocopies of the following documents:
- "i. Email dated 08.02.2023 addressed by Mr. Goenka Pawan of Mahindra and copy of reply Email dated 10.03.2018 addressed by the respondent.
 - ii. 12 Messages between Mr. Rajeev Dubey, Mahindra and the respondent.
 - iii. Photo of the respondent after haircut (undated).
 - iv. Brief profile of Goenka who joined Mahindra in October 1993 as General Manager, R & D.
 - v. Additional Affidavit filed before the Supreme Court in compliance of Order dated 23.08.2022 in C.A. No.6391 of 2021 showing her loss under the different heads owing to the negligence of the appellant.
 - vi. Advertisement of Panteen in which picture of respondent appeared.
 - vii. Advertisement of VLCC in which picture of respondent appeared.
 - viii. Letter on plain paper addressed by Pranav Awasti, Director, Glitz Modelling & Production Pvt. Ltd. (undated) certifying that the respondent was offered feature films and has been modelled from 2015-2018.
 - ix. Letter on plain paper addressed by Mr. Jeet Surendranath, Partner Far Commercials, dated 02.02.2018 to the respondent, offering haircare modelling assignment (Rs.50,00,000/- per annum) with a reputed haircare brand and for Fashion Features and Brand endorsements for a fees of Rs.20 lakhs.
 - x. Letter on plain paper addressed by Pranavi Awasti, Director, Glitz Modelling & Production Pvt. Ltd., dated

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11.12.2017 to the respondent, offering proposal for Feature Film on remuneration of Rs.60,00,000/- for the second lead role.

- xi. Prescription in the form of Letter dated 11.07.2018 addressed by Dr. Ranajit Kumar Das where he stated that the respondent was suffering from mental trauma, depression and anxiety and also advised rest of duties for 30 working days in addition to prescription of medicines.
 - xii. Letter on plain paper addressed by Mr. Jeet Surendranath, Partner Far Commercials, dated 13.02.2023 certifying that the respondent has performed as model in Pantene and VLCC in the year 2017 and 2018, featured in the short film “The Japanese Wife” and the respondent had been offered many fashion related projects and hair care advertisements.
 - xiii. Pay Slip for the month of May, 2018 of the respondent issued by A.M.C. Marketing Research Associates reflecting her designation as Sr. Director at a gross salary of Rs.4,67,468.
 - xiv. Pay Slip for the month of April, 2018 of the respondent issued by A.M.C. Marketing Research Associates reflecting her designation as Sr. Director at a gross salary of Rs.4,67,468.
 - xv. Certificate (undated) issued by the Glitz Modelling and Productions Pvt. Ltd. endorsing her affiliation with them and her work in well-known brands for advertisement and fashion shows and offer of feature films.”
12. The appellant replied to the aforesaid affidavit vide its affidavit dated 16.03.2023, which contains a statement of denial of all documents filed by the respondent.
13. Going in detail, though there was no pleading with reference to the documents annexed by the respondent in the affidavit filed by her, the appellant in the affidavit filed in response pleaded as under:

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"5. That the Opposite Party herein is filing the present reply to the application and the documents filed by the Complainant without prejudice to the fact that most of the documents supplied to the Opposite Party are dim and illegible, and without prejudice to the rights and contentions taken in the Review Petition filed in the Hon'ble Supreme Court, and subject to the outcome of the said Review Petition. The Opposite. Party reserves its rights to add to or alter its. response and file a detailed reply and additional documents, if required. It is submitted that the documents filed by the Complainant and supplied to the Opposite Party herein are mere photocopies and it is prayed that this Hon'ble Commission may be pleased to direct the Complainant to produce the originals of the documents filed by her before this Hon'ble Commission and an inspection thereof may be permitted to the Opposite Party.

X X X

8. It is submitted that the Complainant has sought to constantly improve her case and pleadings over the course of the proceedings in the present matter. In the original complaint and the rejoinder filed before this Hon'ble Commission, there were no pleadings, averments or allegations by the Complainant regarding any loss caused to the Complainant at all on any account whatsoever. The only allegation in the complaint was that the hair of the Complainant was cut short by the Opposite Party herein for commercial gain as the attempt was to sell the hair by the Opposite Party. It is submitted that the Complainant, having not even pleaded any loss in her complaint as is sought to be made out now, has subsequently sought to improve her case and has now filed certain documents pertaining to her alleged loss. It is the submission of the Opposite Parties herein that any evidence or document filed by the Complainant which is outside the scope of the original pleadings in the complaint is liable to be ignored and/or not permitted on the record of the case by this Hon'ble Commission."

14. Learned counsel for the appellant had also referred to two applications filed by them before the Commission:

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- (i) praying for production of original documents;
 - (ii) seeking permission to cross-examine the respondent.
15. We had summoned the record of the Commission and found that the aforesaid two applications are available on record.
 16. The National Commission exercises original jurisdiction under Section 22 of the 1986 Act. This section provides that the provisions of Sections 12, 13 and 14 of the Act and the Rules framed thereunder for disposal of complaints by the District Forum, with such modifications as may be considered necessary by the National Commission, will be applicable for disposal of disputes by the National Commission. Section 13 thereof deals with the procedure on admission of complaints before the District Forum.
 17. It is well-settled that the provisions of the Indian Evidence Act, 1872 (Bharatiya Sakshya Adhiniyam, 2023) are not strictly applicable for proceedings under the 1986 Act. The Commission is, however, bound to comply with the Principles of Natural Justice, save and except as laid down in sub-section (4) of Section 13 of the 1986 Act. Reference can be made to para 43 of the judgment of this Court in **Malay Kumar Ganguly v. Dr. Sukumar Mukherjee and others**¹¹:

“43. Apart from the procedures laid down in Sections 12 and 13 as also the Rules made under the Act, the Commission is not bound by any other prescribed procedure. The provisions of the Evidence Act are not applicable. The Commission is merely to comply with the principles of natural justice, save and except the ones laid down under sub-section (4) of Section 13 of the 1986 Act. The proceedings before the National Commission are although judicial proceedings, but at the same time it is not a civil court within the meaning of the provisions of the Code of Civil Procedure. It may have all the trappings of the civil court but yet it cannot be called a civil court. (See *Bharat Bank Ltd. v. Employees and Nahar Industrial Enterprises Ltd. v. Hong Kong & Shanghai Banking Corpn.*)”

11 (2009) 9 SCC 221

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- 17.1 Judgment of this Court in **Dr. J.J. Merchant and others v. Shrinath Chaturvedi**¹² deals with the issue as to how evidence is to be recorded before the Commission under the 1986 Act. The idea behind is that in the process, the proceedings should not be delayed. While trying a complaint the evidence of the parties could be taken on affidavits as provided in Section 13(4) (iii). The Commission is also empowered to issue commission for examination of any witnesses in terms of Section 13(4) (v) of the 1986 Act. It is akin to Order XVIII Rule 4 CPC, which also provides that in every case examination-in-chief of the witness shall be on affidavit. Further, witness could be examined by the court or the Commissioner appointed by it. The Commission also needs to follow the same system. In case the facts are taken in evidence and cross-examination is sought by the other side, the Commission can easily evolve a procedure permitting the other side to cross-examine the witnesses. The same can be done by putting certain questions in writing or through video conferencing or by appointment of a Commission. Relevant para 19 thereof is extracted below:

“19. It is true that it is the discretion of the Commission to examine the experts if required in an appropriate matter. It is equally true that in cases where it is deemed fit to examine experts, recording of evidence before a Commission may consume time. The Act specifically empowers the Consumer Forums to follow the procedure which may not require more time or delay the proceedings. The only caution required is to follow the said procedure strictly. Under the Act, while trying a complaint, evidence could be taken on affidavits [under Section 13(4)(iii)]. It also empowers such Forums to issue any commission for examination of any witness [under Section 13(4)(v)]. It is also to be stated that Rule 4 in Order 18 CPC is substituted which *inter alia* provides that in every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence. It

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also provides that witnesses could be examined by the court or the Commissioner appointed by it. As stated above, the Commission is also empowered to follow the said procedure. Hence, we do not think that there is any scope of delay in examination or cross-examination of the witnesses. The affidavits of the experts including the doctors can be taken as evidence. Thereafter, if cross-examination is sought for by the other side and the Commission finds it proper, it can easily evolve a procedure permitting the party who intends to cross-examine by putting certain questions in writing and those questions also could be replied by such experts including doctors on affidavits. In case where stakes are very high and still a party intends to cross-examine such doctors or experts, there can be video conferences or asking questions by arranging telephonic conference and at the initial stage this cost should be borne by the person who claims such video conference. Further, cross-examination can be taken by the Commissioner appointed by it at the working place of such experts at a fixed time.”

- 17.2 The enunciation of law by this Court in **R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and another**¹³ with reference to evidence to be led by the parties under the 1986 Act was quoted with the approval in a matter pertaining to Consumer Protection Act by this Court in **Malay Kumar Ganguly (supra)**. Para 40 thereof is extracted below:

“40. This Court in *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple* held at SCC p. 764, para 20:

“20. ... Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that

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the document which is sought to be proved is *itself inadmissible* in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the *mode of proof* alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading

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the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court.”

(emphasis in original)

18. While remanding the case back to the Commission, in the earlier round of litigation, this Court had specifically observed that ‘quantification of compensation has to be based upon material evidence and not on the mere asking’.

ANALYSIS

19. We may add here that whatever documents the respondent produced along with her affidavit were in the form of photocopies. None of the authors of those documents was summoned nor did the respondent get a commission issued for examination of those witnesses. In case any witness was produced, the appellant would have opportunity to cross-examine the same regarding veracity of the documents and/or the contents thereof.
20. Despite denial of all the documents filed by the respondent in evidence to claim damages, the respondent did not take any steps to prove the authenticity thereof. Some of the documents are prior to the relevant date, namely, when the respondent had a haircut in a salon in the hotel managed by the appellant, whereas some are later in time. The manner in which the photocopies thereof are sought were produced do not inspire confidence specially where the claim of damages is made for crores of rupees. From the evidence placed on record, a case is not made out for such a huge compensation to the respondent.
21. At the time of hearing, the appellant had referred to each and every document produced by the respondent along with the affidavit and pointed out the discrepancies therein. The idea was to raise an

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argument that none of the documents produced by the respondent could be relied upon to award her compensation to the tune of ₹5,20,00,000/- as sought to be claimed by her or justify award of ₹2,00,00,000/-. It is in the form of a table filed along with the written note on behalf of the appellant.

“Documents relied upon by the Respondent and Rebuttal of the Appellant to the Documents

Date	Document filed by Respondent	Original/ Photo-copy	Appellant’s rebuttal
<i>On Existing Job/Loss of Job</i>			
May, 2018	Pay-Slip from one AMC Marketing Research Associates indicating that her net salary is INR 3.53 lakh	Photo-copy	The Pay-slip does not indicate when the Respondent quit her job (if at all she did quit). It further does not indicate why she quit her job. There is no causal link shown to the haircut received by her.
April, 2018	Pay-Slip from one AMC Marketing Research Associates indicating that her net salary is IN 3.53 lakh	Photo-copy	On the contrary, the Pay-Slip indicates that she was gainfully employed before and after the haircut. The Respondent has not produced payslips for other months. This apart, even assuming that the pay-slips are legitimate, it would not amount to INR 1 crore per annum, as claimed.

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10.03.18	E-Mail from Mr. Pawan Goenka informing the Respondent that she is 'good fit' for a senior level position in Delhi for which Mr. Rajeev Dubey will get in touch to 'possibly organize a meeting'	Photo-copy	The E-mail does not indicate any specifics of the job that she was purportedly offer, particularly the salary. There is no evidence to show that any official offer was made to the Respondent herein with any details. There is no evidence presented to show that she lost out on this job opportunity purely due to the hair-cut.
09.04.18	E-Mail dated 09.04.2018 from Mr. Rajeev Dubey informing the Respondent to meet at 11 AM without specifying the date. It is indicated to her to recheck before 21.04.2018	Photo-copy	The e-mail does not indicate any formalized meeting or offer made to the Respondent, particularly the financial details. The emails/ messages filed are incomplete. No offer/ interview letter has been produced.

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<i>On Modelling Assignments</i>			
-	Photographs from purported modelling assignments	Photo-copy	Photographs are undated and no proof of receipt of payment qua these specific advertisements are shown to prove any legitimacy.
-	Certificate from one M/s Glitz Modelling and Production Pvt. Ltd. indicating that the Respondent had modelled from 2015-2018 and was offered feature films.	Photo-copy	The Certificate is undated and further, no details or monetary aspects are mentioned in the Certificate. The money, if any, received from such assignments have not been proven by the Respondent through any pay-slip, like she has sought to do with her salary.
11.12.17	Certificate dated 11.12.2017 from M/s Glitz Modelling and Production Pvt. Ltd. proposing a second lead role in a feature film for which the remuneration would be INR 60 lakh.	Photo-copy	The Certificate does not contain any details or specifics and does not provide any evidence regarding her offer. No terms and conditions relating the alleged role are set out. The Certificate is a photocopy and the authenticity of which is under cloud.

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			The role was offered to her, even assuming that it was, in December, 2017 which was much prior to the haircut. No nexus is shown between the loss of assignment and the haircut.
02.02.18	Certificate from Mr. Jeet Surendranath [Partner Far Commercials] offering the Respondent an annual modelling assignment with a reputed haircare brand and other brand campaigns for IN 50 lakh	Photo-copy	The document is illegible and unclear as to whether it is on some letterhead. The Certificate does not indicate any details regarding said modelling assignments. No agreed terms and conditions mentioned relating the said alleged assignment. There is no proof of payment made, if any, from any of the assignments
11.07.18	Certificate from doctor dated 11.07.2018 stating that the Appellant is under medical examination and that she	Photo-copy	The Doctor is not qualified to provide such a certificate. Certificate is from the same doctor who had allegedly treated the Respondent for scalp disorder. The certificate is of July 2018 and was

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	is suffering from mental trauma, depression and anxiety		never filed before by the Respondent, either in the original Complaint or before this Hon'ble Court. The certificate mentions that "She should be relieved of his duties for 30days." The Respondent's contention that she was in modelling for hair-products also belied by these certificates as the doctor who issued these certificates was not a dermatologist.
13.02.23	Certificate dated 13.02.2023 from Mr. Jeet Surendernath [Partner Far Commercials] indicating that the Respondent has modelled in various advertisements for Pantene and VLCC and has featured in some short films	Photo-copy	The Certificate does not indicate any details regarding said modelling assignments. The details of the cast of the film on IMDB does not show the name of the Respondent. There is no proof of payment made, if any, from any of the assignments.

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22. The damages cannot be awarded merely on presumptions or whims and fancies of the complainant. To make out a case for award of damages, especially when the claim is to the tune of crores of rupees, some trustworthy and reliable evidence has to be led. It is not a case where the Commission was considering a small issue where compensation could be awarded by applying a thumb rule. Claim of compensation was for crores of rupees, for which some loss suffered by the respondent because of deficiency in service was required to be established. This could not be established by merely producing photocopies of the documents. Even the discrepancies in the photocopies produced on record by the respondent, as pointed out by the appellant, have been noticed above. Thus, even after remand, respondent has not been able to make out a case for award of such huge compensation.
23. In our view, on the basis of photocopies of the documents placed on record by the respondent, the Commission has committed an error in awarding huge amount of compensation of ₹2,00,00,000/-, which in our view cannot be justified. The observation made by the Commission that because of the trauma suffered by the respondent, she may not have maintained the originals of the documents produced before the Commission, hence, reliance could be placed on mere photocopies, cannot be a justification for awarding such a huge compensation. Even if the photocopies were to be produced, there are other ways and means to justify the claim made on that basis. Even if the Code of Civil Procedure may not be strictly applicable, the Commission has not assessed as to how the respondent suffered loss to the tune of ₹2,00,00,000/-. General discussion in the impugned judgment may not justify the same.
- 23.1 The fact remains that in the earlier round of litigation, the appellant had deposited a sum of ₹25,00,000/- in this Court. While deciding the appeal¹⁴ and remitting the case back to the Commission, this Court had directed for transmission of the said amount to it. While deciding the complaint in the second round of litigation, the Commission had directed release of the aforesaid amount in favor of the respondent.

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24. For the reasons mentioned above, the present appeal is partially allowed. The impugned order passed by the Commission is modified to the extent that the amount of compensation, to which the respondent is entitled to, shall be restricted to the amount already released in her favor.

Result of the case: Appeal partly allowed.

[†]Headnotes prepared by: Nidhi Jain